

WILTSHIRE COUNCIL

SOUTHERN AREA PLANNING COMMITTEE

24 March 2011

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

Purpose of Report

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

Background

2. Members will recall that at the meeting on 16th September 2010, the Committee resolved that, amongst other things, the Area Development Manager South should investigate making an Article 4 Direction to remove "permitted development" rights in relation to temporary uses and caravan sites, at this site. This report has been prepared in the light of the conclusions reached following the making of a Direction by the Area Development Manager under delegated powers on 11th February 2011.
3. In respect of the enforcement action authorised by Members at the above meeting concerning alleged unlawful temporary camping in excess of the 28 days limited by permitted development, an Enforcement Notice was served on 24th September, however this is now the subject of an appeal to the Planning Inspectorate. Similarly an Enforcement Notice dealing with operational development at the site following refusal of planning application reference S/2010/1058 was issued on 15th November 2010 and is also the subject of an appeal. These appeals and that against the refusal of planning permission reference S/2010/0007 are due to be heard at an Inquiry, the date of which recently been confirmed by the Planning Inspectorate as 17th - 19th May.
4. Members will recollect that in previous enforcement reports concerning this site, the extent of "permitted development" rights available for temporary uses and caravan sites (i.e. development which can be carried out without needing to obtain express planning permission from the Council) were clarified. Summarised, these rights are as follows:

- Use as a caravan site approved by an 'exempted organisation' (i.e. the Caravan Club) for the stationing and occupation of up to five members' touring caravans;
- Use for the holding of caravan rallies organised by exempted organisations-no restriction under on the number of such rallies which can be held annually or the number of caravans which could attend;
- Temporary use for the stationing and habitation of tents for up to 28 days annually -no limit on the numbers of tents which can be accommodated;
- Use by recreational groups such as the Scouts or the Guides - no restriction on the number or duration of events or tents present.

Article 4

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

7. DCLG guidance published in November last year on the use of Article 4 Directions indicates amongst other things, that the Council can consider making a Direction only exceptionally where there is evidence to suggest that the exercise of permitted development rights would undermine the visual amenity of the area and the Council should clearly identify any potential harm that the Direction is intending to address. Procedural matters including publicity and notification arrangements are set out in secondary legislation which came into force in April 2010. Also noted is the application of an Article 4 Direction to prevent the sub-division of, or loss of, agricultural land.
8. The application of directions in relation to temporary uses and caravan sites is not specifically referred to in the guidance. However, directions bringing agricultural and forestry permitted development under full planning control will rarely be justified.
9. Research carried out in relation to the use of Article 4 Directions in 2008, focused on their application in Conservation Areas to restrict householder development and is largely not considered relevant to the current case. There appears to have been no detailed study concerning the use of Article 4 Directions to remove other permitted development rights, such as those with which Members are concerned in this case.

Implications of an Article 4 Direction

10. The practical effect of an Article 4 Direction when in force, is not to automatically *prevent* development which would otherwise have been permitted but an application for planning permission required for that development. Any such application should be considered on its merits in the normal way and the existence of a direction does not convey any more restrictive policy approach to the determination of such applications. Where permitted development rights have been removed, any applications for development which would otherwise have been permitted do not attract a fee. The work, therefore undertaken by the Council in respect of such applications does not generate any fee income.
11. A constraint on the use of Article 4 Directions is a possible claim of compensation for abortive expenditure or loss of income directly attributable to the withdrawal of permitted development rights, if permission is later refused or granted subject to conditions. There is a time limit of 12 months from the date of the application decision, for submitting a claim for compensation. Nevertheless in deciding whether to confirm the Direction, Members should be aware that the landowner could make a compensation claim against the Council as a result of being prevented from carrying out the activities in question at the site, if planning permission were subsequently refused or granted subject to

conditions. In view of the scale of activity previously undertaken by the owner under permitted development, a claim is considered likely in the event that permission were subsequently refused and the scale of the claim could be significant.

12. A Direction cannot be made retrospectively; therefore permitted development already carried out at a site cannot be made unlawful by a Direction coming into force. In this case, if, for example, a certificate of exemption in relation to a 5 -caravan site was in force before the direction was made, that development could lawfully continue whilst the certificate remained. However, no such certificate appears to be in force at the time of writing. Moreover, it would also appear that in respect of the 28 days' temporary use under Part 4, any 'unused' days in a year on the date when any Direction came into force, could not be relied upon to undertake further temporary uses and would effectively be 'lost' (unless planning permission were granted).

Need for the proposed Direction

13. In view of the government advice above, it is necessary to assess the need for a Direction. This should consider the evidence of whether the exercise of permitted development rights in the Classes referred to at the site has caused/will cause serious threats to the attractiveness of surrounding countryside and; whether, exceptionally it is therefore considered necessary to bring the matter within planning control in the public interest.
14. Land to the east of the site is subject to other statutory designations, including the river Till valley Site of Special Scientific Interest (SSSI) and Special Area of Conservation and the Winterbourne Stoke Designated Conservation Area. Nevertheless this site itself lies in the general extent of the countryside. It does not lie within an area with a nationally important landscape (such as a National Park or an Area of Outstanding Natural Beauty).
15. In common with most countryside in south Wiltshire outside of such areas, the site and surroundings lie within an area defined in the Wiltshire & Swindon Structure Plan 2016 (WSSP) as a Special Landscape Area (SLA), this being countryside recognised at local level for its scenic qualities and landscape character. 'Saved' Development Plan policies including policy C9 of the WSSP and policies C6 of the adopted Salisbury District Local Plan seek to prevent non-essential development in the countryside and ensure that where it does take place, new development does not detract from the landscape quality of the SLA and that the siting and scale of development and its landscaping and materials are appropriate.

16. Members will be aware that camping and caravanning activity has taken place at the site for two years, largely relying on permitted development rights.
17. The Council's Landscape Officer, who has commented in detail on the recent planning applications in respect of this site, was asked to comment on the need to make an Article 4 Direction in respect of this site. These comments were prepared having regard to the south Wiltshire landscape character assessment undertaken in 2008.
18. The Landscape Officer having considered the local landscape character and visibility of the site in its wider setting has concluded that continued unrestricted caravanning and camping at this location is harmful to the landscape and recommended that permitted development rights relating to the stationing of caravans and tents on this site should be withdrawn for the following reasons:
 - The relatively enclosed nature of the valley, with its settlement Winterbourne Stoke shrouded in woodland and small pasture fields, is highly sensitive to any development that would erode its strong rural character.
 - The Rally Field is the most visually prominent part of the site and the pitching of caravans, coloured tents and associated cars and portable toilets stand out and are at odds with the rural landscape character of the River Till valley.
 - When the site is occupied views along the valley from the north and across the valley from the west appear cluttered with caravanning and tenting paraphernalia which is contrary to the Management Objectives of the LCA. Even when the site is unoccupied the portable toilets remain visually prominent.
 - The camp site is located within a Special Landscape Area and it is considered that excessive camping in such a visible location is harmful to the scenic quality, character and appearance of the SLA.
19. In addition to the above, one of the key advantages of making a Direction from a development control /management perspective, would be that in the event the Council was minded to grant a subsequent planning application for temporary camping, it could then impose planning conditions limiting, for example, the number of tents stationed on the site, their location within the site and that of associated facilities as well as restricting activities such as campfires and use of amplified music, all of which could mitigate the effects of the development on the landscape and general rural amenities. Such conditions would require monitoring but their enforcement is more straightforward.

20. On the basis of the Landscape Officer's advice above, your Officer's conclusions are that the landscape qualities of the site and surroundings and the degree of harm caused by temporary camping and caravanning, justify the confirmation of the Order in this case.
21. It is noted that the countryside surrounding the site exhibits similar landscape characteristics and scenic qualities to that of the site. Nevertheless, unlike this site, where there is tangible evidence of camping and caravanning activity, there is no known 'threat' to those areas at the moment in terms of the exercise of permitted development rights. Therefore it is considered that any Direction could only be justified if it were limited in terms of its scope to this site only.

Publicity and notification

22. The following representations have been received in respect of the publicity carried out in respect the making of the Order:

Landowner's agent: Letter received objecting to the Order on the following grounds (summary-copy of full letter attached as an Appendix):

- No evidence offered by the Council as to why it is necessary to made the Direction; any decision to confirm the Direction would therefore be unlawful;
- Owner has not been advised of the basis on which the Direction is being made;
- A scheme for camping and caravanning at the site is the subject of a planning appeal;
- Temporary events have limited impact; similar restrictions are not proposed elsewhere in the authority's area where there may be greater risk of landscape harm;
- No extant site certificate exempting up to 5 caravans from planning control, so no reason to remove permitted development rights;
- No reason why use by exempted organisations is likely to cause planning harm;
- The extent of the Direction is excessive-in particular removal of all Part 4, Class B rights would exclude even small -scale, limited temporary activity;
- Area Development Manager did not have the authority to make the Direction due to the Committee's resolution on 3rd June 2010, that issues at this site should not be dealt with under delegated powers;

- Direction has been made now to deliberately prejudice the appellant's position at the forthcoming planning and enforcement appeal Inquiry;
- Bookings have already been taken for temporary events from Easter onwards;
- Direction has not been served on all parties;
- Owner is making representations to the Secretary of State asking that he deal with this matter;
- If the Direction is confirmed, it is likely to be the subject of judicial review proceedings;
- If Direction is confirmed, it should be limited to specific harm identified and it should not take effect until after 1st October 2011.

Local residents: 25 letters received, supporting the making of a Direction, on the following grounds (summary):

- Site is located in an area of beautiful, unspoilt countryside and is open to long distance views;
- Not an appropriate location for caravan and tent activities;
- Direction is necessary to protect the Special Landscape Area;
- Would preserve the landscape in the valley between Winterbourne Stoke and Berwick St. James;
- Would help protect the Winterbourne Stoke Conservation Area;
- Adverse impact on landscape of current temporary uses including tents and caravans, including views across the Till valley.
- Caravans and tents not in keeping with the local landscape;
- Urbanisation of the area and in reality not temporary uses at all;
- Planting would not adequately screen the activities;
- Site is adjacent to a Site of Special Scientific Interest;
- Will regulate landowner's activities.

Berwick St. James Parish Council: No comments received.

Winterbourne Stoke Parish Council: "Strongly support...we believe this action will protect the Special Landscape Area".

Secretary of State for the Environment (Government Office for The West Midlands): Letter received 23rd February 2011 confirming that the Secretary of State has no comments to make in respect of the proposed Direction.

Response to landowner's objections

23. The reasons that the making of the Direction was considered expedient are set out in detail above and clearly informs all parties including the owner, of the basis for seeking confirmation of the Direction. Two caravan organisations have previously held a certificate of exemption in respect of the site and the Council is aware of at least one caravan rally planned in respect of the site this year.
24. Turning to the procedural issues raised. The Area Development Manager had delegated powers to make the Direction; this was not fettered by the Committee's resolution on 3rd June, which referred specifically to 'applications'. In relation to service on interested parties, Officers do not accept that the parties referred to were not served. It has however served further copies on those parties identified and the consultation period has been lengthened accordingly. Turning to the points raised concerning the date that the Direction was served in relation to the forthcoming appeals, the investigation and the making of the Direction has been carried out entirely separately and unrelated to the appeal proceedings. For legal and procedural reasons it was not possible to make the Order at an earlier date as indicated in the earlier parts of this report.
25. Turning now to the extent of the Direction, in particular the comments that removal of all rights under Part 4B of the Order is excessive. In general any activity otherwise permitted by Part 4B would be withdrawn in the event of confirmation of the Order as made. In addition to temporary camping activity, this could for example include fairs, recreation/sports use, flying of balloons or helicopters, musical entertainment and other spectator events. It could also include use for markets (including car boot sales) and motor racing and practice-these events are limited to 14 days per year. It is considered in general that such events have similar characteristics/impacts to temporary camping and it could be difficult to distinguish between different events in deciding whether or they should be the subject of control by the Order. Apart from temporary camping however none of these events have taken place at the site in the past and there do not appear to be any proposals to undertake such events other than temporary camping in the future, so there is no threat from such activity at this time. For these reasons and given that the Order should tackle specific harm, it is considered on balance that the extent of permitted development rights under 4B proposed to be removed by the Order could reasonably be limited to temporary camping only.

26. The owner's point regarding bookings already taken for the summer season is noted. Members are reminded that confirmation of the Direction does not automatically prevent such activity going ahead; however such use would then require prior planning permission and may otherwise be unlawful. It would be open to the owner to make a planning application for the events they wished to undertake this year.

Conclusions

27. Members have the following options:

A: To confirm the Direction (with in addition the suggested modification set out at para 25 above that the Order shall not apply to temporary buildings and uses under Part 4B other than temporary camping);

B: To decide not to confirm the Direction.

Within option A, Members can also, if they consider it appropriate, vary the date the Order comes into effect from 1st April to 1st October.

In the event that Members followed option B, the landowner would then be entitled to exercise his permitted development rights on the land, notwithstanding the outcome of the appeals referred to above, subject only to any conditions imposed in the event that the appeals were allowed.

Recommendation

Option A: Subject to the expiration of the consultation period and no further representations being received which raise new material issues, that the Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2010, to remove 'permitted development' rights under Parts 4B, Part 5 and Part 27 of the 2nd Schedule to the Town and Country Planning (General Permitted Development) Order 1995, made by the Council on 11th February 2011, should be CONFIRMED, with the modification that the Order shall NOT apply to temporary buildings and uses under Part 4B other than temporary camping.

Report Author:

Stephen Hawkins, Team leader (Enforcement).

Date of report 14th March 2011.

Background Papers

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

Landscape Officer's comments.

Delegated report.
