

WELWYN HATFIELD COUNCIL – DEVELOPMENT CONTROL
DELEGATED REPORT

APPLICATION No:	S6/2011/2486/MA
APPLICATION Site:	Land at Warrenwood Manor, Hornbeam Lane Essendon AL9 6JF

NOTATION:

The site lies within the Metropolitan Green Belt and Landscape Character Area as designated in the Welwyn Hatfield District Plan 2005.

DESCRIPTION OF SITE:

The site lies on the south side of Cum Cum Hill [B157] between Warrenwood Mews and Hornbeam Lane. It is enclosed by an Historic Hedgerow along the road frontage and comprises 2 fields separated by a woodland coppice that has “blanket” TPO protection. Beyond the eastern boundary of the site there is a Bridleway 18 [Essendon]

The first field land slopes generally downwards from the B158 to a ditch. The second field slopes upwards rather more steeply towards its rear towards the rear [southern] edge. Both fields are laid as grazing pasture. The land lies within the designated Green Belt and comprises an open agricultural landscape of fields with mature enclosures and small areas of woodland. Elements of sporadic development mainly put to residential use, contribute to the mature open rural character of the area.

DESCRIPTION OF PROPOSAL:

The application proposes the construction of a new private access road from the B158 to a new dwelling [permitted by S6/2009/2574/FP] and adjoining land together with gated access and ancillary works. The works would include construction of a new 5.5m wide bell-mouth access onto the B157 and a 3.2 metres wide private way, some 560 metres long, to the dwelling that would be surfaced in gravel. Passing places would be provided at intervals along its length.

The new access from the B157 would be approximately two-thirds of the distance along Cum Cum Hill between Warrenwood Mews and Hornbeam Lane and would necessitate removal of a section of the hedgerow that encloses the road frontage.

Behind the bell-mouth, the track cuts across the first field towards its western field boundary following existing land contours that cross-fall from north-west to south east. It then curves through the area of TPO'd woodland necessitating removal of a number of Protected Trees. A Landscape Management Plan offers a programme of work including additional planting, as part of the development

Within the second field levels rise north to southwards by some 9 metres, [towards the site for the house] at approximately 1:14 gradient. The track follows the rising ground to a level area in front of the intended house. From there it divides - one leg would provide access to the house; the other would provide access to stabling accommodation [associated with the new house] to be provided on land beyond the Bridleway.

Electrically operated entrance gates would be installed across the rear of the bellmouth and the remainder of the opening enclosed with post and rail fencing/hedge planting.

Two further applications have also been made that are consequential to the decision on application S6/2011/2486/FP.

[a] **S6/2011/2490/S73B** proposes removal of Condition 21 [Easement Rights over Hornbeam Lane] of S6/2009/2574 and Variation of Condition 2 of the same permission to allow landscape details approved as part of S6/2011/2486 to be substituted for the currently approved landscape scheme

[b] **S6/2011/2492/S73B** proposes removal of Condition 10 [Landscape and Biodiversity Enhancement] of S6/2009/2574 and Variation of Condition 2 of the same permission to allow enhanced landscape/ biodiversity proposals contained in S6/2011/2486 to be substituted for the currently approved landscape scheme

PLANNING HISTORY:

There is an extensive planning / planning enforcement history for the site set out in Planning Report S6/2009/2547/FP that assessed of the merits of a new dwelling and other buildings on the land, and associated demolition and removal of partly constructed unauthorized development. That history is not repeated in this Report.

Among other things the 2009 permission includes [at Condition 21] a requirement that:

Prior to commencement of the development hereby permitted details shall be submitted to the local planning authority, for approval in writing, showing easement details that give legal rights for vehicular traffic to travel along the Public bridleway [Hornbeam Lane]

Reason To ensure that there is legal right of access for vehicular traffic in accordance with the Countryside and Rights of Way Act 2000

If successful, this development would avoid need to comply with the above condition.

SUMMARY OF POLICIES:

Policies relevant to assessing S6/2009/2574/FP are relevant to assessment of both S73B applications. For convenience they are not re-stated – but a copy of the original report and recommendation are appended to this report.

Policies relevant to the issues raised by the changes proposed to the parent permission include

National Policy

PPG2: Green Belts

PPS9: Biodiversity and Geological Conservation

East of England Plan 2008 Policies:

SS1: Achieving Sustainable Development

ENV6: The Historic Environment

ENV7: Quality in the Built Environment

Hertfordshire Structure Plan Review 1991 – 2011:

None

Welwyn Hatfield District Plan 2005

GBSP1: Definition of Green Belt

D1: Quality and Design

D2: Character and Context

D8: Landscaping

R11 Biodiversity and Development

RA4: Replacement Dwellings in the Green Belt

RA10: Landscape Regions and Character Areas

IM2 Planning Obligations

CONSULTATIONS:

County Highways – No objections subject to conditions being imposed to safeguard highway safety interests

Environment Agency. - No objection. Point out that Flood Risk Assessment is required under PPS25 and has not been provided. Advise that because the road is to be constructed of gravel and will be permeable to rainwater, and because ground levels are not to be raised it is not necessary for the Agency to see an FRA Also advise that EA has a national policy against culverting watercourses and will require a clear span bridge: over the channel that crossed the land. The bridge will help safeguard wildlife using the river corridor and help to minimise flood risk

HBRC; No comments

Landscaping: No comments received

TOWN/PARISH COUNCIL COMMENTS:

None

REPRESENTATIONS:

This application has been advertised and 4 representations have been received, raising the following issues:

- Will result in the loss of protected woodland and open vistas across two fields

- Would cut across a public footpath and generate noise at the rear of objector's dwelling
- Will be used to service equestrian use – 30 horses will require regular use of access for deliveries, transport movements and movement of employees
- This section of the B158 is busy and traffic is fast moving and there is a history of accidents. Access is near to sharp bend and several existing accesses. Risk of accidents will increase.
- Suggests right of access exists has always existed along Hornbeam Lane and “grand access road” through the Green Belt is in developer's interests but unnecessary
- Nearby woods are unspoiled and full of wildlife – the access road would destroy that environment
- No amount of planting will replace the mature woodland that would be lost
- Would result in loss of privacy to residents

Other issues raised

- Easement rights exist over the land for drainage. Impact of development on those rights has not been assessed
- It is claimed that neighbour notification has not been carried out properly

Period for publicity expired 21 December 2011

DISCUSSION:

In support of the application it has been stated that after re-possessing of the land, it has not been possible for the new owner to prove vehicle access rights to the land, over Hornbeam Lane that is identified as Bridleway 18 [Essendon] in the Definitive Map. The proposal has been made to overcome that difficulty and to achieve vehicle access to allow the permission to be implemented.

A Statement setting out “very special circumstances” to justify this new development in the Green Belt has been provided [31 January 2012]. It explains that Land Registry information is inconclusive about whether private vehicle rights to the site exist over the public bridleway [Hornbeam Lane]. It also says that the extant permissions cannot be implemented without a means of vehicle access. The track would have a limited visual impact and not harm openness of the Green Belt.

The Statement goes on to explain the development site is a blight on the Green Belt with part built structures and piles of building materials that arise from past actions in breach of planning control. Implementation of the current planning permissions would bring improvement to the character of the Green Belt, through significant investment, as the land would no longer be a building site, and through comprehensive landscaping proposals. [The full text of the statement is available on the application file]

A S106 Unilateral Undertaking has been offered, as part of the proposal that would relinquish any historic rights to use the Bridleway for vehicle access to the plot, should such rights be proved subsequent to planning permission being granted. The document would also bind the developer to meet the cost of repositioning bollards [that have been put in place just to the south of existing access to the plot to prevent vehicle access further along the Bridleway] further north and closer to other existing dwellings that take vehicle access from Hornbeam Lane

The main issues raised are:

- 1 Whether the development is appropriate in the Green Belt
- 2 Impact on openness and character of the Metropolitan Green Belt.
- 3 Whether there are “very special circumstances to justify exception to PPG2
- 4 Revised Landscape and Biodiversity proposals and effect of Loss of Protected Trees and an Historic Hedgerow
- 5 Impact on living conditions and amenity of nearby residents
- 6 Impact on highway safety
- 7 Effect of the draft S106 Unilateral Obligation

1 Whether or not the development is appropriate development in the Green Belt

Planning Policy Guidance 2 – Green Belts (PPG 2) states a presumption against inappropriate development within Green Belts and says that such development should not be approved, except in very special circumstances. At *para 3.12* PPG2 sets out that engineering and other operations and the making of any material change in the use of land are inappropriate development. The new access and private way is by definition, ‘inappropriate development’ contrary to the guidance in PPG 2 unless openness is maintained and there is no conflict with the purposes of including land within the Green Belt.

2 Impact on openness and character of the Green Belt Part of the objective of Green Belt designation is to retain and enhance landscapes near where people live, and to retain land in agriculture and related uses. In this case, the route of the track [made necessary to satisfy highway visibility requirements at its access] track would carve diagonally across the first field, severing it. Its visual impact would be increased through removal of a length of roadside hedgerow – landscaping could not provide adequate mitigation – it would spoil the open field pattern that is a feature locally and would be incongruous with the local landscape form. It would take time to establish.

The track’s route through the TPO’d coppice and through the second field would be less intrusive in public views. Nevertheless views across the Green Belt from nearby dwellings and from the Bridleway would be harmed particularly at times when trees are not in leaf. It is considered that the development would have a quite intensive physical presence in the rural landscape, harmful to the openness of the area, and contrary to PPG 2 guidance.

3 Whether “very special circumstances” exist to justify exception to PPG2 The applicant has set out 3 main justifications [set out in above in “description of development] to justify an exception to PPG2.

On the first issue, the fact that the proposal would help to remedy existing unauthorised development and bring about landscape improvement is not an exceptional circumstance. The Planning Authority has adequate powers of enforcement to remedy unauthorised development.

On the second matter, planning permission has been already been granted conditional on access being obtained from Hornbeam Lane. Difficulty in proving access rights over the Lane, is not a very special circumstance for inappropriate

development in the Green Belt. As a matter of further observation, the current position of vehicle bollards on the Bridleway and issues referred to in public representations both suggest that there may be locally available evidence to help resolve historic access arrangements. Nor does it appear that private Easement Rights have been sought to overcome the “inconclusiveness” of evidence that has been presented

On the third matter the impact on openness and character, as discussed elsewhere is considered to be significant and unacceptable. It could not therefore, on its own justify exception to PPG2

The very special circumstances that have been presented do not outweigh the strong presumption against inappropriate development; the harmful effect on the openness of the area that arise.

4 Revised Landscape and Biodiversity proposals and effect of Loss of Protected Trees and an Historic Hedgerow It is acknowledged that the track’s route through the TPO’d coppice would not destroy the woodland as a landscape feature. Notwithstanding that, in addition to Green Belt considerations, the area is designated as an area of Landscape Character. In these circumstances, where development is not considered to be appropriate for other reasons, retention and enhancement of local landscape character is a primary consideration, and any avoidable loss of it is to be discouraged. The same criteria apply and support retention of the historic hedgerow along the highway frontage of the site.

It is noted that the Biodiversity Report that accompanies the application concludes that the land is not colonised by any protected species. Notwithstanding that, the avoidable loss of mature woodland and historic hedgerow will reduce wildlife habitats to the detriment of biodiversity interests. The development would not be in accordance with the provisions of PPS9 and “saved” policy RA10 of the Welwyn Hatfield District plan 2005

5 Impact on living conditions and amenity of nearby residents No assessment of noise has been provided. It might reasonably be expected that traffic noise from the B158 might cause disturbance at peak travel times. Most of the existing dwellings are reasonably secluded and mature planting will provide some buffering to traffic noise. Those dwellings nearest to the track are set in a hollow in the landscape and enjoy additional seclusion. Traffic generated from the approved development will be significant [equestrian deliveries and transport; equestrian employment and movements associated with the mansion] and likely to take place at times when ambient noise levels are low. Vehicles will pass close to dwellings near to the western site boundary. In the absence of a detailed noise assessment, it has not been shown that the development could be carried out without causing disturbance and harm to the living conditions and amenity of neighbouring dwellings contrary to PPS24 and “saved” policy R19 of the Welwyn Hatfield District Plan 2005.

6 Impact on highway safety In their advice the Highways Authority explain that the B158 has an unrestricted speed limit of 60 mph but that average speed along this section is around 40mph. Accordingly forward visibility splays of 120 metres would be required at the new access. This can be achieved. Maintaining a 5.5 metres

wide access for 12 metres into the site would allow vehicles [including horseboxes] to pass within the access and avoid vehicle queuing within the highway. In circumstances where the Highways Authority has no objections, it would be difficult to support the representations made about highway safety. The proposals would satisfy PPG13 and “saved” policy RA28 of the Welwyn Hatfield District Plan 2005

7 Effect of the draft S106 Unilateral Obligation [UU]. In its present form the terms of the UU would not achieve the objective of extinguishing any historic rights of use over Bridleway 18 [Essendon]. Instead it merely offers to restrict any such rights of use to agreement with the County Council. Further there is lack of clarity about arrangements for meeting the Costs of relocating “bollards”. As the works are entirely a cost associated with the proposed development, the full cost of the works [including obtaining any Orders that maybe needed under Rights of Way legislation] should be borne by the developer

1. Other Material Planning Considerations

Protected Species The presence of protected species is a material consideration, in accordance with PPS9 (Biodiversity and Geological Conservation), Natural Environment & Rural Communities (NERC) Act 2006 (section 40), Wildlife and Countryside Act 1981 as well as Circular 06/05.

Protected species such as great crested newts, otters, dormice and bats benefit from the strictest legal protection. These species are known as European Protected Species (‘EPS’) and the protection afforded to them derives from the EU Habitats Directive, in addition to the above legislation. Water voles, badgers, reptiles, all wild birds, invertebrates and certain rare plants are protected to a lesser extent under UK domestic law (NERC Act and Wildlife and Countryside Act 1981).

The existing site and development is such that there is not a reasonable likelihood of EPS being present on site nor would a EPS offence be likely to occur. It is therefore not necessary to consider the Conservation Regulations 2010 further.

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Protected species such as great crested newts, otters, dormice and bats benefit from the strictest legal protection. These species are known as European Protected Species (‘EPS’) and the protection afforded to them derives from the EU Habitats Directive, in addition to the above legislation. Water voles, badgers, reptiles, all wild birds, invertebrates and certain rare plants are protected to a lesser extent under UK domestic law (NERC Act and Wildlife and Countryside Act 1981).

In the UK the requirements of the EU Habitats Directive is implemented by the Conservation of Habitats and Species Regulations 2010 (the Conservation Regulations 2010). Where a European Protected Species (‘EPS’) might be affected by a development, it is necessary to have regard to Regulation 9(5) of the Conservation Regulations 2010, which states:

“a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.”

The Conservation Regulations 2010, (Regulation 41) contains the main offences for EPS animals. These comprise:

- “Deliberate capture or killing or injuring of an EPS”
 - “Deliberate taking or destroying of EPS eggs”
 - “Deliberate disturbance of a EPS” including in particular any disturbance which is likely –
 - (a) to impair their ability –
 - (i) to survive, to breed or reproduce, or to rear or nurture their young, or,
 - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate, or
 - (b) to affect significantly the local distribution or abundance of the species to which they belong
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- “Damage or destruction of a EPS breeding site or resting place” (applicable throughout the year).
 - e.g. bat maternity roost (breeding site) or hibernation or summer roost (resting place)
 - e.g. great crested newt pond (breeding site) or logpiles / piles of stones (resting place)
 - e.g. dormice nest (breeding site or resting place (where it hibernates)

In some circumstances a person is permitted to ‘derogate’ from this protection. The Conservation Regulations 2010 establishes a regime for dealing with such derogations via the licensing regime administered by Natural England. The approval of such a license by Natural England may only be granted if three strict “derogation” tests can be met:

- the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative; and
- favourable conservation status of the species must be maintained.

Notwithstanding the licensing regime, the Council as Local Planning Authority (LPA) has a statutory duty to have regard to the requirements of the Habitat Directive and therefore should give due weight to the presence of an EPS on a development site. Therefore in deciding to grant permission for a development which could affect an EPS the LPA should:

- a) Consider whether an offence to an EPS is likely to be committed by the development proposal.
- b) If the answer is yes, consider whether the three “derogation” tests will be met.

A LPA failing to do so would be in breach of Regulation 9(5) of the Conservation Regulations 2010 which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.

No reasonable likelihood of EPS species

From the information submitted, HBRC have confirmed that there is not a reasonable likelihood of EPS being present. As such, it is unlikely that a EPS offence will occur and it is therefore not necessary to consider the Conservation Regulations 2010 further.

East of England Plan 2008: On 10th November 2010, The High Court quashed the decision of the Secretary of State for Communities and Local Government to unilaterally revoke Regional Spatial Strategies in England on two grounds:

That he acted outside his statutory powers in circumventing the need for parliamentary scrutiny of such a fundamental change to the national planning system; and

He failed to consider the likely environmental effects of revoking Regional Strategies

However, the Government is still committed to the abolition of Regional Spatial Strategies through the Localism Act. In the meantime, the policies in the East of England Plan are re-established and form part of the development plan again and are therefore a material consideration which can be taken into account in reaching a decision. However, the Government's intention to abolish Regional Spatial Strategies is also a material consideration that could be considered to reduce the weight to be attached to policies in Regional Spatial Strategies.

The application has been considered against policies in the East of England Plan, which at the time of this decision forms part of the development plan for the Borough. The weight accorded to these policies, in light of the above circumstances, has been carefully considered in reaching a decision.

Other matters that have been raised

Matters relating to heritable rights to property, including Easements are protected under civil law and are not a material planning consideration. An Informative is appropriate to inform prospective developers of the representations that have received through the planning process

Planning records show that neighbours were properly informed about this proposal. Representations have also been received from nearby residents who fall outside the definition of "neighbour" for notification purposes. A Site Notice was posted on 7 December 2011. The notification procedure has been carried out properly.

CONCLUSION:

The development does not satisfy the objectives of PPG2 and constitutes an inappropriate form of development in the Green Belt. It is further considered that the loss of protected trees and hedgerow would be harmful to landscape character in an area that is designated as an area of Landscape Character. It has not been shown that the development could be carried out without harm to the living conditions and residential amenity of neighbours. The Unilateral Undertaking that has been drafted

to support the application is inadequate for its intended purpose. It is therefore commended that planning permission should be REFUSED.

RECOMMENDATION: REFUSAL

REASONS

- 1 There is inadequate justification based on very special circumstances to support the development and the proposal constitutes an inappropriate form of development that would be harmful to the openness and character of the Metropolitan Green Belt, contrary to the provisions of PPG2
- 2 The development would result in the loss of Protected Trees, and a length of Historic Hedgerow and would be to the detriment of the established landscape character of an area that lies within Landscape Character Area No. and would result in a loss of habitats to the detriment of local biodiversity contrary to the provisions of PPS9 and “saved” Policy RA10 of the Welwyn Hatfield District Plan, 2005
- 3 It has not been shown that the development could be carried out without detriment to the living conditions and residential amenity of neighbours due to disturbance arising from noise from vehicles using the access track, contrary to the provisions of PPS23 and “saved” policy R19 of the Welwyn Hatfield District Plan, 2005
- 4 The draft Unilateral Undertaking submitted with the application is not sufficient to achieve its stated objective of discontinuing historic vehicle rights over Bridleway 18 [Essendon] contrary to “saved” policy IM2 of the Welwyn Hatfield District Plan 2005.

INFORMATIVES:

1. The attention of the beneficiary of this decision is drawn to representations that have been received about private drainage easement rights on land affected by these proposals. Such issues are not material planning considerations and have not been taking into consideration in this decision. However, any such rights may be protected under heritable property law and, in the event of successful appeal against this decision should be resolved, before development commences.

REFUSED DRAWING NUMBERS:

605/LP1 & 4595/01 & 605/01 & 605/02 & DS/19051101.01A.& DS/19051101.02A received and dated 9 November 2011

Signature of author..... Date.....