

## **WILTSHIRE COUNCIL**

### **SOUTHERN AREA PLANNING COMMITTEE**

**Date: 4<sup>th</sup> July 2013**

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**Subject: Unauthorised use of former barn and adjacent field for events including wedding ceremonies and receptions, on land at The Grange, Gaters Lane, Winterbourne Dauntsey.**

#### **Purpose of Report**

1. To seek Members instructions in relation to alleged unauthorised development which has taken place at the site, as the Area Development Manager does not consider it prudent to exercise delegated powers.

#### **Background**

2. The Grange is a large detached residential property set in extensive grounds on the southern side of Gaters Lane.
3. The former barn is a substantial thatched timber framed structure, dating from the late 17<sup>th</sup>/early 18<sup>th</sup> century within the grounds of The Grange and is Grade II listed. No physical alterations have been undertaken to the building in relation to the material change of use.
4. Allegations were first made in respect of this site in August 2012 and originally concerned what was described as a new parking area, formed to the side of a former agricultural building known as Clarks Barn, to the west of the Grange. Following investigation these works - comprising formation of a bark surfaced area following removal of some trees (which had Conservation Area consent from the Council) were ultimately considered to be 'permitted development', not requiring an application for planning permission as the former farmyard was considered to fall within the lawful domestic curtilage of the dwelling.
5. Subsequently in September 2012 however, third party objections were also received in relation to the use of the barn as a wedding venue. These objections centred on an application made to the Council's licencing team to renew the premises licence for the barn for up to 200 guests (subsequently withdrawn). The issues raised by third parties in

objection to the use concern noise and disturbance from the activities and comings and goings to the site, adverse effects on neighbouring amenities, adverse effects on road safety through increased traffic on Gaters Lane, adverse effect on the Conservation Area and wildlife and use of an adjoining field (opposite End Cottage) for parking.

6. Upon further investigation, it appears that the use as a wedding venue started in 2009 when a licence to hold weddings was obtained from the Council. It appears that the business has grown, initially from what was described as 'infrequent' events, to (based on the owners' own figures) up to and around thirteen wedding events taking place at the site during the summer of 2012, most of which finished at 11:00pm (one finishing at midnight). This is in addition to what the owner describes as other non profit making/charitable/village/family activities also taking place at the site in 2012 (of which their own figures suggest there were nine events, the majority of which also finished between 10.30 and 11.30pm).
  
7. Officers have attempted to negotiate with the owners to remedy the breach and in correspondence and meetings with them since October 2012 have pointed out their available options. Whilst the owners could have submitted a planning application for permanent or temporary planning permission, they have declined to do so, initially stating that they intend to run down the wedding reception operation during 2013, whilst honouring existing bookings. They have also declined an alternative course of action suggested by Officers, which was to enter into a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 to secure the gradual 'running down' of the business as the owners proposed during 2013 and; controls over its nature and scale in the interim. They did submit another form of agreement (referred to in more detail at 8. below). They also have submitted a statement detailing how they would intend to control noise from the barn during the events, which include closing the barn doors whilst music is played and finishing music by 11:00pm and remaining on site during an event. At the time of writing, the first weddings scheduled for 2013 have recently taken place and have been monitored by officers.
  
8. The owners had recently submitted a suggested draft of a personal 'agreement' between them and the Council to regulate the use as follows (but see further in 9 below):
  - a) The number of guests at any civil wedding ceremony and subsequent reception and evening function shall not exceed 150 at any one time (save in respect of their jazz evening)-the term "guests" shall be exclusive of caterers, bar staff and musicians.
  
  - b) The owners will ensure that either they one of them or some other responsible adult person will attend at the

Property throughout the conduct of any of the events and will have overall responsibility to ensure that the event is conducted in a proper and responsible manner.

- c) No music be it amplified shall be played or performed after 11pm on the day of any events.
  - d) All doors to the south elevation of a building known as The Barn at the Property will be closed after 9 pm while any music is being played in the Barn save in respect of the charity jazz evening.
  - e) All guests shall park vehicles on part of the property designated for such use by the Owners and agreed with the Council.
9. The Council's solicitor was asked for their views on the submitted document and stated that it is not enforceable as there is no evidence of ownership provided, it does not bind the land being personal to the owners only and does not control what events take place other than supplying a list. Additionally there is no agreement to cease the use permanently (unless planning permission has been obtained) after September 2013 and the parking area has not been defined. As such this agreement would not meet the tests of a Planning Obligation, as set out in the National Planning Policy Framework. Moreover, the owner's solicitors confirmed by letter dated 20<sup>th</sup> May that this offer of observing some controls over activities at the site has now been withdrawn, and therefore cannot be given any weight in any decision taken in respect of planning enforcement. It is also unclear whether the owners' intention to 'run down' the events use has also changed.
10. The owners have previously advised your officers that they have accepted bookings for seven (previously eight) wedding events, six of which including evening functions, between 25<sup>th</sup> May and 7<sup>th</sup> September 2013, following which they did not intend to take further bookings for evening events (but see above). Each event would be attended by approximately 85-150 persons. However the owners state that they wish to continue to host civil ceremonies in the barn during 2014 and 2015. In addition to the above events, there would be a charity Jazz evening and an open gardens afternoon.
11. The Council's Environmental Protection team is currently investigating separate allegations of noise nuisance arising from the events being undertaken at the site and have monitored recent activity. It is understood that on the 8<sup>th</sup> June, noise levels were found to be considerably lower than previously found. A noise consultant employed by the owners took measurements from the public open space between residential property at Sherfield and the barn. A "Directional

Sound Ceiling speaker” system had been installed and the consultant’s engineer was on hand to monitor and regulate music levels. There was a live band playing through the system. It is understood that the above system will be in use at future events and that the consultant will be trying to persuade those who have booked events to use recorded music rather than live bands as this should improve performance of the system further.

12. Decisions as to enforce noise complaints matters principally concern the licensing aspect (prevention of nuisance). Any issues as to the licensing aspect can be dealt with by the Licensing Authority. Furthermore the Council has powers under the Environmental Protection Act 1990 to serve a noise abatement notice. Both of the above matters are entirely separate from this planning enforcement report, which solely concerns the material change of use of the barn.

### **Planning issues**

13. *The need for planning permission:*

14. Officers consider it would be reasonable to expect the occupants of a large dwelling such as The Grange to entertain guests at their property on perhaps 5 or 6 occasions per year in connection with private and family events such as birthdays and other celebrations and; that perhaps once or twice a year, this may lead to around 100 people being present. This would normally be regarded as a level of use which would be incidental to enjoyment of the dwelling as such and would not change the character of the residential use of the site.
15. However, use of the former barn to hold the number of events, including regular wedding ceremonies and receptions of the scale described above, in addition to the number of other events, as has occurred over the past 3-4 years and is also scheduled for this year, all as described above, is considered to have amounted to a material change of use requiring planning permission. Whilst not conclusive to the materiality of a change of use, it should also be mentioned that the ‘commercial’ aspect of the use further reduces any argument that the use could be incidental to the enjoyment of the dwelling. The use has not been continuous for more than ten years and is not immune from planning enforcement action.
16. It should also be remembered that notwithstanding the comments made by the owners at 7 and 8 regarding how the use would be managed in future (which have in any event since been withdrawn), there are currently no planning controls over the nature, scale of activities and duration at the site. Therefore at the moment, the number of events taking place at the site for example, could increase if the

owners are approached regarding taking additional bookings for this year or next year. There are no planning controls over the time when events finish.

17. Although the temporary parking of vehicles on the adjacent field for up to 28 days per year would normally be “permitted development”, such parking would not take place if it were not for the events taking place at the site and is thus a part of the unauthorised use. In any event, it is understood that vehicle parking extends to days either side of the event with the effect that in 2012 the 28 day period would have been exceeded.

*18. Planning merits:*

19. As noted above, the former barn is a listed structure, which is situated within the Winterbourne Conservation Area.
20. The following Salisbury District Local Plan saved policies, listed in Appendix C of the Adopted South Wiltshire Core Strategy, are relevant:
  - G1 – General principles for development;
  - G2 – General criteria for development;
  - C2 – Development in the countryside;
  - C6 – Special Landscape Area;
  - CN3 -listed buildings;
  - CN4-changes of use in Conservation Areas;
  - CN6-changes of use of listed agricultural buildings;
  - CN8-development in Conservation Areas.
21. The National Planning Policy Framework (NPPF) is also relevant, in particular paragraph 17 core planning principles “...conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations...”; paragraph 28 LPAs should be “...supportive of economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development, support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside”; paragraph 32 “...safe and suitable access to the site can be achieved for all people...”; paragraph 39; “...if setting local parking standards for residential and non-residential development, local planning authorities should take into account: the accessibility of the development; the type, mix and use of development; the availability of and opportunities for public transport; local car ownership levels; and an overall need to reduce the use of high-emission vehicles...”, and paragraph 131 “ ...in determining planning applications, local planning authorities should take

account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation...”

22. In terms of its planning merits, had a planning application been submitted your officers consider that the principle of the use of the otherwise underutilised former barn for a purpose which, as in this case, does not entail extensive interior or exterior alteration and conserves its inherent agricultural character, would be broadly consistent with the policies listed above concerning listed buildings. The conservation officer has been informally consulted however there are no objections to the use of the barn for events including weddings and receptions from a conservation point of view.
  
23. Turning to other planning issues however, the site is on the edge of the village in a rural position, surrounded by a number of residential properties, served by a very narrow lane leading between the A338 and C56 Portway. The use of the site for events, including wedding ceremonies and receptions, attracts noise and disturbance arising from the activity itself -which involves amplified music and a large number of guests (the potential number of guests at future events is listed above) attending the site late into the evening in the summer, when nearby residential properties would have their windows open and /or occupiers would be enjoying their gardens and could reasonably expect a degree of peace and quiet commensurate with their rural location.
  
24. Environmental Health were asked to comment on the ‘noise’ aspect of the use. In response, they have indicated that had a planning application been received for the use, given the management of noise levels recently demonstrated, they would have been inclined to recommend conditions along the following lines:
  - i. No use outside the hours of noon and 11pm Monday – Saturday;
  - ii. Music levels are managed through the sound ceiling system only;
  - iii. Any recommendations for proofing the elevation facing Sherfield are adopted;
  - iv. All doors are kept closed during events;
  - v. Recorded music only;
  - vi. Inaudibility at the facade of the nearest dwelling.

However it should be remembered that as the owners have declined to submit a planning application, there is no opportunity for the Council to impose conditions to mitigate the adverse effects of noise arising from the use, which could otherwise continue in the absence of enforcement action.

25. In addition, there is the associated disturbance arising from pedestrian and vehicular comings and goings to and from the site and the parking area along the narrow Gaters Lane. This is particularly noticeable at the end of the event, for similar reasons as identified above. Whilst not in itself a reason for objection, it is of note that objections from third parties are in part on this basis.
26. In view of all the above, the use is considered to have seriously detracted from the standard of residential amenities enjoyed by nearby residential property. To allow the use to continue on the current basis would therefore be contrary to 'saved' policy G2 (vi) of the Salisbury District Local Plan.
27. Additionally in response to consultation the Council's Highways Officer has expressed serious concerns about the use of Gaters Lane, which is narrow, unlit and lacking footways, to accommodate the additional traffic generated by the continued use of the site for events wedding ceremonies and receptions, in particular having regard to the number of guests anticipated by the owners. Additionally there is serious concern regarding the visibility at the junction of Gaters Lane with the C56 Portway. He has indicated that he is prepared to support enforcement action on the basis that continued use of the site for events including wedding ceremonies and receptions would be detrimental to highway safety conditions.

### **Options for enforcement action**

28. *To issue an Enforcement Notice to require the unauthorised use to cease.* This potentially would provide a medium-term remedy to the harm to amenity caused by the breach. However the Notice would potentially be delayed in coming into effect by any appeal to the Planning Inspectorate. One of the grounds of appeal could be that the owners consider that planning permission should be granted for the development. This would enable the planning merits of the development to be tested and conditions to be added to any grant of planning permission at appeal.

In the event there was no appeal made against the Notice, by the time it came into effect and the period for compliance expired, it would not prevent the remaining events at the site scheduled for 2013 from being undertaken, but it would preclude further activities (other than that deemed incidental to the enjoyment of the dwellinghouse as such) in 2014 and beyond.

In the latter respect it should also be noted that an Enforcement Notice cannot take away existing use rights, such as those identified at 14 above.

29. *To not take any action at this time.* As noted above, the owners informally indicated to officers that they are not taking further bookings for wedding receptions and that use will finish in September 2013 (however whether this 'offer' still stands following recent communications is in question); the use for wedding ceremonies will cease when the licence expires in 2015. In the interim they initially stated the owners intend to put the noise control measures referred to at paragraph 7 above into effect. However as noted above, that offer has also since been withdrawn. Such an approach could potentially allow an orderly 'winding down' of the business.
30. However, the Council would then be entirely reliant on the owners' intentions. If, for example, those intentions or the ownership changed and/or the owners subsequently decided to take additional bookings for events and weddings, the Council would effectively find itself in the same situation as it is at the moment and it would have allowed the harm caused by the use to continue for a further lengthy period without any justification. As noted above, the owners declined to enter into an Undertaking which could, amongst other things, have secured this approach and; would have been enforceable in default of compliance. It is not considered a reasonable approach to rely solely on the assurances of the owners in this respect. For the above reasons, the option is not recommended.
31. As noted above, the (withdrawn) 'agreement' suggested by the owners was not a Planning Obligation, it was not enforceable and can be afforded no weight in determining the expediency of enforcement action. Further options considered as an alternative to formal action included the submission of a retrospective planning application, by which the nature, scale and duration of the use could potentially have been limited by conditions. The owners have had since October last year but have not proved cooperative to date in relation to submitting a planning application and in line with good practice, further negotiations are not considered a good reason to delay formal action.

## **Conclusions**

32. The breach of planning control identified above is causing planning harm which officers consider warrants enforcement action being taken to require it to cease. The owners have declined to submit a planning application to attempt to regularise the use notwithstanding having an extended period to do so. Whilst the owners previously stated that they were prepared to cease the use for wedding receptions after



September 2013 and cease the use for wedding ceremonies when their licence expires, in default of a grant of planning permission or Section 106 Undertaking the Council can only secure cessation of the use by taking planning enforcement action.

### **Recommendation**

**The Area Development Manager South be instructed to serve an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 (as amended) and serve it on the appropriate persons, in respect of the following:**

**Without planning permission, the material change of use of the Land from a residential dwellinghouse and uses incidental thereto, and agriculture; to a mixed use of residential dwellinghouse, agriculture and use for the holding of events including wedding ceremonies and receptions.**

**The Enforcement Notice to require the following step to be taken:**

**Cease the use of the Land for the holding of events including wedding ceremonies and receptions.**

**Time for compliance with the Enforcement Notice from the date the Notice takes effect:**

**One month.**

**Reason for serving the Enforcement Notice:**

- 1. The use of the Land for the holding of events including wedding ceremonies and receptions has seriously detracted from the standard of residential amenity enjoyed by nearby dwellings by reason of the levels of undue noise and disturbance caused by the activity on the Land and the vehicular comings and goings to the Land, in particular during unsocial hours, all therefore being contrary to 'saved' policy G2 (vi) of the Salisbury District Local Plan.**

2. **Gaters Lane is narrow, unlit, with few passing places and lacking footways with a poor junction lacking adequate visibility onto the C56 Portway in particular, and; is unsuitable to accommodate the substantial additional traffic generated by the continued use of the Land for the holding of events including wedding ceremonies and receptions without causing serious harm to highway safety conditions, being contrary to 'saved' policy G2 (i) of the Salisbury District Local Plan.**

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Report Author:

Stephen Hawkins, Team Leader (Enforcement).

Date of report: 19<sup>th</sup> June 2013

### **Background Papers**

The following unpublished documents have been relied on in the preparation of this report:

None.

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