

Report

Report subject: Operational development comprising material alterations to the landform and the construction of a bund on land at the rear of Bourne View, Allington.

Report to: Northern Area Committee.

Date: 2nd November 2006.

Author: Stephen Hawkins, Principal Planning Officer (Enforcement)

This application was deferred at the meeting of the Northern Area Committee on 5th October to allow Members the opportunity to visit the site. The report to the previous meeting is reproduced in full below, with a report and a letter submitted by the site owner, both included on the schedule of late correspondence, attached as Appendix 1.

Report Summary

For Members to consider the expediency of enforcement action in relation to the above development, carried out in breach of planning control.

Introduction

The site consists of a large area of previously overgrown, disturbed land lying immediately to the north of the rear gardens of nos.16 –24 Bourne View.

The landform rises up steeply from the rear gardens to the site, which was previously covered by overgrown planting. In the middle of the site were, until recently, the remains of an incomplete block building. The eastern part of the land appears to have been used as a builder's compound in conjunction with permitted building operations on adjacent land to the east.

Elsewhere part of the site was in a semi-derelict condition and appears to have been used in the past for the random storage/disposal of vehicles, vehicle parts, oil drums, metal containers, other scrap metal, tyres and overgrown piles of soil and rubble, most of which however appears to have now largely been removed by the owner. The remains of the blockwork structure also appear to have recently been removed.

In March 2006, the Council's attention was drawn to the undertaking of earthworks at this site. As far as can be ascertained, these earthworks have retained the previous landform over the majority of the site. However,



Awarded in:
Housing Services
Waste and Recycling Services



a bund consisting of earth, chalk, soil, spoil and rubble has been also constructed on the southern part of the site, running parallel to the rear gardens of the Bourne View properties.

The bund varies in height from approximately 1.5m to 2m high and is around 70 metres in length.

Planning History

The site has a long planning history. In May 1971 the Secretary of State upheld an Enforcement Notice issued by Amesbury RDC directed at ceasing uses for siting railway containers, storage of building and other materials and repair of motor vehicles.

Following a series of planning applications over several years, land to the east currently also in the same ownership is currently being developed for residential purposes. Planning permission reference S/00/0003 for the demolition of existing buildings and construction of two houses was granted on 1st June 2000. One of the two approved dwellings has subsequently been completed and occupied.

Planning permission reference S/04/1853 was granted on 17th January 2005 for amendments to S/00/0003 above, to erect an enlarged dwelling. The dwelling the subject of this later permission is currently under construction. Enquiries have also been made regarding whether the dwelling is being constructed in accordance with the approved plans; this is the subject of a separate, ongoing investigation.

Following receipt of the enquiry regarding the earthworks in March 2006, Officers advised the landowner that planning permission was required. The owner then indicated to Officers that he was 'tidying up' the site.

Subsequently a Planning Contravention Notice was served on the owner. In response, he indicated amongst other things that no materials had been deposited on the site, several lorry loads of materials having been removed, and the bund had been formed from materials already on the site to replace a previous bund of similar height. The bund, it was stated, had been created using one JCB. The owner also supplied photographs of the site's appearance prior to commencement of the earthworks. The owner did not offer an explanation for creation of the bund, however its purpose appears to be a boundary feature between the site and properties in Bourne View.

The owner also suggested that the works had been permitted as part of a landscape management scheme required by a condition of the planning permission relating to development of the adjoining land (however, see "the breach of planning control and the need for planning permission below").

Officers subsequently reiterated the requirement for planning permission to retain the bund, and a planning application was invited. However, the deadline for submitting an application has since passed and no application has been received to date.

Representations Received

Parish Council: Queried whether the bund had permission, its height and why it was required.

Neighbouring resident: One letter has been received from a neighbour supporting restoration of the site to its original level as their garden has suffered from increased surface water run-off from the site since the bund was formed. Subsequent issues have been raised regarding the deposit of lorry loads of waste materials at the site (apparently not however, incorporated into the bund). This has been referred to the County Council Enforcement Officer, as the County are the relevant Local Planning Authority for waste matters.

Considerations

The breach of planning control and the need for planning permission

The works in question appear to have physically changed the landform of the site and involved the creation of a substantial bund. The above works due to the scale of physical change and change to the appearance of the land and also having regard to the fact that mechanical equipment was used to form the bund, are considered to have comprised engineering or other operations and therefore involved development. Even had

a similar bund existed previously (an assertion made by the owner which has little supporting evidence), such conclusions would still apply. Such development is not permitted by any Class within the GPDO.

Notwithstanding the owner's claim, the works also do not appear to have been permitted under any condition of planning permission relating to residential development of adjacent land.

Planning permission should therefore have been sought before formation of the bund in the absence of which its formation is unauthorised and in breach of planning control.

Planning policy context

The site lies in an area regarded as countryside, within the Special Landscape Area (SLA) as defined in the Salisbury District Local Plan. Policies G2, C2, C6 are considered relevant to the development.

General development standards are set out in policy G2 and require development to, amongst other things, respect for existing beneficial landscape and ecological features and include measures for the enhancement of such features and the landscaping of the site where appropriate (G2 (iv)).

Policy C2 strictly limits development in the countryside unless it would benefit the rural economy and maintains or enhances the environment.

Policy C6 sets out criteria for development within the SLA. Proposals should have particular regard to the high quality of the landscape and should not have an adverse effect on the quality of the landscape. The siting and scale of the development should be sympathetic with the landscape; and high standards of landscaping and design should be used, using materials that are appropriate to the locality and reflect the character of the area.

Impact on character and appearance of the surroundings.

The site lies beyond the built-up area of the village adjacent to land in rural uses and, notwithstanding its overgrown and semi-derelict condition, the character of this site prior to the earthworks being undertaken and bund formed was not inconsistent with the attractive rural character and appearance of the surrounding countryside.

Whilst the other earthworks appear to have largely retained the existing landform, the creation of the earth bund in particular has resulted in a rather stark and obviously made-made feature. Due to the elevated siting and 'engineered' profile of the bund, at odds with that of the softer, more naturalistic contours of the adjacent landform together with its stark, unfinished appearance, it is considered that the bund currently appears as an alien feature, out of keeping with the rural surroundings appearing at odds with its naturalistic surroundings, out of context with the contours of adjoining land and not respecting the recognised scenic qualities of the surrounding landscape.

The presence of existing trees and vegetation only slightly softens the appearance of the bund, however its current visual impact is likely to diminish over time as vegetation regenerates over it.

Whilst as noted above the part of the site where the bund has been formed is elevated in its surroundings and open to view from the rear of a number of adjacent residential properties, the bund can only be glimpsed from Bourne View in some of the gaps between the properties and there are limited views of it in the wider landscape. Consequently, on balance it is considered that the overall visual impact of the bund on the wider surroundings and hence any harm caused in this regard, is somewhat limited.

Effect on neighbouring amenities

As noted above the land rises beyond the relatively long back gardens of properties in Bourne View up to the site. Before the works were carried out, it appears that neighbours had a view beyond their back gardens of a well-vegetated embankment.

The bund has been erected on top of the embankment and is therefore a very visible feature from neighbouring properties.

Whilst neighbours' views have been eroded by formation of the bund, it is considered that this has not seriously detracted from the standard of outlook, or aspect previously enjoyed by those properties to a level which would harm their residential amenities. Loss of view is not a planning issue.

Other issues

As noted above a neighbour has raised the issue of increased surface water run –off from the bund. This is primarily a private civil matter between landowners, which could have also in part been addressed had a planning application been made, however if enforcement action were taken to remove the bund, it would also address the neighbour's concern in this regard.

Options For Enforcement

1. *To take no further action at this time:* In view of the conclusions regarding the limited adverse effects of the bund on the SLA landscape and neighbouring amenities, Officers consider that it would not be expedient to take enforcement action at this stage, and are therefore recommending that no further action be taken at this time. This conclusion could be reviewed in the event of a change in circumstances, i.e. vegetation does not regenerate as envisaged or the bund is enlarged in future.
2. *To issue an Enforcement Notice:* Officer's assessment of the effect of the bund on the SLA landscape is finely balanced and after consideration, Members may reach a different conclusion. In which eventuality, a Notice could reasonably be issued requiring removal of the bund and the resulting materials, on grounds of the harm to the character and appearance of the countryside.

Members should however be aware that in the event that such a Notice were issued, Officers consider that there is a significant risk that it may not be upheld by the Inspectorate at appeal.

PPG 18

The above favours informal discussions to resolve matters without recourse to formal enforcement action. The PPG also advises that full account should be taken of the consequences including financial, of taking enforcement action in such cases.

However, the failure of negotiations to resolve matters should not hamper or delay formal enforcement action in cases where unacceptable harm to local amenity is being caused. This is also reflected in the Council's general approach to enforcement, outlined in the first chapter of the Salisbury District Local Plan.

It should be noted that informal negotiations have taken place with the owner in an attempt to regularise matters at this site to avoid the necessity for formal enforcement action and a PCN was served. However, the owner has not responded to negotiations and the breach still continues at the site. It is therefore considered, having full regard to the above guidance, that if formal enforcement action to remedy any harm caused is considered justified by Members, it should not be further delayed.

Human Rights

Any enforcement action will interfere with the owner's rights under Article 1 (1), of the European Convention on Human Rights.

However, in the event that Members decided on the balance of considerations that enforcement action was merited on grounds of the harm caused to the character of the area, the landscape of which is recognised as being of high quality in the local plan, such action could be regarded as in the public interest of preservation of those matters.

The action would also be considered proportionate, as the interference would be minor and lesser steps than those identified below would not mitigate any harm identified as arising from the works.

Conclusion

The owner having had the opportunity to remedy the breach and notwithstanding warnings, has chosen not to do so.

It is considered that works could potentially be undertaken to address any issues relating to perceived harm to the landscape. For example the bund could be reduced in height, re-contoured and planted with grass/trees so that its impact on the landscape qualities of the area was minimised. However, such positive steps cannot reasonably be included within an Enforcement Notice and could only be negotiated in the context of a planning application. As already noted already the applicant has failed to submit an application notwithstanding having had ample opportunity to do so.

This is a finely balanced case. If Members decide that enforcement action is considered expedient, the only steps that the Notice could reasonably require and provide certainty as to what is required would be for the total demolition of the bund, removal of the deposited materials and the reinstatement of the land to its former condition.

RECOMMENDATION: That it is not expedient to take enforcement action in relation to the bund at this time, in accordance with Option 1 above.

If, notwithstanding the above, Members decide that it is expedient to take enforcement action to secure removal of the bund, that the Head of Legal & Property Services be authorised to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 (as amended) and serve it on the appropriate person(s), in accordance with Option 2 above, in respect of the following: -

Without planning permission: -

Operational development comprising material alterations to the landform and the construction of a bund comprising earth, chalk, soil, spoil and rubble, on the Land.

Requiring the following steps to be taken: -

1. To permanently demolish the bund comprising earth, chalk, soil, spoil and rubble formed on the Land.
2. To permanently remove all of the earth, chalk, soil, spoil and rubble arising from demolition of the bund from the Land.
3. To reinstate the Land to its condition before the construction of the bund took place by reinstatement of the Land to match adjacent profiles and contours.

Reasons for serving the Notice: -

1. The site lies within the general extent of the countryside, where development is strictly limited and is only permitted if it benefits the rural economy or it maintains or enhances the environment, and; is within a Special Landscape Area, recognised for the high quality of the landscape and where the siting and scale of new development should be sympathetic to the landscape and high standards of landscaping and design are sought. The formation of the bund has by reason of its conspicuous siting, its obviously 'engineered' profile at odds with the prevailing landform and naturalistic contours of the surroundings together with its stark, unfinished appearance has all resulted in its appearing as an unduly prominent, alien visual intrusion into the surroundings, out of keeping with and seriously detracting from the character of the landscape. To retain the bund would be therefore be contrary to policies G2 (iv), C2 & C6 the adopted June 2003 Replacement Salisbury District Local Plan.

Time For Compliance: -

1. Steps 1 & 2 – 3 months.

Implications:

- Financial: None at this time. There could be costs implication in the event of the Council having been found to have behaved unreasonably following any subsequent appeal proceedings.
- Legal: Detailed in the report.
- Environmental implications: Detailed in the report.
- Council's Core Values: Protecting the environment.
- Wards Affected: Idmiston & Winterbourne.
- Human Rights: Detailed in the report

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SCHEDULE OF ADDITIONAL CORRESPONDENCE**

Agenda Item 10

Update on new dwelling under construction on land at Hillview, Allington (adjacent to site the subject of the report, and in same ownership):

During a recent visit by Enforcement Officers it was noted that whilst the height and other dimensions accorded with the approved scheme, there were several elevational differences apparent between the plans approved and the dwelling under construction, including, amongst other things: south elevation - construction of a basement level garage, access drive and retaining walls; south west elevation - construction of a canopy and changes to fenestration; north west elevation - conversion of the garage to a habitable room (in breach of condition 3 attached to planning permission S/04/1853) and substitution of dormer by a rooflight; north east elevation - enlarged roof light.

The owner was advised by letter on 2nd October to contact the Planning Office urgently to discuss how the above matters can be addressed and warned that any further work undertaken on the development in the meantime is at his own risk.

Please see following comments:-

Dear Mr Hawkins

I am advised that you are to make representations regarding the land at the rear of properties at Bourne View, Allington and that the matter is to be discussed at a Planning meeting tomorrow night. Regrettably I am unable to attend tomorrow's meeting as I am in Manchester on business.

I had not seen a copy of your report (nothing has been sent to me), until I looked at the Council's website this evening and therefore wish to raise a few points which I hope you can add as late correspondence to the report.

I have taken advice from several sources in respect of this matter and remain of the belief that Enforcement action is not justified in this instance.

I would like to reiterate that on my possession of the land in Nov 1999, after I had cleared the ground from Cars, Milk Floats and household rubbish and at the time the Planning Application was made there was a bund in existence. This you can see clearly in the picture on the right which was taken from the Northern most boundary of my land.

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The only works undertaken by me since that time has been to excavate the area, remove the deposits placed by the previous owner and council tenants and more recently replace it with a new bund in readiness for planting out with a hedgerow to provide privacy to both Council tenants and myself and improved landscape.

The picture to the left shows the view from the same position as the picture taken on 11/9/99 and to the right, the land to the rear of the council houses as of Today and before planting.

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You will see from the before and after pictures that the height of the replaced bund is not much different than how it was in the Winter of 1999. It will of course settle and I expect during the winter it will drop around 150-300mm. It is certainly not 1.5-2.0m in height anywhere along its length.

I had a lengthy discussion about this area of land with Adele Poulton in 2000 and as part of my conditions for planning I had agreed the work I have carried out to clean the site of rubbish and return it to fields.

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This I have carried out, by removing over 50, 20 tonne lorry loads of "muck" away at a huge expense.

I would like to say that I am totally disheartened and disappointed by your actions and being accused of carrying out operational development in this vicinity after the immense amount of work I have undertaken to clean the land and return it to its natural setting.

Please can you ensure that this email and its contents are discussed in full at the Northern Area meeting tomorrow as late correspondence.

Many thanks

Andy Rhind-Tutt

Planslist
Item No .3

**S/2006/1770 - OUTLINE PLANNING FOR ONE CHALET BUNGALOW ON LAND AT WAYSIDE,
STOFORD BOTTOM,STOFORD SALISBURY SP2 OPW**

Additional Committee Report

The following additional comments are made on the case-officer's report for the application for a new dwelling at Wayside, Stoford. The comments should be read in conjunction with the previously submitted committee report.

Rights of way over Mount Pleasant

Clarification has been sought from Wiltshire County Council on the possible imposition of a condition regarding the clarification of land ownership of the access road (see full report).

Highways are now aware that Certificate D has correctly been served, and that the planning consultation process has been fully adhered to. As such, Highways wish the following to be deleted from their recommendation dated 14th September 2006: - 'The applicant has not shown the access road to be in their control and a notice has not been served on the owners, according to the application form.'.....'Providing the applicant can confirm a vehicular right of access in perpetuity over the access lane'...

To summarise Highways advice, it has been confirmed that the applicant does not need to confirm a vehicular right of access in perpetuity over the access lane before development commences.

It must be stated again that land ownership disputes as such are regarded as civil matters, and cannot be considered as a material planning considerations.

Visibility Splays/ Loss of Hedging

The creation of a visibility splay at the entrance to the new dwelling would result in a reduction in the height of the hedge alongside Mount Pleasant Road to 600mm. The vegetation at the bottom of Mount Pleasant Close will also be reduced in height to 1.0m.

See Appendix 1 (site plan for area of hedging affected).

It is recommended that a condition to provide additional screening higher than 600mm alongside the development site (but behind the visibility splays) is added to any approval.

Impact of development on Archaeology

Norman Parker, the local expert on air raid shelters, managed to visit Wayside on 27th September. He has confirmed that the structure is an air raid shelter constructed of concrete with a corrugated