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Report

Report subject: Unauthorised groundworks at Nadder School, Weaveland Road, Tisbury.

Report to: Western Area Committee

Date: 15 September 2005

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Report Summary

To consider the expediency of enforcement action concerning groundworks carried out to form a hardsurface at the above site, without the benefit of planning permission.

Introduction

This report is being brought to Committee as a result of an emergency item brought before Members at the last meeting of the Western Area Committee on 18th August 2005, concerning the starting of works on this site without planning permission.

The works concerned are located in front of one of the main school blocks, with the King George V Playing Fields lying directly to the south. A hardsurfaced area, apparently to provide a volleyball court and a 10 -space extension to the car park, has been created. The works have generally followed the existing landform with no significant 'cut and fill' operations involved.

Formerly a grassed area forming a small part of the playing fields, around 5 semi-mature trees (Apple, Cherry and Silver Birch) have also been removed in conjunction with the works.

Following this matter being drawn to Officers' attention in early August, the site was inspected where the groundworks were found to be well advanced with scalplings and kerbing laid and fencing under construction. The developers (Thistledown Education Trust) were advised that such works were in breach of planning control and that they should stop work and that any further works were undertaken at their own risk. Nevertheless, it was observed at a subsequent visit that the works had continued and indeed were nearing completion, the parking and volleyball court areas having been surfaced and chain link fencing having been erected along the new boundary.



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At the time the application at appeal was submitted, the land was in the ownership of WCC. However, according to the documentation accompanying the more recent applications, it is now owned by Thistledown Educational Trust although these applications included additional land under the ownership of Tisbury Parish Council upon whom notice was served. However the work carried out may encroach onto Tisbury Parish Council land.

Planning History

There have been three, recent planning applications in respect of similar works to that carried out at the site: -

S/05/0318-New fence, hard play area car parking and pedestrian access. Refused 7th April 2005 for the following reason: -

“Insufficient information has been provided to demonstrate that a landscaping scheme can be provided to mitigate the visual effects of the proposed work and therefore the proposal is contrary to policy G2, C4 and C5 of the Adopted Salisbury District Local Plan.”

(This decision is now subject of an appeal to the Planning Inspectorate, submitted on 28th July 2005).

S/051074- New fence, hard play area car parking and pedestrian access. Withdrawn 1st July 2005.

S/05/1384- New fence, hard play area car parking and pedestrian access. Withdrawn 28th July 2005.

Planning Policies

The site is within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty and forms part of a much larger area of Recreational Open Space in the Plan. Policies G2 (general development criteria); R5 (protection of outdoor recreational facilities); C4 & C5 (development in the AONB) are relevant to the site.

Considerations:

The breach of planning control

The works carried out at the site, by reason of their nature and scale and change to the land, have clearly involved development. Planning permission was required, as, with the exception of the fencing erected, the works were not permitted by any Class of the General Permitted Development Order.

Expediency of Enforcement Action

The hardsurfacing works have involved a relatively small area of the recreational open space. If the works were completed a volleyball court would be provided on the majority of the hardsurfaced area.

The principal issue in this case is the impact of the works on the AONB. The school site is in an elevated position on the outskirts of the town and is very open with long views across the playing fields, making it very visible in the wider surroundings. The small trees removed on the site of proposed works were not outstanding specimens and there was no objection to their loss, however they did assist in breaking up the mass of the school buildings. One tree (Hornbeam) has been retained.

The visual impact of the hardsurfacing works is somewhat offset by the presence of the large - scale school buildings immediately adjacent. However the hardsurfaced area, because of its rather harsh, engineered appearance, is viewed as a rather stark feature at odds with the rural surroundings. The balanced judgement in this case is that the unauthorised hardsurfacing works

seriously detract from the landscape character of the AONB in general and this part of the AONB in particular. This adverse visual impact would be exacerbated if the areas were used for the purposes proposed particularly in relation to the car parking area.

It is further considered that significant landscaping works could, in principle, offset the adverse visual impact of the proposed works. However, due to the minimal space left beyond the works to the site boundary, it is considered on balance that insufficient space exists for satisfactory landscape planting to take place without interfering with the use of existing facilities, which would in time lead to excessive cutting back or removal of any landscape planting.

In view of the above conclusions, it is considered that the harm to the AONB caused by the unauthorised works could not therefore be overcome by attaching conditions to a planning permission and enforcement action to secure remedying of the breach of planning control is therefore adjudged to be expedient.

Options For Enforcement

1. *Serving an Enforcement Notice*: Having regard to the harm to the AONB described above arising from the unauthorised works and the resulting conclusion on the expediency of enforcement action, it is considered that an Enforcement Notice could reasonably require removal of the hardsurfacing works and reinstatement of the land to its previous condition within a reasonable time period in order to remedy the breach of planning control.

However an Enforcement Notice can only deal with existing breaches and cannot prohibit future activities such as bringing into use of the parking area/volleyball court. Additionally, such a Notice could not be used in this case to require removal of works which are not deemed to an integral part of the unauthorised works and would otherwise be authorised by the GPDO (i.e. the boundary fencing erected). As with any Enforcement Notice there is a right of appeal to the Planning Inspectorate, which would suspend the Notice from taking effect and thereby delay removal of the works.

In this case due to the balanced, subjective nature of the judgment of the acceptability of the unauthorised works in planning terms, Members should be aware that there is an increased risk of permission being granted for the works and the Notice being quashed on any subsequent appeal.

It would also be open to the Council to withdraw any Enforcement Notice in the event that the current appeal was successful, however this is also not without risk.

2. *Serving a Temporary Stop Notice (TSN)*: Such a Notice can be served where there has been a breach of planning control in relation to any land and it is expedient that the activity (or part of the activity) should cease immediately. It is an offence to not comply with a TSN, however compensation is payable if the development was lawful at the time the Notice was issued or it is later withdrawn. Only one TSN can be issued in relation to a particular breach.

As part of the process of determining whether a TSN should be issued, the Council should carry out a cost/ benefit analysis.

A TSN is only effective for 28 days, by the end of which the Council must decide whether further enforcement action is appropriate.

As noted already above, the unauthorised works are nearing completion. Whilst a TSN could therefore only be used to prohibit the bringing into use of the parking area and the volleyball court. However, relevant government guidance concerning considerations relevant to the expediency of issuing a TSN suggests that they should only be used to achieve what is essential to safeguard neighborhood amenities or to prevent serious, possibly irremediable harm occurring. Such considerations do not appear to arise in this case. Moreover, the TSN

would only prohibit use for a relatively short period, and the end of which an Enforcement Notice would still have to be issued, if Members considered such a Notice expedient. Officers are therefore not recommending the service of a TSN.

3. *To take no further action at this time:* As already noted above, the unauthorised works were the subject of a failed planning application which is now the subject of an appeal.

Members could therefore decide not to consider the expediency of enforcement action until the appeal has been determined, as such action could be unnecessary if the appeal succeeded. This course of action could recommend itself in view of the balanced nature of the judgment on the acceptability of the unauthorised works in planning terms. Otherwise, whilst this course of action is open to Members it is not considered to have particular merit, as it would further delay the remedying of the breach in the event that the appeal failed.

Human Rights

Article 1, Protocol 1, which establishes the peaceful enjoyment of property and the legitimacy of controlling the use of such property in accordance with the general interest, is relevant to the consideration of these enforcement considerations.

It is considered with regard to the recommended option that any interference with the rights of the owners in this case is proportionate, having regard to the objectives of the Development Plan policies referred to above as they apply in this case, which seek all protection of the environment in the public interest.

CONCLUSION

The carrying out of works comprising the construction of a hardsurface without the benefit of planning permission is development, not permitted by any Class of the GPDO and has therefore been undertaken in breach of planning control.

If Members consider that the works have caused unacceptable harm to the AONB, which cannot be overcome by attaching conditions to a planning permission, enforcement action, by issuing an Enforcement Notice in line with option 1 above, would be expedient.

RECOMMENDATION

That the Head of Legal and Property Services be authorised to issue an Enforcement Notice under the Town and Country Planning Act 1990 (as amended) in line with Option 1 set out in the report above, and serve it on the appropriate person(s)

Alleging the following breach of planning control:

Operational development consisting of the construction of a hardsurface without the benefit of planning permission.

Requiring the following steps to be taken:

1. Permanent removal of the hardsurface constructed on the Land by removing the top surface, base and sub-base together with the kerb edging;
2. Permanent removal of all of the demolition materials arising from step 1 from the Land;
3. Reinstatement of the Land to its former condition by covering the area of the removed hardsurface with earth and topsoil, to match the levels of adjoining Land;
4. To re-seed the Land with grass seed following its covering with earth and topsoil under step 3 above and plant 5 replacement trees similar in species and position to those removed.

Reason for serving the Notice:

The Land lies within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty. The continued retention of the development is contrary to policy G2, C4 and C5 of the Adopted Replacement Salisbury District Local Plan in that the unduly harsh, engineered appearance of the hard surface formed on the Land seriously detracts from the landscape character of the AONB in general and of the particular locality.

Time Period For Compliance:

1. One month;
2. One month;
3. One month;
4. Before the end of the next planting season following the Notice taking effect (for the avoidance of doubt, the planting season is 1st November –31st March the following year).

Implications:

- **Financial:** None at this time. There may be costs implications if the issue of an Enforcement Notice was held to be unreasonable by an Inspector determining a subsequent appeal.
- **Legal:** Detailed in the report.
- **Human Rights:** Detailed in the report.
- **Environmental:** Detailed in the report.
- **Council's Core Values:** Protecting the environment.
- **Wards Affected:** Tisbury & Fovant.