

WILTSHIRE COUNCIL

SOUTHERN AREA PLANNING COMMITTEE

3rd June 2010

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

Purpose of Report

1. To advise the Committee in respect of the various breaches of planning control at this site, setting out options for enforcement action where appropriate.

Background

2. Part of this site comprises a field to the north of the former Wisma Poultry Farm, off Berwick Road, in countryside between the villages of Berwick St. James and Winterbourne Stoke. Prior to development it appears that this comprised a largely level open field, with a simple field gate onto the road from which a grass track led across the field, to a collection of simple agricultural buildings of no particular merit at the eastern end of the site. These buildings have since largely been demolished although some hardsurfacing and the flank wall of one building remains.
3. An existing vehicular access and track have been altered and improved, earth bunds constructed, hardstandings laid and a 5 pitch caravan site, currently certified by the Caravan Club, created on a levelled area of land adjacent to the river Till to the north of the former poultry buildings. This area contains 5 hardstandings as well as various facilities associated with the caravanning/camping use, including toilets/showers, washing up and waste facilities, a cesspool/waste disposal point and electrical hook -ups.
4. This lower section of the site is the closest part to the river, although the land is raised above the flood plain and separated by a strip of woodland. The River Till is designated as a SSSI and an SAC. A paddock closer to Berwick Road is referred to by the owner as "the rally field" and is understood to have been used for temporary touring and camping events.
5. Land to the south of the caravan and camping areas, comprises the former poultry farm, some of the buildings of which remain, together with a dwelling. Permission was granted on appeal for redevelopment of this site on planning permission reference S/2006/2122 in February 2008. A further permission for redevelopment was granted under application reference S/2007/2046 in March that year.
6. Since May 2008 various alleged breaches of planning control have been drawn to Officers' attention. These related firstly to earthworks. By September 2008, works were being undertaken to improve the access and

track and bunds being formed along the site frontage. A retrospective planning application was requested. In January 2009 the Council served a requisition for information on the owner. Later earthmoving works and formation of hardstandings in March 2009 took place on site, which subsequently transpired to be in conjunction with provision of a five- pitch caravan site. At a very early stage, Officers suggested that some of the latter works at the eastern end of the site did not amount to development requiring planning permission, however subsequently further significant works appear to have been undertaken. Subsequently in April 2009 an unlawful sign was erected. In August 2009 allegations were made regarding the use of the former poultry sheds to store caravans and cars and at site visits in August and November, substantial numbers of caravans and cars were noted as well as domestic items and paraphernalia.

7. There have also been allegations from September 2009 to date regarding whether the 5 caravan site was being used in accordance with the Caravan Club's requirements, in particular that caravans have been occupied for residential purposes or more than 5 vans have been accommodated, although it has not been possible to establish the former. Officers negotiated with the owner over a protracted period (September 2008 -December 2009) seeking regularisation of matters as they arose and at least two meetings took place at which the owner undertook to promptly make retrospective planning application/s; this culminated in the submission of application reference S/2010/0007.
8. Members will recall that at the meeting on 22nd April 2010, following the refusal of (part retrospective) planning application S/2010/0007, the Committee requested that a comprehensive report on the options for enforcement action including the expediency for so doing, in respect of this site be brought to the next available meeting of the committee.
9. At a visit following the meeting Officers noted that further substantial excavations appeared to have taken place in the southern corner of the site, the earth re-profiled and a pedestrian access formed to an adjacent footpath.
10. Subsequently at the 13th May meeting, Members were advised that on 30th April a Temporary Stop Notice (TSN) had been issued under delegated powers prohibiting for a period of 28 days further development at the site, including stationing touring caravans and tents on the land in excess of 'permitted development' limits, further building or engineering operations ancillary to such use, as well as any further development associated with planning permission reference S/2006/2122 including completion and use of the manege. The owner subsequently advised the Council that all work had ceased on the manege and that he would abide by the terms of the undertaking.
11. The TSN expired on 28th May 2010. It is not possible to issue a further TSN and the Council now has to reach a decision on the expediency of

further enforcement action in respect of the breaches identified in the Notice.

12. At a recent visit it was noted that no caravans were stationed on the site other than those sanctioned under 'permitted development', no further groundworks had been undertaken and no further work had been undertaken on the riding arena. The number of caravans stored within the buildings had been reduced to 3.

Planning Policy Context

13. The site lies in open countryside to the north of Berwick St. James village within the Special Landscape Area and in an Area of Special Archaeological Significance.
14. Part of the eastern boundary of the site is also adjacent to the Winterbourne Stoke Conservation Area. To the east, the River Till is designated as a SSSI and an SAC. Development Plan 'saved' policies G1, G2, G5, CN11, CN21, CN22, C2, C6, C12, C13, C18, C19 & T9 are relevant as are PPS1, PPS4, PPS5, PPS9, PPG13 and PPS23.

The caravan and camping uses-the need for planning permission & alleged breaches

15. Planning controls over the use of land for stationing and inhabiting touring caravans are particularly complex and a brief overview is provided here. Part 5, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) permits the use of land as a caravan site where that use falls within Schedule 1 attached to the Caravan Sites Control of Development Act 1960. Schedule 1 refers to cases where a site licence is not required from the Local Authority to station caravans. These include the use of holdings of five acres or more for the stationing and occupation of up to three caravans for up to 28 days per year; sites occupied and approved by 'exempted organisations', sites approved by exempted organisations for stationing and occupation of not more than five caravans and; meetings organised by exempted organisations lasting no longer than five days. For the purposes of planning the definition of a caravan includes a motorhome.
16. The above authorises the change of use of the land but does not necessarily authorise any works of operational development undertaken in association with the use. As a site licence is not required, Class B of the above Part which authorises development associated with a caravan site needed to meet licensing requirements, would not appear to give authority for the works. Some (probably small –scale)development could be

regarded as ancillary to the change of use; it will be a matter of fact and degree depending on the circumstances of the case as to whether any operational development goes beyond that which could be regarded as ancillary and therefore requires planning permission in its own right.

17. There are no planning controls regarding the number and density of caravans of tents stationed on the site in connection with such uses. Generally a licence for such events is not required from the Local Authority.
18. At this point it is relevant to look at what is meant by an 'exempted organisation'. This is an organisation whose objects include the promotion of recreational activities and which holds a certificate of exemption granted by Natural England. Probably the best known on these are the Caravan Club and Caravanning and Camping Club, although there are in excess of 400 such organisations. Depending on the organisation, the effect of their certificate may restrict the organisation to, for example, approving the holding of rallies only and would not extend to their approving a 5 caravan site.
19. Turning to tents, the temporary use of land for stationing and habitation of tents for up to 28 days per year would normally be permitted by Part 4, Class B of the GPDO. Such use by members of certain recreational organisations including the Scouts and Guides, is also permitted by Part 27 of the GPDO for longer periods.
20. So, in summary:
 - **Providing use of the relevant part of the site has been approved by an exempted organisation such as the Caravan Club or Camping and Caravanning Club, the use of the site as a caravan site for the stationing and occupation of up to five club members' touring caravans is permitted development. However, this would not appear to permit any building engineering or other operations of significant scale which are associated with the use.**
 - **The use of part of the site for the holding of caravan rallies of up to 5 days' duration organised by exempted organisations, is permitted development. There is no restriction under planning legislation on the number of such rallies which can be held annually or the number of caravans which could attend.**
 - **The temporary use of part of the site for the stationing and habitation of tents for up to 28 days annually is permitted development. Again there is no limit on the numbers of tents which can be accommodated.**

- **The use of part of the site by recreational groups such as the Scouts or the Guides is permitted development. There is no restriction on the number or duration of events or tent present.**

The 'certified' site & associated works

21. It appears that the owner sought a certificate of exemption from the Camping and Caravanning Club in April 2009, to allow him to operate a five caravan site. In November 2009 the Council was advised that the site was no longer approved. It appears however that the owner had been granted a similar certificate by the Caravan Club in August 2009, approving the continued use of the site for stationing and occupation of up to five touring caravans by Caravan Club members.
22. In October 2009, it was first alleged that the use was exceeding the permitted 5 touring caravans, in particular that the caravans were occupied on a residential basis. The owner's website at this time suggested that 15 pitches were available on the site.
23. At an inspection in November 2009 it was noted that four caravans were in situ; all had their curtains closed and were connected to services. In early December 2009, it was noted that three of four caravans seen at the previous visit, were still present. By the end of 2009 however it appears that all the caravans in question had been removed.
24. At the most recent visits to the site, no more than two caravans or motorhomes have been viewed on the certified site and these have been different on each occasion. At the moment therefore, it can only be concluded that there is no evidence that the site is being occupied on a residential or other basis which does not comply with the exemption. The owner has since removed any reference to having 15 pitches available from his website; this now refers to five pitches only and a sign at the site entrance makes it clear that the use of those pitches should be for Caravan Club members only.
25. In view of third party representations, Officers have made enquiries with the Caravan Club, who have confirmed that their certificate is still in effect and that the 5 caravan site is therefore lawful in planning terms.
26. It is also necessary to consider what can be regarded as building, engineering and other operations which have been carried out in association with the creation of the 'certified' site, which include the carrying out of engineering and other operations including materially altering the landform by excavating and re-profiling the ground to form levelled areas and formation of hardstandings; formation of earth bunds and associated fencing; installation of a cesspool/ waste disposal point and enclosing fencing; installing electrical hook –ups and lighting; materially altering the position of and widening an access onto a classified road and resurfacing and improvements to an existing track; formation of a

pathway, and; erection of buildings including a prefabricated toilet/shower block building (it is considered that this structure meets the accepted tests of a building having regard to its size, degree of permanence and physical attachment to the land, although the point could be argued at appeal) and washing up building.

27. It is considered relevant that a certified site could have been brought into use, largely without any of the operational development undertaken at the site. Other, similar rural certified sites do not appear to have similar works on this scale. It would not appear that these works were required to be carried out by either the Camping and Caravanning Club or the Caravan Club-in fact the latter has commented that “physical development is a matter for the normal planning process in which the owners need to liaise with the Local Planning Authority, submitting a formal planning application if the latter so desires”. Cumulatively the works are of significant scale, which could not be regarded as ‘de minimis’ and it is considered that as a matter of fact and degree, they go beyond that which could reasonably be regarded as ancillary to the permitted change of use under Part 5, Class A.
28. Furthermore, these works would largely not appear to have been permitted development, for the following reasons. First, the site falls outside of the caravan site licensing regime, so the works would not have been permitted by Part 5, Class B of the GPDO. Second, given that the works are associated with the provision of a caravan site it is considered unlikely that any part thereof (for example, resurfacing of the track) could reasonably be claimed to be agricultural permitted development under Part 6 of the GPDO. Even if it could be argued that the improvements to the track were reasonably necessary for the purposes of agriculture, they were not subject to any prior notification and have therefore been carried out in breach. Moreover these improvements appear to have been carried out as an integral part of the operations associated with the alteration and material widening of the access.
29. It is accepted however that earth bunds can be a ‘means of enclosure’ and therefore permitted development by virtue of Part 2, Class A of the GPDO. In this case, the height of the bund and the associated fencing at the front of the site would appear in places to exceed one metre in height where considered to be adjacent to the road, thereby exceeding one of the development tolerances within the GPDO. It is also relevant to consider that these works could be brought within permitted limits by the simple expedient of removing the fencing. Elsewhere in particular adjacent to the track, the bunding does not exceed the permitted two metre height limitation and is therefore not enforceable against. However the other operational development described at para 23 above appear to have all been carried out in breach of planning control and is therefore enforceable against.
30. It is then necessary to move on and consider whether it is expedient to take enforcement action in respect of the operational development identified above. As noted above, the site is situated within a prominent

part of the landscape, which is designated as a Special Landscape Area, and lies against the backdrop of the Winterbourne Stoke Conservation Area. The retrospective planning application for development of this site as a larger camping and caravan site was refused at Committee principally on the grounds of adverse landscape impact.

31. Prior to carrying out the above works, it would appear that the site consisted of a simple, largely level open agricultural field with a modest access point and a rutted track extending down to a group of dilapidated agricultural buildings situated immediately to the south of the caravan site. The access alterations, alterations to the contours and profile of the site, construction of bunds and fencing, hardsurfaced track and hardstandings and erection of associated buildings of utilitarian design, could all be considered to have lent the site a much more 'formalised' appearance than that which previously existed.
32. Given Committee's conclusions on the above application, which sought retention of some, but not all of the works identified at para 23 above, Members could be minded to conclude that the associated earthworks, bunding, outbuildings etc. and hardsurfacing the subject of consideration here both individually and cumulatively appear as rather alien, man-made features in the otherwise generally open and unspoilt countryside, all adversely affecting the character and appearance of the site itself and the wider surroundings. However, Members are also reminded of officers' views in relation to application S/10/0007 on this issue. Moreover, Members should note that there are limited, wider public views of the most of the track and the certified site, which is at the lower eastern end of the field.
33. Members should also be aware that consideration of the earth bund along the site frontage should be in the context of the works permitted under S/2006/2122, which approved a bund across the frontage of the land to the south of this site, the height of the bund for a large part being similar to that which is now at issue.
34. Furthermore it is relevant to consider the 'fall back' position, in terms of what would be left following enforcement action; for example enforcement action could not secure the removal of the earth bunds where they fell within 'permitted development' limits. It could not secure removal of the altered access and track, only reversion to what was there prior to the unauthorised development being undertaken.
35. The site is outside of the Stonehenge World Heritage Site but situated in an area of archaeological significance, being close to the medieval settlement of Winterbourne Stoke. In response to consultation on S/2010/007, the Council's archaeologist had recommended that an archaeological watching brief had been undertaken for further works at the site involving excavation. Further substantial excavations to reduce the land levels have been undertaken in the southern corner of the site, without the involvement of the Council's archaeologist. However the

importance of the excavated area in archaeological terms is not known at this time.

36. Further and as noted above, land beyond the site is of nature conservation significance, particularly the River Till SSSI and SAC. Whilst the unauthorised operations at the site have not yet directly affected these areas, it is also relevant to take into account the potential adverse impacts on the nature conservation interests of these areas that further unauthorised works could have.
37. In view of all the above, whilst Members could conclude that there was planning harm and conflict with the planning policies identified in paras 13&14 above (including policies G1, G2, C2, C6, CN11 and T9, the guidance contained within PPS4, PPS5, PPS7 and the Good Practice Guide for Planning & Tourism, policies CN21 & CN22 and the guidance contained within the recently published PPS5 policies C12, C13 and C18 and the guidance in PPS9) caused by the operational development identified at para 26 and that enforcement action to remedy the breach may be expedient, this also needs to be tempered by the limits of what such action could reasonably be expected to achieve.
38. It is understood moreover that the owner is preparing a revised, retrospective application which would solely be limited to retaining the physical features at the site (as opposed to S/10/0007, which sought to extend the caravan site) possibly with modifications to the works having regard to a landscape assessment which is being prepared. The owner has already undertaken some planting to attempt to address visual objections. Such an application would also, if successful, allow restrictive conditions to be imposed on the use of the site. It is understood that a further application may well be received before this meeting; it would then be subject to consultation prior to being considered at a future Committee.
39. Further, the owner has offered to enter into a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, the effect of which would be to prevent him from undertaking any further unauthorised operational development at the site. Such an Undertaking would be enforceable by the Council through the Courts in the event of any breaches.
40. In considering the expediency of enforcement action at this stage Members should also be aware of guidance in Planning Policy Guidance Note no.18, which in summary encourages resolution of breaches of planning control by negotiation as far as possible, although this should of course be balanced against not allowing any planning harm caused by activities to continue indefinitely.
41. In summary the approach outlined at 38 and 39 above therefore offers advantages in that it offers the prospect of the Council gaining detailed control over activities at the site, the addressing of visual and other objections raised in relation to the previous application and preventing further unauthorised works. It would also avoid the prospect of an appeal to

the Planning Inspectorate where the ultimate decision is outside of the Council's control and the time in which these matters remain unresolved would be further extended.

42. Nevertheless if Committee do not share the above views regarding the efficacy of a further application together with an Undertaking, it will then be for Members to consider whether it is expedient to issue a Stop Notice as well as an Enforcement Notice, to both require removal of the existing works and to prohibit the carrying out of further works respectively. The advantage of a Stop Notice in this instance is that whilst an appeal can be made against an Enforcement Notice (which suspends it coming into effect and therefore would effectively not prevent further operations from continuing until such time as an appeal had been decided), a Stop Notice can take effect almost immediately to prohibit further works.
43. A Stop Notice should only be used in circumstances where the Committee considers it is essential in the interests of safeguarding amenity or public safety, to do so. In deciding whether to serve such a Notice in this case, the Committee should identify the costs to the owner and weigh them up against the benefits to amenity. It is considered unlikely that there would be significant costs to the business, which would be limited to for example having to lay off contractors, against which the benefits in terms of preventing serious and continued harm, for example to nature conservation and archaeological interests, which could be caused by erection of further buildings or further excavations and alterations to the contours and profile of the site. Accordingly, Members may conclude that the balance is towards issuing a Stop Notice to accompany an Enforcement Notice should they favour formal enforcement action overall.
44. Members should be aware that there is a risk of compensation being payable to the owner in the event that the associated Enforcement Notice is quashed at appeal. This is generally limited to situations where the appeal is allowed on grounds other than the grant of planning permission. Whilst it is difficult to be conclusive, it is likely that the risks are therefore not significant in this particular case. Nevertheless the Council will need to produce substantial evidence to support its reasons for issuing an Enforcement Notice at appeal, otherwise it risks having to pay the appellant's costs as the Notice could be deemed to have been issued unreasonably.

Other caravans & camping

45. As noted above, these are permitted with certain restrictions, in particular that any caravan rallies must be under the auspices of one of the many exempted organisations and that in general any tented use of the land should not exceed 28 days' duration in total in any year.
46. The available evidence suggests that some caravans and motorhomes have, at least occasionally, been stationed on the land outside of the

restrictions of the 'certified' site and were not associated with a rally being conducted by an exempt organisation. Although the scale and duration of such occurrences is unclear, it is noted that over the weekend of 1st-3rd May 2010, between 4 and 10 caravans/motorhomes may have been present on this part of the site. In 2009, the owner's website publicity referred to 15 pitches being available. The recent, refused application showed a further 10 pitches to be created to the south of the certified and 10 pitches within an 'overflow' area to the west for 'peak and bank holidays only', in addition to the rally field further to the west. This suggests that such activity does occur in particular at peak periods during the holiday season.

47. The area of land outside of the 'certified' site is more prominent in the landscape, being visible from the Class B Berwick Road road and at longer distance to the north west from the A303. Members could therefore reasonably conclude that that an accumulation of caravans and motorhomes with their man-made, box-like profile and stark colours all at odds with the muted colours and softer profiles of the countryside, on this part of the site would appear as unduly alien and intrusive features in the otherwise generally open and unspoilt countryside. This would also therefore be contrary to the aims and objectives of the adopted Salisbury District Local Plan, including saved policies G1, G2, C2, C6, CN11 and T9, and the guidance contained within PPS4, PPS5, PPS7 and the Good Practice Guide for Planning & Tourism.
48. In negotiations the owner has also offered to enter into a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, the effect of which would be to prevent him from stationing caravans on the site (other than those permitted by reason of being part of a Caravan Club etc. organised meeting). As noted above, such an Undertaking would be enforceable by the Council through the Courts in the event of any breaches. This would effectively achieve a similar outcome to an Enforcement Notice and Stop Notice, without giving rise to any right of appeal to the Planning Inspectorate.
49. If Members are minded not to accept the offer of an Undertaking, they would then need to consider whether it would be expedient to take formal enforcement action to secure cessation of the use by issuing an Enforcement Notice. Consideration then turns to whether it would also be necessary to issue a Stop Notice to accompany an Enforcement Notice, to prohibit further stationing of caravans at the site in breach of planning control almost immediately.
50. As noted above, the advantage of a Stop Notice in relation to this use is that it could take effect almost immediately and would be effective even if the Enforcement Notice were the subject of an appeal. A Stop Notice should only be used in circumstances where the Committee considers it is essential in the interests of safeguarding amenity or public safety, to do so. In deciding whether to serve such a Notice in this case, the Committee should estimate the broad costs to the owner and weigh them up against the benefits to amenity. It is considered unlikely that there would be

significant costs to the business, which would be limited to for example having to turn trade away, and reimburse customers against which the benefits in terms of preventing the continued, largely visual harm caused by the use should be considered. It should also however be borne in mind that such harm may be of short- term duration (both in terms of caravans coming and going on a regular basis, but also in the event of an Enforcement Notice being upheld at appeal) and limited, in particular as the available evidence suggests that there may have been a maximum of ten caravans at the site at any one time. Serving a Stop Notice in such circumstances would be an unusual step. Accordingly, Members may conclude in this instance that the balance is not in favour of issuing a Stop Notice to accompany an Enforcement Notice at this stage. However it is open to the Council to revisit this conclusion at any time once an Enforcement Notice has been served and if considered appropriate to serve a Stop Notice under delegated powers.

51. Members should also be aware that there is a risk of compensation being payable to the owner in the event that the associated Enforcement Notice is quashed at appeal. This is generally limited to situations where the appeal is allowed on grounds other than the grant of planning permission. Whilst it is difficult to be conclusive, it is likely that the risks would therefore not be significant in this particular case. However the reasons for issuing the Notice will still need to be substantiated in any subsequent appeal-see para 44 above.
52. The situation in relation to tents on this part of the site is less clear -cut at the moment. Officers have attended the site on several occasions but are unable to monitor the site on a daily basis over an extended period. At the time of writing, there is little evidence to suggest that the site has been used to station tents for more than 28 days. Officers have examined the owners' record of events which suggests that to date, tented activity at the site this year has amounted to 8 days only and unlikely to exceed 17 days up to the end of August-i.e. well within permitted limits. Enforcement action cannot be taken in relation to a breach which has not yet taken place. It is therefore proposed to keep this matter under review. If deemed expedient to do so, Officers would be able to take further enforcement action under delegated powers.

Use of former poultry buildings for caravan etc. storage

53. This was drawn to the Council's attention in September 2009 and confirmed in subsequent site visits when several caravans and cars as well as domestic paraphernalia were recorded. It was also noted that the owner was advertising the availability of storage facilities at the site, on his website.
54. At the time following negotiations a retrospective planning application was requested to retain the use. Officers were given to understand that such

an application would be forthcoming in respect of one of the buildings with the other being removed.

55. No application was received however and several caravans were still being stored in the buildings in November. Following further negotiations with the owner, it is understood that this use will have ceased altogether by the time of the Committee meeting, only 3 caravans remaining at the latest visit.
56. It has also been made clear to the owner that the advertising should be removed from his website as its continued presence suggests that the use may recommence in future.

Unlawful signage

57. In April 2009, it came to the Council's attention that a large blue sign advertising the camp site had been erected in the field to the south of the access. The owner subsequently agreed to remove this sign following negotiations.
58. By August, two new, smaller brown signs had been erected adjacent to the access and the blue sign removed. A retrospective application was requested and officers were subsequently led to believe that an application would be made contemporaneously with the partially retrospective application in relation to the caravan site. No such application has been received at the time of writing. However it is considered likely that one will be registered prior to the date of the Committee.
59. Unlike some other planning breaches, the display of signage without the relevant consent from the Council is an offence and it would be open to the Committee to direct Officers to instruct prosecution proceedings against the person/s responsible for displaying the signs, provided the latter are satisfied that such action is merited in the public interest.
60. In weighing up the public interest in prosecution the Council is required to consider a number of factors. The balance of the public interest in favour of prosecution may be affected by for example, early removal of the signs or by their obtaining retrospective consent.
61. In the circumstances it is therefore considered appropriate, in the event that an application is received and registered, to await its outcome before determining a further course of action in this regard.

The riding arena

62. A riding arena/manege forms part of the development granted planning permission on appeal reference S/2006/2122 for demolition and clearance of existing derelict buildings and construction of a replacement dwelling, stables, manege, office building, new access and landscaping. However, as built the riding arena is unauthorised, as none of the pre-commencement conditions attached to the permission have been complied with; whilst the position of the riding arena has altered in relation to that approved, this is not considered material. It is also noted that the riding arena is largely built on the concrete pad of a former poultry shed; therefore intrusive groundworks appear to have been minimal although this not clear at this stage.
63. The conditions on the above permission require, among other things, provision of alternative roosting for bat and barn owls, submission and approval of further bat and bird surveys and submission and approval of mitigation measures, submission and approval of pollution prevention measures, submission and approval of a scheme for foul and surface water disposal, submission and approval of schemes regarding contamination and remediation, submission and implementation of a programme of archaeological investigation.
64. The above conditions were all imposed to accord with Development Plan policies referred to at 13&14 above and the continued failure to comply with the conditions coupled with further development pursuant to the above permission is likely to cause serious harm to interests such as nature conservation, the adjacent SSSI/ SAC, archaeological interests and public health through failure to undertake a proper contamination study and remediation and pollution. The Council's ecologist and archaeologist have both expressed concern regarding further works at the site until such time as the relevant conditions have been complied with and the Council's environmental health officer is understood to hold similar views. It is therefore considered expedient that further development which could harm the above interests should be prohibited.
65. The proposed Unilateral Undertaking would also prevent the owner from undertaking any further unauthorised operational development on this part of the site, i.e. preventing further development until such time as all of the pre-conditions attached to the above permission have been discharged. The above would seem to largely address the potential planning harm, without having to issue formal Notices and giving rise to rights of appeal to the Planning Inspectorate etc. The principle of a riding arena in a similar location has already been accepted under S/2006/2122. The degree of harm caused by the works undertaken to date is unclear, but is likely to be minimal and could be addressed through the submission of details required to comply with the various conditions imposed on the permission.
66. In the event Members nevertheless wish to consider the expediency of serving a Stop Notice and an Enforcement Notice, they should do so

having full regard to the penultimate sentence of paragraph 65 above. The considerations regarding serving such Notices are already set out at paragraphs 44 and 49-51 above. Members should consider that an Enforcement Notice could be challenged at appeal. Moreover it is considered that it would not be appropriate to serve a Breach of Condition Notice as that could not take effect for 28 days, within which time further harmful works could be carried out and it cannot be served to accompany a Stop Notice.

Human Rights

67. Any course of action adopted by Members in respect of the above breaches will interfere with owner's rights under Article 1, 1 and Article 8 of the HRA. However, such interference is in pursuit of a legitimate public interest- upholding of Development Plan policies and protecting the environment. The level of such interference could be regarded as reasonable, minimal, and proportionate, having regard to the nature of the breach and the objectives of Development Plan policies.

Conclusions

68. This report has principally been concerned with the following breaches of planning control at the site:

- i. Engineering and other operations including materially altering the landform by excavating and re-profiling the ground to form levelled areas and formation of hardstandings; formation of an earth bund and associated fencing; installation of a cesspool/ waste disposal point and enclosing fencing; installing electrical hook –ups and lighting; materially altering the position of and widening an access onto a classified road and resurfacing and improvements to an existing track; formation of a pathway, and; erection of a toilet block and a washing up building.**
- ii. The use of land as a caravan site for the stationing and habitation of touring caravans;**
- iii. By constructing a riding arena/ manege, commencement of development in respect of planning permission S/2006/2122 dated 28th February 2008 without compliance with condition nos. 2, 3, 5, 6, 9, 10, 11, 12, 13, 14, 17, 18, 22 & 28.**

69. Given the harm to the landscape identified by Members in refusing the recent planning application reference S/10/0007 in respect of the site and to prevent further damage to interests including nature conservation and

archaeology in the event that further development were undertaken at the site in breach of planning control enforcement action may be merited, however it is considered by Officers that this should be through a combination of retrospective application and a Unilateral Undertaking to prevent further unauthorised development. It is hoped that a least a draft form of the Undertaking will be available prior to the meeting. Whilst formal enforcement action through issuing Enforcement Notices and Stop Notices is a course of action available to Members, nevertheless the former would seem to be the most appropriate option for addressing the breaches of planning control at this site in a timely and effective manner.

70. In addition, signs have been erected without the required consent however these will be the subject of a retrospective application and it is considered to appropriate to await the determination of that application before further action is considered. An unauthorised storage use at the site will have ceased by the date of the Committee

71. However, the use of the site as a certified location by the Caravan Club for up to 5 of its members' caravans, the holding of caravan rallies organised by a bona fide organisation and the stationing of tents on site for up to 28 days per year, are all permitted development and do not require an application for planning permission.

Recommendation

A: That the Committee is minded not to take further enforcement action at this stage in respect of the breaches of planning control identified above, provided that, no later than one month of the date of this meeting:

- i. A Unilateral Undertaking under Section 106 of the Town and Country Planning Act has been completed, which prohibits:**
 - a) Further unauthorised operational development on the certified site and the adjoining rally field;**
 - b) Stationing and habitation of caravans on the rally field (other than that already permitted by law); and**
 - c) Further operational development in breach of conditions attached to planning permission reference S/2006/2122.**
- ii. Retrospective applications have been registered concerning retention of the altered access, track, earth bund, hardstanding, electrical hook ups, lighting and building.**

Further to the above, that prior to completion of the Undertaking, the owner honours its terms;

B: Alternatively, in the event that Members are minded not to accept recommendation A above:

That the Area Development Manager be authorised to issue the following Stop Notices & Enforcement Notices under the Town and Country Planning Act 1990 and serve it on the appropriate person(s) as follows:

Notice no.1

Alleging the following breach of planning control:

Without planning permission,

- i. The carrying out of engineering and other operations on the Land including materially altering the landform by excavating and re-profiling the ground to form levelled areas and formation of hardstandings; formation of an earth bund and associated fencing; installation of a cesspool/ waste disposal point and enclosing fencing; installing electrical hook –ups and lighting; materially altering the position of and widening an access onto a classified road and resurfacing and improvements to an existing track; formation of a pathway, and erection of a toilet block and washing up building.**

The Stop Notice to prohibit any further building, engineering or other operations on, over or under the Land including construction of outbuildings, hardstandings, septic tanks, or excavations or deposits which materially alter the landform.

The Enforcement Notice to require the following steps to be taken:

- 1. Permanently demolish the hardstandings, and remove the access and track surfacing materials, pathway surfacing materials, cesspool /waste disposal point and associated fencing, lighting and electrical hook up points from the Land;**
- 2. Reinstate the Land to its former contours and profiles, i.e. to match the levels and profiles that of the land immediately adjacent;**
- 3. Permanently demolish the toilet/shower block and washing up building and reinstate the land to its condition before development took place;**
- 4. Reduce the height of the earth bund and associated fencing so that where adjacent to Berwick Road as shown on plan A attached to the Notice, the height of the bund or the fence or their combined height does not exceed one metre.**
- 5. Permanently remove all demolition materials arising from steps 1-4 from the Land**

Timescale for compliance with the Enforcement Notice:

Steps 1-5: 3 months.

Reasons for serving the Enforcement Notice:

- 1. The Land is situated within a prominent part of the landscape, which is designated as a Special Landscape Area, lies against the backdrop of the Winterbourne Stoke Conservation Area, is in close proximity to a Site of Special Scientific Interest/Special Area of Conservation and is also situated in an area of archaeological significance. The development has had a significant and unacceptable visual impact upon the landscape qualities of the area, including the setting of the Conservation Area, and it is not considered that this harm would be outweighed by economic benefits or could be satisfactorily addressed through new landscaping. The development is therefore contrary to the aims and objectives of the adopted Salisbury District Local Plan, including saved policies G1, G2, C2, C6, C12, C13, C18, CN11, CN21, CN22 and T9, and the guidance contained within PPS4, PPS5, PPS7 and the Good Practice Guide for Planning & Tourism.**

Notice no.2

Alleging the following breach of planning control:

Without planning permission, the use of the Land as a caravan site for the stationing and habitation of touring caravans.

The Enforcement Notice to require the following steps to be taken:

- 1. Cease permanently the use of the Land as a caravan site for the stationing and habitation of touring caravans by removing any caravans on the site, other than those permitted by Part 5 of the 2nd Schedule to the Town and Country Planning (General Permitted Development) Order 1995.**

Timescale for compliance with the Enforcement Notice:

Step 1: One month.

Reasons for serving the Enforcement Notice:

- 1. The Land is situated within a prominent part of the landscape, which is designated as a Special Landscape Area, and lies against the backdrop of the Winterbourne Stoke Conservation Area and is in close proximity to a Site of Special Scientific Interest/Special Area of Conservation. The use of the Land as a**

caravan site for the stationing and habitation of touring caravans has a significant and unacceptable visual impact upon the landscape qualities of the area, including the setting of the Conservation Area, and it is not considered that this harm would be outweighed by economic benefits or could be satisfactorily addressed through new landscaping. The development would therefore be contrary to the aims and objectives of the adopted Salisbury District Local Plan, including saved policies G1, G2, C2, C6, CN11 and T9, and the guidance contained within PPS4, PPS5, PPS7 and the Good Practice Guide for Planning & Tourism.

Notice no.3

That the Area Development Manager be authorised to issue a Stop Notice and an Enforcement Notice under the Town and Country Planning Act 1990 and serve it on the appropriate person(s)

Alleging the following breach of planning control:

Without planning permission, the construction of a riding arena/manege in breach of conditions 2, 3, 5, 6, 9, 10, 11, 12, 13, 14, 17, 18, 22 & 28 attached to planning permission reference S/2006/2122 dated 28th February 2008.

The Stop Notice to prohibit any further building, engineering or other operations on the Land in conjunction with or incidental or ancillary to, the construction of the replacement dwelling, stables, manege, office building storage building, new access and landscaping granted conditional planning permission by reference S/2006/2122 dated 28th February 2008.

The Enforcement Notice to require the following steps to be taken:

- 1. Cease permanently the construction of the riding arena/manege;**
- 2. Permanently demolish the riding arena/manege and reinstate the and to its former condition i.e. to match the levels and profiles that of the land immediately adjacent;**
- 3. Remove all associated demolition materials from the Land.**

Timescale for compliance with the Enforcement Notice:

- 1. One month.**
- 2. One month.**
- 3. One month.**

Reason for serving the Enforcement Notice:

1. The Land is situated within a prominent part of the landscape, which is designated as a Special Landscape Area, and lies against the backdrop of the Winterbourne Stoke Conservation Area and is in close proximity to a Site of Special Scientific Interest/Special Area of Conservation. It has not been demonstrated to the Local Planning Authority that the building, engineering or other operations on the Land in conjunction with or incidental or ancillary to, the construction of the replacement dwelling, stables, manege, office building storage building, new access and landscaping granted conditional planning permission by reference S/2006/2122 dated 28th February 2008, without compliance with any of the pre-commencement conditions attached to that permission, have not harmed interests including nature conservation, the adjacent SSSI/ SAC, the archaeological interests of the Land and/or public health and retention of the development would therefore be contrary to the aims and objectives of the adopted Salisbury District Local Plan, including saved policies G1, G2, C2, C6, C12 C13, C18, CN11, CN21& CN22 and the guidance contained within PPS5, PPS7 and PPS23.

Report Author:

Stephen Hawkins, Lead Principal Planning Enforcement Officer

Date of report 3rd June 2010

Background Papers

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

None

Appendices

None
