

WILTSHIRE COUNCIL

SOUTHERN AREA PLANNING COMMITTEE

18th August 2011

Subject: Land at the former Wisma Poultry Farm/Stonehenge Campsite, Berwick Road, Berwick St. James, Wiltshire SP3 4TQ

Purpose of Report

1. To advise of the Council's options in respect of deciding whether to confirm a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (an "Article 4 Direction") to remove "permitted development" rights under Parts 4, 5 and 27 of the Schedule to the above Order for temporary uses and caravan sites and use by certain recreational organisations.

Background

2. Members will recall that at the meeting on 14th April 2011, the Committee instructed the Head of Legal Services to make an Article 4 Direction to remove 'permitted development' rights for certain temporary uses (in particular temporary camping); certain uses as a caravan site, and; use for camping by 'exempted organisations', all in respect of this site.
3. The above followed an earlier resolution by the Council in respect of the confirmation of a previous Article 4 Direction, which was discontinued following legal advice. The latest Direction was made in early June and has been the subject of a publicity and consultation exercise concerning whether it should be confirmed, with an anticipated effective date of 1st October.
4. Members will recollect that in previous reports concerning this site, the extent of lawful "permitted development" rights available for temporary uses and caravan sites (i.e. development which can be carried out without needing to obtain express planning permission from the Council) were clarified. Summarised, these rights are as follows:
 - Use as a caravan site approved by an 'exempted organisation' (i.e. the Caravan Club) for the stationing and occupation of up to five members' touring caravans;

- Use for the holding of caravan rallies organised by exempted organisations - no restriction on the number of such rallies which can be held annually or the number of caravans which could attend;
 - Temporary use for the stationing and habitation of tents for up to 28 days annually -no limit on the numbers of tents which can be accommodated;
 - Use by recreational groups such as the Scouts or the Guides - no restriction on the number or duration of events or tents present.
5. Members will also recall that at the April 2010 Planning Committee, a partly retrospective planning application for caravanning/camping on part of this site (reference S/2010/0007) had been refused, and; following subsequent meetings enforcement action had been taken in relation to camping activity on the rest of the site, in excess of the provisions of the GPDO and; associated operational development. The above decisions are all the subject of recent appeal decisions following a Public Inquiry in May, which in summary granted planning permission for camping and caravanning activity at the site, subject to conditions.

Article 4

6. Article 4 of the above Order, as amended in April 2010, provides the Council (or the Secretary of State for Communities and Local Government) with the power to make a direction in a specified area which can remove some or all of permitted development rights which would otherwise be available. Directions can be immediate or non-immediate; however the former can only be used in limited circumstances and cannot be used in respect of caravan sites. A non-immediate Direction is one which does not come into force at the point at which it is made – rather, it comes into force on a date to be determined by the Council.
7. Prior to April 2010, non-immediate directions required confirmation by the Secretary of State. However, the Council can now confirm such directions after taking certain procedural steps, which include undertaking publicity and a public consultation exercise and consideration of any representations received as a result, subject to the Secretary of State coming to the view that he does not wish to decide whether the direction should be confirmed.
8. DCLG guidance published in November last year on the use of Article 4 Directions indicates amongst other things, that the Council can

consider making a Direction only exceptionally where there is evidence to suggest that the exercise of permitted development rights would undermine the visual amenity of the area and the Council should clearly identify any potential harm that the Direction is intending to address. Procedural matters including publicity and notification arrangements are set out in secondary legislation which came into force in April 2010. Also noted is the application of an Article 4 Direction to prevent the sub-division of, or loss of, agricultural land. The application of directions in relation to temporary uses and caravan sites is not specifically referred to in the guidance. However, directions bringing agricultural and forestry permitted development under full planning control will rarely be justified.

9. Research carried out in relation to the use of Article 4 Directions in 2008, focused on their application in Conservation Areas to restrict householder development and is largely not considered relevant to the current case. There appears to have been no detailed study concerning the use of Article 4 Directions to remove other permitted development rights, such as those with which Members are concerned in this case. The practical effect of an Article 4 Direction when in force, is not to automatically *prevent* development which would otherwise have been permitted but to require an application for planning permission for that development. Any such application should be considered on its merits in the normal way and the existence of a direction does not convey any more restrictive policy approach to the determination of such applications. Where permitted development rights have been removed, any applications for development which would otherwise have been permitted do not attract a fee. The work, therefore undertaken by the Council in respect of such applications does not generate any fee income.

10. A constraint on the use of Article 4 Directions is a possible claim of compensation for abortive expenditure or loss of income directly attributable to the withdrawal of permitted development rights, if permission is later refused or granted subject to conditions. There is a time limit of 12 months from the date of the application decision, for submitting a claim for compensation. Nevertheless in deciding whether to confirm the Direction, Members should be aware that the landowner could make a compensation claim against the Council as a result of being prevented from carrying out the activities in question at the site, if planning permission were subsequently refused or granted subject to conditions.

Whether there is need to confirm the Direction

11. In view of the government advice above and the recent appeal decision, it is necessary to assess whether the Direction is still needed. This assessment should consider the evidence of whether the exercise of permitted development rights in the Classes referred to at the site has caused/will cause serious threats to the attractiveness of surrounding countryside and; whether, exceptionally it is therefore considered necessary to bring the matter within planning control in the public interest.
12. Land to the east of the site is subject to other statutory designations, including the river Till valley Site of Special Scientific Interest (SSSI) and Special Area of Conservation and the Winterbourne Stoke Designated Conservation Area. Nevertheless this site itself lies in the general extent of the countryside. It does not lie within an area with a nationally important landscape (such as a National Park or an Area of Outstanding Natural Beauty).
13. In common with most countryside in south Wiltshire outside of such areas, the site and surroundings lie within an area defined in the Wiltshire & Swindon Structure Plan 2016 (WSSP) as a Special Landscape Area (SLA), this being countryside recognised at local level for its scenic qualities and landscape character. 'Saved' Development Plan policies including policy C9 of the WSSP and policies C6 of the adopted Salisbury District Local Plan seek to prevent non-essential development in the countryside and ensure that where it does take place, new development does not detract from the landscape quality of the SLA and that the siting and scale of development and its landscaping and materials are appropriate.
14. Members will be aware that camping and caravanning activity has taken place at the site for the last two years, largely relying on, but also exceeding, permitted development rights which resulted in enforcement action being taken. The Inspector's decision letter in relation to the recent appeals in relation to the site is attached as an Appendix to this report.
15. In allowing the appeals and granting planning permission for use of the site for caravanning and camping purposes, the Inspector concluded that there would be very limited visual impact from the uses, not

causing significant harm to the character and appearance of the countryside/ Special Landscape Area, and; that control of the extent of camping and caravanning and ensuring adequate landscape planting could be secured by planning conditions. Conditions were subsequently imposed by the Inspector, amongst other things limiting the areas of camping and caravanning, limiting the dates camping could take place and the number of tents, removing 'permitted development' rights for camping and caravanning in relation to the southern part of the site, requiring submission and implementation of further landscape planting and a management plan, restricting amplified music, restricting use of fire pits and imposing controls over external lighting.

16. One of the key advantages in originally making the Direction from a development/control management perspective, was that in the event the Council had subsequently been minded to grant planning permission for an application for camping/caravanning made pursuant to the Direction, it could have then imposed planning conditions of a similar nature to those recently imposed by the appeal Inspector.

17. In view of the Inspector's decision to allow the appeals and grant conditional planning permission for camping and caravanning at this site, Officers are of the view that there has been a material change in circumstances since the making of the Direction. The now permitted use of the site for caravanning and camping is restricted by conditions. In particular the 'permitted development' rights for camping and caravanning that the Direction would have sought to restrict, have been removed by a condition of the planning permission over a substantial part of the land ownership. Planning permission would be required for uses restricted by condition in future and any breach would be open to enforcement action.

18. In Officers view, there is no longer a threat to the character and appearance of the countryside through unfettered exercise of 'permitted development' rights, which would exceptionally justify confirming the Direction. The effect of the Direction if confirmed now would be simply to duplicate existing controls already in place, which in itself is considered indicative that it is no longer expedient to confirm the Direction.

Publicity and notification

19. A total of 83 individual representations have been received following publicity carried out after the making of the Order:

Representations received in support of the Council confirming the Article 4 Direction

43 representations received. These are largely from local residents (some from members of the same household). Two have been received from the operator of a local caravan site business. However, representations have also been received from people who do not live near the site.

Reasons for support, in summary are:

- Harm caused by camping/caravanning on this site to historic and natural beauty of the area;
- Would protect Special Landscape Area;
- Site is highly visible from the road and in the wider landscape;
- Camping is inappropriate in this location;
- Unique nature of local countryside;
- Undue noise & disturbance;
- Regulation of activity at the site in the interests of the landscape;
- Planting undertaken by owner will not screen the activity and is out of keeping in itself;
- Site is close to two Conservation Areas and an SSSI.
- Confirmation of Direction would not close the site.
- Licensing concerns.
- Health and safety issues concerning operation of the campsite.

Representations received objecting to the Council confirming the Article 4 Direction:

40 representations received. These are mostly from people who have camped at the site (customers), but two are from businesses. Reasons for objecting, in summary are:

- It would result in the closure of the site;
- It would result in the closure of the 'solstice festival';
- The site is well –run, environmentally responsible and friendly;
- The site benefits local shops and businesses;
- Site has been improved through planting;

- No noise or other adverse impacts on neighbours;
- Site is shielded from neighbours;
- There is limited visual impact
- Need for more camping facilities;
- Previous chicken farm had greater impact;
- Financial implications of compensation etc. for the Council

Owner: Objects to the Direction being confirmed on the following grounds (summary). No evidence of any harm and few complaints. His appeals in relation to using the site for camping and caravanning have been allowed. The Council should be supporting local business and tourism. The owner will seek redress through the Courts if necessary if the Direction is confirmed.

Berwick St. James Parish Council: No comments received.

Winterbourne Stoke Parish Council: “ No comments received.

Secretary of State for the Environment (Government Office for The West Midlands): No response received to date (receipt acknowledged)

Response to objections

20. Confirmation of the Direction would not result in closure of the site or the owner’s annual solstice ‘festival’, unless the owner decided he no longer wished to operate.
21. The other issues raised in representations have largely already been dealt with in the appeal decision and above.

Conclusions

22. The effect of the appeal decision granting conditional planning permission for camping and caravanning activity represents a significant and material change in circumstances since the Direction was made, which together with the responses to publicity/consultation received, warrant careful consideration in terms of whether it is now expedient to confirm the Direction.
23. In view of the conditions imposed on use of the site by the Inspector dealing with the recent appeals, it is considered that it would no longer be expedient to confirm the Direction as adequate controls now exist for the Council to protect the character and appearance of the countryside by the imposition of conditions, and no further action should therefore be taken on it.
24. Members have the following options:
- A: To not confirm the Direction;**
- B: To confirm the Direction.**

Recommendation

A: That the Article 4 Direction made in respect of this site on 7th June 2011, is NOT confirmed.

Report Author:

Stephen Hawkins, Team Leader (Enforcement).

Date of report 29th July 2011

Background Papers

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

None
