Wiltshire Council

Western Area Planning Committee

22 July 2020

From Councillor Ernie Clark, Hilperton Division

Question (W-20-01)

Exactly how far can a developer ignore planning conditions and signed S.106 agreements before this authority takes any action whatsoever against them?

Response

The Council's planning team take breaches of planning control very seriously and the planning enforcement team dedicates proportionate resources to investigate reported cases in the public interest. The Government, through the NPPF, sets out the importance of effective planning enforcement to maintain public confidence in the planning system.

Whilst discretionary, the NPPF directs local planning authorities (under paragraph 58) to apply planning enforcement proportionately, and it is established practice for the majority of all planning breaches to be subject to officer investigation and engagement with site owners to discuss the most appropriate means of remedying planning control breaches – which in the vast majority of cases results in a planning application being submitted to formally regularise matters.

Taking 'direct action' either by way of a stop notice or court injunction are considered the last resort. The Council must also be fully cognisant of the provisions of the European Convention on Human Rights and dutifully consider the appropriateness and expediency of taking direct action.

Question (W-20-02)

If a developer commences development of a site before agreeing (for example building materials to be used) relevant conditions, why does WC not issue a 'stop' notice to the developer?

Response

The answer to this question is partly enshrined within the answer given for W-20-01. A proportionate and reasonable approach must be taken.

In response to the example duly cited, officers would submit that such matters can be regularised effectively through normal planning application processes (such as through variations) rather than require formal or direct enforcement action, which can be costly in terms of officer time and resources and legal expenses.

For planning breaches involving building materials not being confirmed or approved prior to works starting, this can often be resolved through the submission of details retrospectively. Indeed, the practice of requiring developers to submit material samples as a pre-commencement condition requirement is no longer considered reasonable or necessary, and in the summer of 2018, the Government prohibited local planning authorities from doing so, and as such, any condition as described would likely fail the Wednesbury Principles.

Since June 2018, local planning authorities have required the written approval from the applicant/developer when minded to impose a lawful pre-commencement planning condition as part of granting permission (as directed by Section 100ZA(5) of the 1990 Town and Country Planning Act) save for conditions imposed on outline applications that require the subsequent submission of reserved matters approval.

It is also important to appreciate that settled Case law under Hart Aggregates Ltd v Hartlepool Borough Council (2005) established the test of what constitutes a 'true condition precedent' and that a planning condition requiring the submission of external materials before works start on any given site would not go to the heart of the permission.

Put simply, local planning authorities should either require material sample details to be confirmed at application stage, or once a development has reached slab level. By way of an example, a residential development that requires new highway infrastructure should not be reasonably hindered or delayed by 'requirements' that can legitimately be left for a later stage in the development process.

Question (W-20-03)

How does this authority allow a developer to 'sell/transfer' part of an agreed 'open space' to a third party and still continue the development?

Response

Whilst the Council cannot control land purchases or transfers, where there is a legally binding obligation sealed under a s106 agreement, the Council will expect the requisite signatories to such an agreement to honour the obligations and terms. The Council similarly expects site owners and developers to adhere to planning conditions upon the commencement of any approved development. Where there is a deviation, variation or retrospective works undertaken, applications can be submitted for the Council to appraise and determine.

Within the Hilperton division, planning officers are aware of a complaint raised about a consented site for residential development that may have been in part, sold or transferred to another party. This is subject to ongoing investigation and officer engagement with the site owners. However, in terms of remedying such matters, provisions exist within planning legalisation to secure a deed of variation to a s106 legal agreement to update all relevant land owner signatories and to establish the proper responsible parties for the maintenance of the public open space as well as the necessary protected species mitigation.

Officers will continue to keep the division ward member informed of the investigations and ongoing discussions held with the site owners pursuant to the Hilperton site which is the subject of a variation application which has been called-in for committee consideration should officers be minded to approve the revised development; and, should it come before the committee, a full account of the material planning considerations shall be reported for members to determine.