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# Report

**Report subject:** Westfield Park, Catherine Ford Road, Dinton

**Report to:** Western Area Committee

**Date:** 11<sup>th</sup> October 2007

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## Report Summary

For Members to receive an update in relation to enforcement action taken against development carried out at the above site in breach of planning control, in particular in relation to the storage of metal containers at the site in breach of conditions of planning permission.

## Introduction

Westfield Park is a large site extending to around 18 hectares used for business purposes, situated immediately to the south of Dinton village. The site is occupied by 14 sand - coloured warehouse buildings. The main access is from Catherine Ford Road. The whole site is within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty.

The site was formerly RAF Baverstock prior to permission being granted in 1999 for use of the former military buildings for a 'low -key' storage use controlled by conditions. The 1999 permission was subsequently amended in 2001 and 2002 to allow the use of two areas of hardstanding for the storage of vehicles and flowerpots, and to allow ancillary operations on the site of railway sidings towards the south east of the site.



**Awarded in:** 1  
Housing Services  
Waste and Recycling Services



Members will recall that this site was previously the subject of an enforcement report in November 2006. This followed enquiries earlier that year relating to, amongst other things, excessive stacking of containers and stationing outside the permitted storage area, and; 'out of hours' use; all in breach of conditions. However the principal issue raised in representations regarding the site, related to excessive HGV and other commercial vehicle movements, which were attributed to an overall increase in activities at this site.

Officers negotiated with the owners in order to attempt to regularise the above and other breaches. In addition to applications referred to below, planning application reference S/06/2354 to vary the permitted height of container stacking at the site to 3 high was refused at the Western Area Committee on 25<sup>th</sup> January 2007 and is now the subject of an appeal to the Planning Inspectorate.

Following refusal of the above application, on 21<sup>st</sup> February 2007, Breach of Condition Notices were served on the owners requiring, amongst other things, the storage of undamaged containers, storage of containers outside of permitted storage areas and their storage in excess of 2 high, to all cease within 28 days.

At a subsequent site visit in March 2007, it was noted that all of the containers had been moved to within the permitted storage area (Area C) and none were stacked more than 2 high. Breach of Condition Notices served on the same date relating to other matters at the site (retail sales, details of the users of each building and traffic generation characteristics) were also subsequently complied with.

In August 2007, Officers received further representations regarding, amongst other things, excessive lorry movements including 100 lorries in one day and storage of containers in excess of the above, permitted limits. The storage of containers outside of Area C and in excess of 2 high was noted in August 2007, following which Officers negotiated with the owners who were strongly advised to reduce the height of storage and comply with permitted limits. Subsequently in September 2007 containers were noted as being stored at 3-4 high in places as well as a large number of containers stored outside the permitted storage area and it was clear that earlier Officer advice had not been followed.

#### Discontinuance action

This report deals solely with alleged breaches of planning control at the site. Once planning permission is granted it generally runs with the land in perpetuity (unless, for example, a subsequent permission is implemented). Section 102 of the Town and Country Planning Act 1990 however provides a route by which uses with planning permission can be required to cease or further restricted, by the Council making a 'Discontinuance Order.' This can require the use of any land to be discontinued or conditions imposed on a continuing use, where the Council considers it expedient to do so having regard to the Development Plan and any other material considerations. Any such Order requires confirmation by the Secretary of State. Compensation amounting to the reduction in the value of the land

caused by the action would be payable to the owner in the event of confirmation of an Order.

A separate report would need to be brought to Members if they wished Officers to investigate the expediency of taking discontinuance action in this case.

## **Planning History**

The site has a complex and lengthy planning history, including the following:

S/99/1280: Change of use of 14 buildings to class B8 (storage) and 1 building to class B1 (business). Approved 16<sup>th</sup> October 2000. Conditions were imposed, which, amongst others:

- Limited the use of 13 buildings to B8 storage and one building to B1 offices, to retain control over the use of the site (condition 2);
- Prohibited storage or industrial operations outside the buildings, in the interest of visual and neighbouring amenities (condition 4);
- Prevented deliveries being taken at or despatched from the site or loading/unloading of vehicles or traffic movements taking place outside the hours of 7.00am - 7.00pm Monday to Friday, 7.00am - 1.00pm Saturday nor at any times on Sundays, Bank or Public Holidays, in the interests; of neighbouring amenities (condition 7).
- Required that prior to occupation of each unit (and each subsequent occupation) details of the business and the likely number and types of vehicles it will generate shall be submitted to and approved in writing in the interests of keeping the traffic movements from the site to a level compatible with the amenities of nearby dwellings and in the interests of minimising HGV traffic generation (condition 14).

S/01/1660: To vary condition 4 above to permit the use of two hard standing areas for outside storage of vehicles and flowerpots. Approved 11<sup>th</sup> October 2001. Conditions were imposed, which, amongst other things:

- Prevented storage or industrial operations outside the buildings other than the storage of flowerpots on the hardstanding marked as A on the approved plan and the storage of new vehicles on the hardstanding marked as B unless otherwise agreed in writing by the Local planning Authority, to retain control over the use of the premises in the interests of visual amenity (condition1);
- Prevented storage of refrigerated vehicles, in the interest of neighbouring amenities (condition 2).

S/02/1169 To vary condition 1 to planning permission S/01/1660 to allow ancillary operations outside building on the area marked C (hatched blue) was approved on 24<sup>th</sup> September 2002. Conditions were imposed which amongst other things:

- Prevented storage or industrial operations outside the buildings other than the storage of flowerpots on the on areas A&B under S/01/1660 and the ancillary sorting/ storage of damaged containers within the hardstanding area marked as 'C' on the plans hereby approved unless otherwise agreed in writing by the Local Planning Authority. Within the area marked 'C' the loading/unloading of containers should only take place in front of (to south east of) buildings 387 & 386 and shall not extend beyond the north eastern corner of building 387, in order to control over the use in the interests of visual amenity (condition 1).
- Restricted stacking of containers more than 2 high (one on top of another) in the interest of visual amenities. (condition 2).

S/05/0269 Retention of a landscape bund was approved on 6<sup>th</sup> April 2005, subject to conditions which amongst other things, required submission and implementation of a landscaping scheme.

S/06/1886 Vary condition 1 of planning permission 2002/1169 to allow storage of trailers outside building 385. Approved 23<sup>rd</sup> November 2006, subject to conditions restricting storage to unloaded flat bed trailers (2); hours of operation (3); and requiring implementation of a landscaping scheme (4).

S/06/2145 Retention of 4 no. portable office suites and 1 no. portable WC compartment. Approved 23<sup>rd</sup> November 2006 for a temporary three -year period (1), and; requiring implementation of a landscaping scheme (3).

S/06/2354 Vary condition 2 of planning permission s/2002/1169 to allow containers to be stacked 3 high outside building 386-38. Refused 25<sup>th</sup> January 2007, for the following reason:

*“The proposed stacking of containers 3 high would by reason of the resulting height of stacking, and the noise and disturbance which may result from the stacking, together with the likely highly visual impact within the AONB, result in an unacceptable visual intrusion detrimental to the landscape of the AONB and be detrimental to the residential amenities of the immediate neighbourhood. As such the proposal is considered to be discordant with the aims and objectives of Policies C4, C5 and G2 of the adopted Salisbury District Local Plan.”*

This application is now the subject of an appeal to the Planning Inspectorate, being dealt with under the written procedure.

## **Representations Received**

Local residents: Two letters received referring to excessive container storage, storage of railway carriages vehicles and other paraphernalia elsewhere on the site, storage of curtain sided trailers, and; failure to undertake landscaping schemes all in breach of various planning conditions; together with traffic levels, excessive noise pollution created by the large container trucks and traffic congestion.

## **Considerations**

### Container storage-the nature of the breach

Storing containers outside of the permitted storage area, known as Area 'C' and in excess of two high is clearly in breach of conditions 1 & 2 attached to permission S/02/1169 above. Additionally, condition 1 limited activities to *ancillary* storage of *damaged* containers. On the latter point, it is hard to ascertain whether any of the containers are actually 'damaged' although bearing in mind the reason for imposing the condition-visual amenity-it is considered that there is little practical difference between a damaged container and an undamaged one.

Whether all the containers being stored at the site are 'ancillary', is considered more pertinent. It is considered clear that the condition was directed at restricting the use to containers brought to the site with goods destined for storage in the buildings. Whilst this clearly does happen, it also appears that many containers are brought to the site simply for external storage. Nevertheless, it is considered that the condition has to be interpreted as allowing storage ancillary to the use of site as a whole, in which case it would be difficult to argue that the current use is anything but ancillary to the overall B8 use of the site. Even if it were to be interpreted more restrictively, it is considered that the owners would still have a 'fall back' position in occupying the whole of the authorised area with containers up to 2 high, provided such use were ancillary to the use of the buildings.

### Planning policy context

Policies G2 (General Criteria for Development), E17 (Employment), C1 & C2 (The Rural Environment); C4 & C5 (Landscape Conservation-AONB) are all relevant to this site.

Policy G2 general criteria for development seeks amongst other things respect for landscape features and landscaping where appropriate and avoidance of undue disturbance, interference, conflict or overlooking of other dwellings or uses to the detriment of existing occupiers.

Policy E17 allows for new employment development within Uses Classes B1 and B8 on the edge of villages subject to criteria which include access and highway considerations, impact on the amenities of nearby dwellings and landscape considerations.

Policies C1 and C2 relate to the rural environment of the district. Policy C1 seeks to protect, restore and improve the natural beauty and amenity of the District, Policy C2 states that development in the countryside will be strictly limited and will not be permitted unless it would benefit the local economy and maintain or enhance the environment.

Policy C4 seeks to ensure that development in the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty does not harm the natural beauty of the landscape. Major industrial or commercial development proposals should not be permitted unless there is a proven national need and there are no suitable sites outside the AONB.

Policy C5 seeks to ensure that development is sympathetic with the landscape of the AONB, and standards of landscaping and design are high. Regard should also be had to the social and economic well-being of the area.

### Planning merits

#### *Impact on AONB:*

The visual impact on the wider surroundings of the containers stored in excess of 2 high and those stored outside of Area C is partly offset by existing buildings adjacent, mature trees on the site boundaries and the general landform. However in refusing the recent application to store containers up to 3 high, Members considered that the consequent height of stacking resulted in an unacceptable visual intrusion detrimental to the landscape of the AONB and did not accord with the aims and objectives of Policies C4 and C5 above.

#### *Impact on Highway Safety:*

Notwithstanding local concerns expressed in the recent, refused application in respect of the wider issues of traffic congestion, highway safety and the unsuitability of local roads for

use by large numbers of heavy goods vehicles etc. resulting from activities at the site, and WCC Highways' objection to that application, no 'highway' reason for refusal was added as it was considered that the site already had an existing authorised use and storing containers 3 high across Area C would not generate significant additional vehicle movements to and from the site, and, being an existing use, did not present an issue of precedent.

Whilst it is difficult to be certain, the number of containers stored outside Area C or more than 2 high, would probably not exceed the equivalent number of containers proposed in the recent application. For this reason and in the interests of consistency and reasonableness, similar conclusions on highway safety apply here as those reached in relation to the recent application and it is considered that WCC's concerns would not constitute a defensible reason for further enforcement action.

#### *Impact on Neighbouring Amenity:*

Having regard to the existing screening around Area C, including screening provided by the adjacent buildings, the excessive container storage would not, on its own be considered unduly detrimental to the visual amenity of neighbouring residents, and having regard to vehicular movements associated with the fallback position. However in refusing the recent application Members decided that the above did add to their overall objection on grounds of harm to the AONB and it would not be unreasonable for Members to reach similar conclusions.

#### PPG 18

The above favours informal discussions to resolve matters without recourse to formal enforcement action, particularly where businesses providing employment are involved. 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 to compel development to stop 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 Local Plan.

It should be noted that further informal negotiations have taken place with the owners in an attempt to regularise matters at this site to avoid the necessity for further formal enforcement action. However the owners have not complied and harm to amenity to which Members objected and identified above, continues.

It is therefore considered, having full regard to the above guidance, that further formal enforcement action with the objective of remedying the harm caused and compel the harmful activities to cease, should therefore not be further delayed.

### Human Rights

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

However, it is considered that in principle further enforcement action would be merited on grounds of the harm to the visual amenities of the AONB, such action could be regarded as in the public interest of preservation of those matters.

All the options for action outlined below would also be considered proportionate in Human Rights terms as any interference would be minor and lesser steps than those identified would not mitigate any harm identified as arising from the unauthorised activities in question.

### **Enforcement action taken**

By breaching the Council's Breach of Condition Notice issued in March 2007, an offence has been committed which could render the business liable for a fine of up to £1,000 on the first and subsequent convictions. A successful prosecution would not in itself remedy the breach but would encourage the owners to remedy non-compliance as an alternative to the Council bringing subsequent proceedings.

In considering whether to initiate prosecution proceedings in relation to unlawful acts committed under the planning legislation, regard should be had to CPS guidance. There should firstly be enough evidence available to provide a realistic prospect of obtaining a conviction. Additionally it should clearly be in the public interest that such action is taken to remedy continuing harm to public amenity. The effect of a conviction on public confidence of the planning system could also weigh in favour of a public interest in prosecution. On the other hand the likelihood of the Court to impose a minimal penalty, the minor nature of the offence or level of loss or harm caused, evidence of a genuine mistake on the part of the offender, excessive delay in bringing the case to Court and; whether the offence has been remedied are factors which could militate against prosecution being in the public interest.

In this case, there is clear evidence of a breach of the Notice. Members have previously decided, by refusing permission on S/06/2354, that a similar level of container storage causes demonstrable harm to amenity and the objectives of Development Plan policies,



also for the reasons set out above. There is a clear public interest in upholding these policies. There have been previous breaches of the condition in question and it is considered that the breach will continue and further breaches are likely in future unless sanction is applied. There is no evidence of a misunderstanding on the owners' part and at the time of writing to your Officers' knowledge, the offence continues. In consideration of all the above factors, prosecution of the offence is not inconsistent with the relevant guidelines.

The advantages of this course of action are that it is likely a relatively quick and straightforward course of action with the potential to penalise the business for contravention of the BCN and possibly reputational. The disadvantages are the relatively low level of fine involved in conjunction with the likely income for the business concerned, even if several subsequent prosecutions were undertaken, which is considered unlikely to deter continuing offences, in particular there is a risk that the Courts may not fully comprehend the relatively complex planning issues involved.

At the time of writing, the Head of Development Services has instructed prosecution proceedings under delegated powers. Members will be updated regarding the progress on the case at the meeting.

#### Other alleged breaches of conditions

Members will note other breaches alleged in the representations above. These are touched on briefly below:

- *Storage of old railway carriages and other 'industrial paraphernalia' on Areas A & B:* The above consists of storage of items in addition to pots in pallets including: approximately 10 1950s' railway carriages, a double -decker bus, articulated trailer, builders' plant and equipment, hot tubs and architectural features stored on Area A. whilst in itself the above breach is considered to cause minimal harm in landscape, highway safety or neighbouring amenity terms, it is also in breach of condition 1 of the 2002 permission above, as only storage of flowerpots is permitted. It is also in contravention of the Breach of Condition Notice being prosecuted above and is therefore also actively being enforced against.
- *Working outside permitted hours of operations.* The owners have stated that no deliveries, loading/unloading and traffic movements have taken place outside permitted hours and in particular that the site is in fact closed on Saturday morning when activities would otherwise be allowed. There is little evidence to support the allegation on this point and it is therefore considered that enforcement action would not be expedient at this time. This investigation will be continued and it is recommended that if there is subsequent evidence of a material breach causing harm to neighbouring amenities, the Head of Development Services be authorised to take formal enforcement action under delegated powers.

- *Failure to undertake approved landscaping:* Landscaping conditions on recent permissions relating to bunding, trailer storage and stationing of portacabins do not appear to have been complied with. In recent negotiations, the site owners have agreed to undertake the required planting early during the next planting season and stated that they have let a contract to a landscaping business to undertake the work. This is the outcome that formal action would achieve albeit earlier as formal action would have to allow until the end of the planting season (March 2008). It is therefore considered that formal action is not appropriate at this stage; the site will continue to be monitored to ensure that the required works are carried out. The Head of Development Services could take formal enforcement action under delegated powers to ensure compliance with the conditions no later than January 2008, if it appears that the conditions in question have still not been complied with.
- *Storage of curtain sided lorries:* Condition 2 of S/06/1886 above restricts the permitted storage of trailers on part of the site to unloaded trailers. An earlier investigation into this allegation established that curtain sided lorries were parked on the site not stored there as the vehicles changed on a regular basis. Operational parking is not in breach of condition.

## **Conclusions**

Officers consider that the most straightforward course of action and that offering the earliest opportunity to remedy the breach, is by prosecuting the Breach of Condition Notice and members will note that this course is already being followed. Members will be updated on the outcome of prosecution proceedings as soon as they are concluded.

In relation to the other alleged breaches identified above, the site continues to be monitored and further, formal action will be taken if required (landscaping); the breach is already being enforced against (storage of railway carriages etc.); there is no breach (parking of lorries), and/or there is no evidence of a breach (hours of operation). All the above will also be reviewed and in the event material of changes in circumstances or further evidence being advanced, the above conclusions will be revisited.

In the event that Members wished to consider options for further enforcement action, a further report would need to be brought back to WAC setting out the options for consideration and it is likely that such a report would have to be heard in exempt session as it would contain confidential legal advice. In any event it is recommended that the current course of action is reviewed and if necessary a further report be brought before Members if prosecution action fails to remedy the breach.

**RECOMMENDATION:**

**A: That Members note the report.**

**B: in the event of the above course of action not promptly remedying the breach or in the event of further breaches of the Breach of Condition Notice, a further report to be brought to members regarding the expediency further enforcement action to secure continued compliance with conditions 1& 2 attached to planning permission S/02/1169 dated 24<sup>th</sup> September 2002.**

**C: If, notwithstanding the above recommendations at A&B above that Members now wish to consider the expediency of further enforcement action to secure compliance with conditions 1& 2 attached to planning permission S/02/1169 dated 24<sup>th</sup> September 2002, that a further report be brought before the next available Western Area Committee.**

**Implications:**

- **Financial: Detailed in the report.**
- **Legal: Detailed in the report.**
- **Environmental implications: Detailed in the report.**
- **Council's Core Values: Efficient service, fairness and equality.**
- **Wards Affected: Fontihill & Nadder.**
- **Human Rights: Detailed in the report**