

WELWYN HATFIELD BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT
DELEGATED REPORT

APPLICATION No:	S6/2012/2658/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 and paddock/field.

DESCRIPTION OF PROPOSALS:

The proposal comprises a variation of condition 10 from planning permission S6/2009/2556/MA for 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 10 to the decision notice read as follows:-

Prior to the 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 a legal right of access for vehicular traffic in accordance with Countryside and Rights of Way Act 2000.

Since this planning permission was granted, extensive dialogue has taken place between the applicant and Officers from Welwyn Hatfield Borough Council and Hertfordshire County Council with regards to the means of satisfaction of this condition and that the maintains that the satisfaction of this existing condition as worded is not entirely straight forward.

In light of this, the applicant is seeking to formally vary Condition 10 to 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 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”.

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 of the Council, and subsequently agreed with the agent, 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).

S6/2012/2655/S73B – Time extension of planning permission S6/2009/2556/MA for “*Change of use to equestrian with associated ménage, rides and landscaping*” remains undetermined.

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

Herts & Middlesex Wildlife Trust: We have no particular position on the above, which appears to rest on legal access issues.

Hertfordshire County Council (Rights of Way): HCC's comment on this and related applications 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 principle of the development has been accepted as part of the previous full planning application, S6/2009/2556/MA respectively, which essentially sought to renew an earlier consent granted on the site for an equestrian use of adjacent parcels of land to the east of Hornbeam Lane, and opposite the site of the former dwelling house. It is not necessary to repeat or indeed consider those matters here.

For the original considerations, reference should be made to the reports previously completed for this proposal under planning reference S6/2009/2556/MA and the much earlier permission in 1999 (Planning reference S6/1999/0372/FP).

The main issue for consideration with this S73B application is:

1: Whether the suggested revised wording safeguards a legal right of access for vehicular traffic for subsequent approval by the Council and ultimately ensures an element of consistency as far as the Council is concerned.

2: Other Material Considerations.

1: Whether the suggested revised wording safeguards a legal right of access for vehicular traffic for subsequent approval by the Council and ultimately ensures an element of consistency as far as the Council is concerned.

Since this planning permission was granted, extensive dialogue has taken place between the applicant and Officers from both Welwyn Hatfield Borough Council and Hertfordshire County Council with regards to the means of satisfaction of this condition. This process appears to have concluded that satisfaction of this condition, as worded, is not entirely straightforward and it has been queried by the applicant's agent as to whether this is strictly a planning consideration and hence the legitimacy of such a condition on such a planning permission.

To date, the applicant maintains that this issue has prevented marketing and disposal of the site due to queries over the ability to gain access. Therefore, in order

to seek to resolve the applicant has agreed with Officers that a variation of this condition is appropriate to a form that is less onerous in terms of the requirements to satisfy the condition, whilst ensuring that an element of consistency as far as the local planning authority is concerned in respect of this matter.

As part of this process, pre-application discussions have taken place between all parties and an initial agreement in principle was reached over this proposed amended wording to the condition.

Notwithstanding this agreement and having seen the submitted wording in this current S73B submission, the revised wording as submitted does not fully safeguard the council's position in being able to decide, after consideration of evidence from counsel and statutory declarations, as to whether there is a legal right of access for vehicular traffic here.

Accordingly, and with these specific concerns in mind, I have recommended to the agent for the applicant a further revision to the wording of the said condition, the further revision to 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)”.

The above, will in my opinion now give the council the authority to decide from an opinion from counsel, based on statutory declarations and any other information, that there are or not legal rights for vehicular traffic to travel along the Public Bridleway (Hornbeam Lane).

Turning to the concern of Hertfordshire County Council highlighted on related subject applications in respect of the culvert in Hornbeam Lane, with the main concern being the extra weight and vehicle movement across the culvert in Hornbeam Lane, it is argued that having regard to the previous vehicular access over this particular culvert to serve an earlier dwelling house on the same site, the earlier permissions that considered access arrangements as a material consideration and that this application seeks revisions to the wording only of the said condition it would be inappropriate for the Council to now revisit the principal of access at this late stage in proceedings.

Accordingly, and whilst sharing some of the highlighted concerns of the County Council, it is recommended an informative be imposed in this case to safeguard the stability and maintenance of the culvert located in Hornbeam Lane.

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.

Sustainability – The applicant 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:

It is considered that the proposed highlighted revision to the wording (agreed with applicant's agent on 14 February 2013 via email correspondence) , over and above the wording described by the agent in the validated application reference S6/2012/2658/S73B, fully safeguards the Council's position in being able to decide prior to the commencement of development, by virtue of the requirement to submit statutory declarations and a counsel statement, as to whether there is a legal right of access for vehicular traffic here.

RECOMMENDATION

This application to vary the wording to condition 10 of planning permission S6/2009/2556/MA under Section 73 of the Town & Country Planning Act 1990 (as amended) is recommended for approval. It is 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 original reasons to each of the earlier conditions (10 in No) in the decision notice of January 21st 2010 will require amendments to reflect the revoking of the East of England Plan 2008 on January 03 of this year and the introduction of the National Planning Policy Framework (NPPF) of 27 March 2012.

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...5 March 2013.....