

ADDITIONAL INFORMATION

This is information that has been received since the committee report was written. This could include additional comments or representation, new information relating to the site, changes to plans etc.

The text in bold is additional/amended information to that circulated to Members on Tuesday 14th October 2008.

Item 1 – 08/00024/FUL – Gerard Buxton Sports Ground, Rylands Way, Wooton Bassett

The applicants have advised that they wish to amend the proposals, particularly in relation to the three storey properties, to try and address the concerns raised by Members, and therefore do not want the Council to consider the existing plans. When the revised plans are received, neighbours and objectors will be reconsulted.

This item has been removed from the agenda. All objectors have been notified of this change.

Item 2 – 08/00826/FUL – Whitehall Garden Centre, Corsham Road, Lacock

It has become apparent that some objectors may not have been re-consulted on the revised plan which alters the access layout to the site. It has been decided that it would not be appropriate to consider the application again until these consultations have been undertaken.

This item has been removed from the agenda. All objectors have been notified of this change.

Item 3 – 08/01103/REM – Brook Farm, Great Somerford

The application was deferred from the meeting on 24th September 2008 to allow for the comments of the Environment Agency and Wiltshire County Council Highways to be received.

Wiltshire County Council Highways have now indicated that they are satisfied with the scheme and the comments of the Environment Agency have also now been received. However, Officers believe that the issues that have been raised by the Environment Agency cannot be satisfactorily resolved before the meeting.

This item has been removed from the agenda. All objectors have been notified of this change.

Item 4 – 08/01332/FUL – Kingdom Hall, Ernle Road, Calne

Wiltshire County Council Highways

Raises no objection subject to a condition relating to parking (condition 5 refers).

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Letter from Agent

In response to the comments at the previous DC Committee, the agent has provided further details in relation to the use of the proposed new meeting hall.

“The general meeting times held at the hall currently are on Sunday mornings and on one evening weekly, currently Thursday. In addition to these general weekly meetings there are also occasional special meetings held at the hall as has been the case up until now. There is no intention to increase the numbers of these meetings and further to comments raised it should be noted that since the inception of the congregation in 1977 the number of regular attenders has only increased by 8 during that period. The Applicant has already conceded that a time limit of its use restricted to 10.30 pm would be a wholly reasonable concession to the neighbourhood and its residential nature.

Comments have been raised suggesting that the acquired land has been landscaped rather than used to achieve necessary parking. This is not the case. Currently there are only 9no. designated parking spaces on the land which will be increased to 19no. spaces, a significant increase. This will reduce, even from present levels, the impact of the meeting hall on local residents. The layout of this parking scheme has been adjusted to return as much of the acquired land as possible to soft landscaping to reduce the impact of the hard landscaped parking area as much as possible. The intention was also to reduce the impact of any perceived loss of this land in terms of its context to Ernie Road.”

Letters of Objection

A letter of objection has been received from a local resident, the key points raised are summarised below:

- Policy C3 (i) and (iii) – concerns regarding the size of the new meeting hall sited within such a small residential area; extremely close to surrounding homes;
- Policy C3 (vii) and (viii) – concerns regarding pedestrian safety and the local road network;
- Policy C3 (ix) – concerns regarding excessive noise generated from vehicles and larger group of attendees congregating in the car park and hall;
- Appreciate that a meeting place is required – would it not be better to place the meeting hall on the outskirts of Calne, where ample car parking could be provided alongside a new hall without detriment to a small cul-de-sac and its surrounding neighbourhood.

A further letter of objection has been received from a local resident on the grounds that the proposed development is in breach of Policy C3, the key points raised are summarised below:

- Too large, obtrusive to look at, not in keeping with the size of the domestic homes around it;
- Totally visible and not pleasing to the eye and not in keeping with the character of other local domestic properties;
- It is a commercial business and the proposed larger building will reflect this, increasing road use in a small and narrow cul-de-sac, and as the hedge is to

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be removed the building will be a stark permanent reality of its commercial operation;

- Loss of important grassy and safe playing area for children;
- The large hall will increase the amount of travelling, as very few of the present attendees are local, thus more cars in and out and pollution, noise and disruption that is already caused will be worsened. The proposed increase will overload the present road not only on Sundays, but also the days when they all park their cars when they are having an outing etc.;
- Privacy – the whole cul-de-sac will be eroded by the introduction of many more people with the noise etc. that will be created, and the whole area will be overlooked and intruded upon by the much larger commercial building;
- Problems of access to and from our property when the hall is in use as cars are parked the full length of Ernle Road and a six point turn has to be made to get out of our driveway;
- The existing hall is not dilapidated and the Planning Committee should visit the site to fully consider the situation of the local residents.

A further letter of objection has been received from a local resident, the key points raised are summarised below:

- **Nothing has changed since our last letter of objection, apart from the Highways Department came into the Ernle Road cul-de-sac and cleaned the gullies, but it has made no difference to the drainage problem that has existed from the corner of Ernle Road/Warren Crescent footpath for the past two years.**
 - **The proposal is contrary to Development Control Core Policy C3, in particular criteria, (i), (iii), (iv), (vi), (vii), (viii) and (ix).**
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Item 07 - 08/02047/FUL - Land Off Calcutt Street, Cricklade, Swindon, Wiltshire

Town Council

The Town Council objects to the proposed development on the following grounds:

- **Lack of car parking provision.**
- **No provision for parking for deliveries.**
- **105 High Street will now have to reverse out.**
- **Bus shelter is poorly positioned.**
- **Existing parking area and boundary wall are in a poor state.**
- **Development contrary to Policy C3 (vii) and (viii).**

The Cricklade Action Partnership commented on the following grounds:

- **Bus shelter is poorly positioned.**
- **Land should be used to improve the space for bus passengers and pedestrians.**
- **It is only recently that vehicles have been reversing out of the site.**

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County Archaeologist

The County Archaeologist has noted that the site is located within the area of the Saxon town of Cricklade where there have been numerous archaeological discoveries of Roman, Saxon and later date. The County Archaeologist believes therefore that archaeological deposits are likely to be disturbed or removed by the development and therefore recommends that a planning condition relating to archaeological excavation and recording be attached to any permission granted.

Development Control Manager

The Council wrote to the agent on 11th September 2008 enclosing a draft S106 Agreement to secure the Public Open Space financial contribution and requesting that these documents be returned to the Council within three weeks.

The S106 Agreement has not been completed as this stage. Officers therefore suggest that Members delegate to permit the application subject to the S106 being signed prior to the expiry date but that the application be refused should the S106 not be signed by 22nd October 2008, date at which the application expires.

Recommendation

As per the main agenda but with the following condition:

8. No work shall commence on site until the applicant, agent or successor, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The scheme should include on site work and off site work such as analysis, publishing and archiving of the results.

Reason: To ensure that archaeological material and evidence of significance is examined in order to protect the character of the area and for the purpose of drawing up a schedule of works and to comply with Policy HE6 of the North Wiltshire Local Plan (2011).

With an additional recommendation. In the event that an agreement to secure a contribution to public open space has not been completed by 22nd October 2008 that Planning Permission be refused for the following reason:

“The application fails to make any provision for or contribution towards public open space as required by Policy CF3 of the North Wiltshire Local Plan 2011.”

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Item 08 - 08/02019/S73A - Ashley Lodge Farm, Ashley, Box, Wiltshire

Representations

Two (2) letters of objection received (from neighbour and CPRE). Main issues raised :

**Many letters received in support do not live in locality
Decision should not follow similar decision at Westwood Farm, Colerne, which was approved contrary to planning policy
Proposal is for a new dwelling in the Green Belt, contrary to local and national policy
Bybrook Valley is particularly special and should enjoy the highest protection**

Item 9 – 08/02030/FUL – 64 DICKENS AVENUE, CORSHAM, WILTSHIRE

Development Control Manager

The Council wrote to the agent on 27th August 2008 enclosing a draft S106 Agreement to secure the Public Open Space financial contribution and requesting that these documents be returned to the Council within three weeks.

The Council's legal team have confirmed that no information has been submitted. Officers therefore suggest that Members delegate to permit the application subject to the S106 being signed prior to the expiry date but that the application be refused should the S106 not be signed by 21st October 2008, date at which the application expires.

Recommendation

As per the main agenda with an additional recommendation. In the event that an agreement to secure a contribution to public open space has not been completed by 21st October 2008 that Planning Permission be refused for the following reason:

“The application fails to make any provision for or contribution towards public open space as required by Policy CF3 of the North Wiltshire Local Plan 2011.”

Report number 9 – Amendment to Refusal Reason relating to 08/00706/FUL - Wiltshire Golf & Country Club, Vastern, Wootton Bassett

The appellants have submitted the letter copied out below. The Council Solicitor will advise the Committee at the meeting.

Content of Letter from Pegasus Planning Group (dated 13th October 2008)

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"RE: 'Amendment to Refusal reason relating to 08/00706/FUL'
AT: Wiltshire Golf & Country Club, Vastern, Wootton Bassett, Wiltshire,
SN4 7PB

Following our recent discussions, e-mail correspondence and my review of your report to the District Council's Development Control Committee in relation to the above, I write to express concern at the District Council's actions on behalf of the appellant.

The report title states its purpose as 'amendment to Refusal reason relating to 08/00706/FUL'. This reference to 'amendment' of the refusal reason is reiterated at several points within the report, including the report summary and within the officer's recommendation itself. Incidentally, I note the reference in your e-mail of 9th October 2008 that the "report is seeking clarification/confirmation from Members on the reason for refusal, rather than revisiting the applications merits", but the terminology in the report suggests that it seeks more than "clarification". In light of this approach, I have reviewed the Local Planning Authority's ability to 'amend' a decision notice, the relevant aspects of which are set out below for your reference.

General Development Procedure Order (1995)

In determining planning applications local planning authorities are required to give their reasons both for refusing an application as set out within the General Development Procedure Order, 1995, art.22(1) (as substituted by SI 2003/2047). In such circumstances, the reasons to be given must:

- Be stated clearly and precisely;
- Be full;
- Specify all policies and proposals in the development plan which are relevant to the decision; and
- Give details of any direction given, or opposing view expressed, by the Secretary of State or a Government Department.

It is important to note that a failure to give adequate, or indeed any, reasons, does not make a refusal void.

As a result, the decision notice issued in respect of application 08/00706/FUL must be capable of being read on its face, and the reasons given should normally be accepted as giving a faithful indication of the factors taken into account by the authority ("unless they are challenged for lack of bona fides or on the grounds that there is no evidence to support them" – *Encyclopedia of Planning Law and Practice*).

The basis on which a decision notice must be prepared sets the background against which an amendment to a decision notice must viewed.

Planning and Compulsory Purchase Act (2004)

The Planning and Compulsory Purchase Act (2004), hereafter referred to as 'the Act', introduced the ability to correct errors in decisions through Section 56 of the Act. However, Section 56 only applies where "**the Secretary of State or an inspector issues a decision document which contains a correctable error**" (Section 56 does not extend to local planning authorities and is therefore not applicable in this case). Despite the fact that the Act

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does not extend the ability to “correct” an error to local planning authorities, the criteria defining what represents a correctable error and when such an error may be corrected is useful in understanding the context of when amendments to decision notices are deemed acceptable.

What represents a correctable error?:

A correctable error is defined under Section 59 (5) of the Act as:

“... an error:

- (a) which is contained in any part of the decision document which records the decision, but**
- (b) which is not part of any reasons given for the decision”**

Clearly, in the case of ‘Report No. 9’ relating to decision 08/00706/FUL the proposal is to amend the “reasons given for the decision” (i.e. the reason for refusal) and is therefore contrary to Section 59. Therefore, irrespective of the fact that a local planning authority does not benefit from the remit of Section 56 of the Act, the proposed amendment does not fall within the remit of a ‘correctable error’ as defined by Section 59.

When may a correctable error be corrected?:

Section 56 of the Act states that:

“(2) The Secretary of State or the inspector (as the case may be) may correct the error –

If he is requested to do so in writing by any person;

If he sends a statement in writing to the applicant which explains the error and states that he is considering making the correction.

(3) But the Secretary of State or inspector must not correct the error unless –

- (a) not later than the end of the relevant period he receives a request mentioned in subsection (2)(a) or sends a statement mentioned in subsection (2)(b),**
- (b) he informs the local planning authority of that fact, and**
- (c) he obtains the appropriate consent.**

(4) The relevant period –

- (a) is the period within which an application or appeal may be made to the High Court in respect of the decision recorded in the decision document;**
- (b) does not include any time by which such a period may be extended by the High Court.**

(5) It is immaterial whether any such application or appeal is made.

(6) The appropriate consent is –

- (a) the consent in writing of the applicant;**
- (b) if the applicant is not the owner of the land in respect of which the decision was made, the consent in writing of both the applicant and the owner.**

(7) But consent is not appropriate consent if it is given subject to a condition.”

As previously established, the remit of Section 56 only applies to the Secretary of State or an inspector. However, it is material note that (unless a request is made in writing to correct an error) Section 56 requires the

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Secretary of State or an inspector to make a statement in writing to the applicant explaining the error and advising of the proposed correction (under subsection (2)) and to obtain the appropriate consent (under subsection (3)) of the applicant (or applicant and owner where the applicant does not own the land to which the application related) within the relevant period (under subsection (4)). The relevant period being 6 weeks.

Clearly the appropriate consent has not been obtained within the relevant period, irrespective of the local planning authorities ability to amend the decision notice.

Summary

As established above, a local planning authority does not have the ability to amend a decision notice. In any event, the amendment of a reason for refusal does not constitute a "correctable error" and, if it were, the "appropriate consent" to amend the decision has not been given within the "relevant period".

If the local planning authority pursues its current course of action, we are concerned that the appellant will be prejudiced at the lack of clarity arising in terms of the matters to be considered at the forthcoming inquiry.

I trust that the above is clear and can be reported to the District Council's Development Control Committee in advance of its consideration of this matter. However, should you have any queries please do not hesitate to contact me.

Yours sincerely,

Geraint Jones
Principal Planner"