

WELWYN HATFIELD BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT
DELEGATED REPORT

APPLICATION No:	S6/2012/2655/S73B
APPLICATION Site:	Land east of Hornbeam Lane, Brookmans Park

NOTATION:

The site lies within the Metropolitan Green Belt, Landscape Character Area and Wildlife Site, with adjoining Right of Way as designated in the Welwyn Hatfield District Plan 2005.

DESCRIPTION OF SITE:

The wider Warrenwood site extends to 24.05 ha. Currently, the wider site includes a partially constructed dwelling house and stable block (dwelling to eaves level, the stable to roof and watertight), the footings for a barn (granted permission for agricultural use) as well as a number of buildings that were present at the time of the former dwelling house – small stable block and garage, plus post and rail fencing constructed in relation to the stables, ménage etc. A storage container was noted on the application site for the dwelling house, whilst a domestic caravan and a storage container were present adjacent the stable block and land the subject of the equestrian change of use. An electronic alarm system, whilst in situ at the entrance to the dwelling house site, was not functioning.

A 1930s detached house originally stood on the site, together with a number of outbuildings including the stable and garaging block. Whilst the original dwelling house has since been demolished, its stable and garaging blocks remain.

The site is located approximately 2km to the south of the village of Essendon. Access to the site is via Kentish Lane (B158). The application site, to which this proposal relates, comprises land east of Hornbeam Lane, which serves the site and a number of cottages and also forms a public bridleway. This comprises the incomplete 20 box stable building.

DESCRIPTION OF PROPOSALS:

This application seeks permission for a variation of condition 1 of planning permission reference S6/2009/2556/MA which granted consent for “*Change of use to equestrian with associated ménage, rides and landscaping*”. This was a resubmission of an application from 1999 (372/99) which was granted planning permission, but never implemented.

Condition 1 stated that the development shall be begun **within a period of three years commencing on the date of the decision notice (Dated 21 January 2010)**.

The current application is for a new planning permission to replace the extant planning permission in order to extend the time limit for implementation by three more years.

In a supporting statement the applicant's agent confirms that issues associated with access to the application site for the proposed new dwelling/ stable block under planning reference S6/2009/2574/FP remained outstanding at the time of this submission and as a result it has not been possible to market with a view to a disposal. Hence, and whilst new interest has been witnessed, it was necessary to seek a new planning permission for this element of the wider proposals and to ensure it is preserved.

PLANNING HISTORY:

Previously called Meadow Cottage.

S6/1980/64 Two storey side extension - approved 25 Feb 1980.

S6/1984/133 Two storey extension – refused 13 Apr 1984.

Re-named Spike Island.

S6/1987/841/OP Two storey side extension – approved 20 Nov 1987.

S6/1988/1021/DE Two storey side extension with balcony at first floor – approved 28 Nov 1988.

S6/1989/652/OP Demolition of existing house & construction of replacement dwelling – refused 18 Aug 1989. Appeal lodged and upheld 15 Jun 1990.

S6/1993/350/OP Renewal of OP to demolish and build replacement dwelling – approved 08 Jul 1993.

S6/1996/189/OP Renewal of OP to demolish and build replacement dwelling – approved 10 May 1996.

Spike Island and the adjacent land were purchased by Andrew Perryment (Rose Limited) in 1998.

S6/1998/129/AG Barn for general storage purposes in connection with the agricultural use of the land – Determined no objection and no further details required 09 Mar 1998.

S6/1998/291DE Details pursuant to S6/1996/189/OP relating to replacement dwelling – approved 20 Jul 1998.

S6/1998/1132/FP Revised siting of dwelling house approved under S6/1998/0291 – approved 17 May 1999 subject to existing dwelling being removed before commencement of replacement.

S6/1999/372/FP Change of use of land to equestrian with associated ménage, rides and landscaping – approved 09 Aug 1999.

ENF/99/253 – November 1999. 3 x concrete strips laid in west corner of field opposite Spike Island. PCN served leading to:-

S6/1999/993/FP 24 timber loose boxes on concrete bases for equestrian use – refused 04 Jan 2000. Reported to PCC 06 Apr 2000 when enforcement authorised.

S6/2000/387/FP Variation to Condition 5 of S6/1998/1132/FP to allow retention of existing dwelling for 6 months after new dwelling commenced – approved 17 Jul 2000.

Enforcement Notice TP/EN/12/2000 served 22 September 2000 requiring removal of concrete strips. Appeal lodged and new application submitted.

S6/2000/1492/FP Erection of 20 box stable building – refused 05 Jan 2001 but after appeal lodged against non-determination within 8 weeks.

S6/2000/1520/FP Variation to Condition 5 of S6/1998/1132/FP to allow retention of existing dwelling for 12 months after new dwelling commenced – approved 29 Jan 2001.

NB: Appeals against Enforcement Notice and non-determination decision issued 05 July 2001. Notice quashed and permission granted for 3 concrete strips. Permission granted for 20 box stable building.

S6/2001/499/FP Replacement dwelling house (revision of S6/1998/1132/FP) showing additional 12 dormer windows and a basement – approved 27 Aug 2002, subject to condition requiring existing dwelling to be removed prior to commencement of approved replacement.

S6/2009/2556/MA - Change of use to equestrian with associated ménage, rides and landscaping – Granted conditionally on 21 January 2010.

ENF/01/113 - On 26 Sept 2001 it was reported that a mobile home had been sited on land adjacent to Spike Island and was occupied for residential purposes by Mr Moynihan. Enforcement action was authorised on 14 March 2002. An application for Certificate of Lawfulness was submitted but not determined. The mobile home was removed from the land in 2003 (but was moved to the land where stables were being built).

ENF/03/107 – On 25 April 03 it was reported that earth moving was taking place. Investigations revealed this to be groundwork in respect of the replacement house development.

On 15 Sept 2003 revised details of the siting of the barn showing a 90 degree turn were submitted. On 19 September amended details of the replacement house were submitted. These were approved by letter on 22 September 2003.

ENF/04/009 – On 13 Jan 04 it was reported that the stables building was too high. The officer who inspected thought that the building appeared to be proceeding as approved, although photographs taken at the time reveal that the building was much larger.

ENF/06/071 - On 23 March 2006 it was reported that dormer windows had been inserted in the roof of the stables and that a mobile home was being lived in on the land. Investigations revealed that the building was higher than approved, larger than approved and that a first floor was being installed with dormer windows.

ENF/07/099 - It was noted that the barn was not being built in accordance with the details submitted being a different shape, larger and in the wrong materials. Therefore this could not be the permitted development notified under S6/0129/98/AG and amended by letter dated 22 September 2003.

ENF/07/100 & ENF/07/103 – On 28 March 2007 it was noted that the existing house had not been demolished as required by the condition of the permission (as varied), and it appeared that the replacement house was larger than approved. Furthermore a large pond had been created and the landscaping of the site did not correspond with the details approved.

S6/2012/2661/S73B – Variation to Condition 21 (Access/easements/legal rights of access for vehicular traffic) to secure revised wording was approved on 14 February 2013. The revised wording read as follows:-

“Prior to the commencement of the development hereby permitted an opinion from counsel, including statutory declarations and any other information, shall be submitted to and agreed in writing by the local planning authority which shows there are legal rights for vehicular traffic to travel along the Public Bridleway (Hornbeam Lane)”.

S6/2012/2656/S73B - Time extension of planning permission S6/2009/2574/FP (Erection of new dwelling, three bay garage block, garden store together with retention and alteration of the existing stables, landscaping and all other ancillary works. Following demolition of partially constructed dwelling, adjoining stables and garage blocks) was granted conditionally on 14 February 2013, with the revised condition 21 imposed in relation to access legal rights for clarity (S6/2012/2661/S73B).

S6/2012/2658/S73B – Variation of condition 10 (Access/easements/legal rights) of planning permission S6/2009/2556/MA 2 *“Change of use to equestrian with associated ménage, rides and landscaping”*, was granted in February 2013, the revised wording once again to read:-

“Prior to the commencement of the development hereby permitted an opinion from counsel, including statutory declarations and any other information, shall be submitted to and agreed in writing by the local planning authority which shows there are legal rights for vehicular traffic to travel along the Public Bridleway (Hornbeam Lane)”.

SUMMARY OF DEVELOPMENT PLAN POLICIES:

National Planning Policy Framework (March 2012)

Circular 03/09: Costs Awards in Appeals and Other Planning Proceedings

Hertfordshire Structure Plan Review 1991 – 2011:None

Hertfordshire County Council Waste Local Plan 1999: Waste Policy 7 - Re-use of Waste Arising from New Developments

Hertfordshire Structure Plan Review 1991 – 2011:
None

Welwyn Hatfield District Plan 2005:

SD1: Sustainable Development
GBSP1: Definition of Green Belt
R11 Biodiversity and Development
R15 Wildlife Sites
R20 Light Pollution
M14: Parking standards for new developments
D1: Quality of design
D2: Character and context
D8: Landscaping
RA10 Landscape Regions and Character Areas
RA15 Agricultural Land
RA21 Leisure and Tourism in the Countryside
RA24 Riding and Livery Stables
RA25 Public Rights of Way
RA26 Bridleways
RA28 New Development using Rural Roads

Welwyn Hatfield District Plan, Supplementary Design Guidance, February 2005

Welwyn Hatfield District Plan, Supplementary Planning Guidance, Parking Standards, January 2004

CONSULTATIONS

Hertfordshire County Council (Rights of Way): HCC's comment that the responsibility in respect of maintenance is limited to that required for bridleway status. HCC has concerns regarding the culvert in Hornbeam Lane and requests that a copy of the survey previously carried out in respect of the culvert be made available.

Hertfordshire County Council (Highways): No objection, but recommend the wording of any variation of this condition be agreed with the County Council's Rights of Way Unit.

TOWN/PARISH COUNCIL COMMENTS: None received

REPRESENTATIONS:

The application has been advertised by site, press and neighbour notification letters. No representations have been received.

DISCUSSION:

The main issues are:

1. Whether the Extension to the Time Limit is Acceptable
2. Other Material Considerations

1. Whether the Extension to the Time Limit is Acceptable

Section 73 allows applicants to apply to remove one or more conditions attached to an earlier planning permission, reference No. S6/2009/2556/MA in this particular case. This results in a new permission with one or more conditions from an extant permission varied or being wholly removed. In determining an application under this section, officers have to have regard to the development plan and all other material considerations but the principle of development should not be re-assessed since that is not an issue in relation to the variation or removal of the condition.

This application is for a variation of condition 1 of planning permission Reference No.S6/2009/2556/MA which granted consent for "*Change of use to equestrian with associated ménage, rides and landscaping*".

Condition 1 stated that the development shall be begun before the expiration of three years from the date of the decision notice. The current application is for a new planning permission to replace the extant planning permission in order to extend the time limit for implementation.

The extant planning consent is still relevant apart from any changes identified below in regards to:

- Changes to the surroundings, context of the application site or the application site itself
- Changes to planning policy under which the proposal was approved
- New planning history

The National Planning Policy Framework (NPPF) was published on 27 March 2012 and is a material consideration in determining planning applications. This Framework replaced Planning Policy Guidance (PPGs) and Planning Policy Statements (PPSs) which were relevant when planning application S6/2009/2556/MA was earlier determined in 2010, guidance in the then PPS1: Delivering sustainable development, PPG2: Green Belts, PPS9: Biodiversity and Geological Conservation and PPG13: Transport material at that time.

The NPPF of March 2012 does not change the statutory status of the development plan as the starting point for decision making. Planning applications must still be determined in accordance with the development plan consisting of the Welwyn Hatfield District Plan 2005 and Supplementary Design Guidance/SPG Parking Standards.

Of further note, and in terms of regional policy, is the recent revoking of the East of England Plan 2008 (January 3rd 2013), wherein policies SS1: Achieving Sustainable Development, T14: Parking, ENV7 Quality of Design, ENV2 Landscape Conservation and ENV3 Biodiversity and Earth Heritage were originally considered and material.

There have been no significant changes to the application site itself, surrounding context, planning history or other planning policy which would impact on the implementation of this proposal in regards to raising new issues which would justify the need of a fresh planning application.

No representations have been received from neighbours and the Essendon Parish Council did not comment.

Whilst it is normally considered reasonable that the current planning application should be subject to the same conditions as the previous planning application where they remain in accordance with the test set out in paragraph 206 for the NPPF, the recent approvals of S6/2012/2661/S73B (variation to wording of condition 21) and S6/2012/2658/S73B (variation of wording to condition 10) requires the imposition of the revised condition relating to legal rights of access to this decision notice for a time extension.

2. Other Material Considerations

Protect Species: The presence of protected species is a material consideration, in accordance with the Natural Environment & Rural Communities (NERC) Act 2006 (section 40), Wildlife and Countryside Act 1981 as well as Circular 06/05. 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, however the existing

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

Biodiversity – A detailed biodiversity report was submitted with the original application. This assesses bats, birds, reptiles, amphibians and mammals. Bats have been found to be present within the 2 stable blocks with possibility that bats could also be present within the main building (dwelling) (it was not possible to investigate for health and safety reasons). The site has also been acknowledged to be a likely site for nesting birds and works should be undertaken at suitable times of the year to ensure their protection. Herts & Middlesex Wildlife Trust and Herts Biological Records Centre responded to the original consultation on the proposals and neither have raised objections to this time limit extension.

Sustainability – the applicant has submitted a sustainability checklist as part of the application. This details that measures such as minimisation of water consumption, permeable surfacing, minimizing heat loss, following the waste hierarchy, contribution to biodiversity and so forth will be undertaken. It is therefore considered that the development will contribute towards the sustainability objectives of the local plan.

CONCLUSION:

The proposed development is considered to be in accordance with the relevant the National Planning Policy Framework, the Welwyn Hatfield District Plan 2005 and the requirements of the Supplementary Design Guidance, February 2005 and Parking Standards, January 2004.

RECOMMENDATION: APPROVAL WITH CONDITIONS

CONDITIONS:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: In order to comply with Section 91 of the Town and Country Planning Act (As amended).

2. The development/works shall not be started and completed other than in accordance with the approved plans and details B09018.04A & 541/LP2 received and dated 20 November 2009 unless otherwise agreed in writing by the local planning authority.

REASON: To ensure that the development is carried out in accordance with the approved drawings and any changes must be agreed in advance in writing by the local planning authority.

3. No removal of trees, scrub or hedges, shall be carried out on site between the 1st March and the 31st August inclusive in any year, unless searched before hand by a suitable qualified ornithologist.

REASON: To protect nesting birds from disturbance under the Wildlife and Countryside Act 1981 (As amended).

4. No external lighting shall be installed within the site

REASON: The site is within the Green Belt wherein lighting would be likely to have a detrimental impact on the character of the countryside and existing ecology within and adjacent to the site which is likely to be an important habitat for biodiversity and might be adversely affected by light pollution in sensitive areas in accordance with the Wildlife and Countryside Act 1981 (As amended) and the National Planning Policy Framework.

5. No development shall take place until full details on a suitably scaled plan of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. Subsequently, these works shall be carried out as approved. The landscaping details to be submitted shall include:-

- b) means of enclosure and boundary treatments.
- e) hard surfacing, other hard landscape features and materials.

REASON: The landscaping of this site is required in order to protect and enhance the existing visual character of the area and to reduce the visual and environmental impacts of the development hereby permitted in accordance with Policy D8 of the Welwyn Hatfield District Plan 2005.

6. Notwithstanding the landscaping details that have been submitted with the application, prior to the commencement of the development hereby permitted details shall be submitted showing amendments to the landscape plan, to vary the planting and enhance the landscape and biodiversity value of the site, to the local planning authority for approval in writing. The development shall not be carried out other than in accordance with the approved details.

REASON: The landscaping of the site is required in order to protect and enhance the existing visual character of the area and to reduce the visual and environmental impacts of the development hereby permitted in accordance with Policy D8 and R11 of the Welwyn Hatfield District Plan 2005.

7. All planting seeding or turfing and soil preparation comprised in the above details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings, the completion of the development, or in agreed phases whichever is the sooner: and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation. All landscape works shall be carried out in accordance with the guidance contained in British Standards, unless otherwise agreed in writing by the local planning authority.

REASON: To ensure proper implementation of the agreed landscape details in the interest of the amenity value of the development in accordance with Policy D8 of the

Welwyn Hatfield District Plan 2005.

8. Prior to the commencement of the development hereby permitted, a detailed scheme for the storage and disposal of waste and manure shall be submitted to and approved in writing by the local planning authority.

REASON: To ensure that risks from contamination to the users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and others offsite in accordance with policies R2 and R7 of the Welwyn Hatfield District Plan 2005.

9. The use hereby permitted and associated ménage and rides shall only be in conjunction with the residential development and stable block approved under planning application S6/2009/2574/FP and shall not at any time be used for commercial livery or riding school purposes.

REASON: To restrict the use of the building to one compatible with the local area and to minimise the intensity of use of the site in accordance with Policy RA24 of the Welwyn Hatfield District Plan 2005 and the National Planning Policy Framework.

10. Prior to the commencement of the development hereby permitted an opinion from counsel, including statutory declarations and any other information, shall be submitted to and agreed in writing by the local planning authority which shows there are legal rights for vehicular traffic to travel along the Public Bridleway (Hornbeam Lane).

REASON: To ensure that there is a legal right of access for vehicular traffic.

SUMMARY OF REASONS FOR THE GRANT OF PERMISSION:

The proposal has been considered against the National Planning Policy Framework, Hertfordshire County Council Waste Local Plan 1999 Waste Policy 7 - Re-use of Waste Arising from New Developments, development plan policies SD1, GBSP1, R11, R15, R20, M14, D1, D2, D8, RA10, RA15, RA21, RA24, RA25, RA26, RA28, Supplementary Design Guidance, of the Welwyn Hatfield District Plan 2005 and Supplementary Planning Guidance, Parking Standards, January 2004 in addition to the Human Rights Act 1998, which, at the time of this decision indicate that the proposal should be approved. The decision has also been made taking into account, where practicable and appropriate the requirements of paragraphs 186-187 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be inspected at these offices).

INFORMATIVES:

1. Investigation of the culvert/bridge along the Public Bridleway in Hornbeam Lane should be undertaken to determine its structural soundness prior to

commencement of development. A survey to determine the weight and vehicle movement capacity of the bridge should also be undertaken. Details of the survey results should be submitted to Hertfordshire County Council, Rights of Way department.

2. No manure shall be burnt on site.

Signature of author...A.W. Mangham.....

Date...05 March 2013.....