

WILTSHIRE COUNCIL

SOUTHERN AREA PLANNING COMMITTEE

16th September 2010

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

Purpose of Report

1. To advise Members on the Council's interpretation of Part 4 of the General Permitted Development Order (GPDO), the implications this has in relation to further temporary camping activity at this site and seek Members' instructions regarding any further enforcement action considered necessary. Members should note that this report has been prepared with advice from Legal Services.

Background

2. Members will recall previous enforcement reports to Committee concerning this site at meetings including 3rd June, 24th June and 15th July 2010.
3. Members will recall that, at the meeting on 3rd June, the Committee was minded not to take enforcement action at that time against unauthorised development at the site provided, amongst other things, a retrospective planning application was promptly registered concerning retention of the altered access, track, earth bund and fencing, hardstanding, electrical hook ups, lighting and buildings. However Members did also add a proviso that relevant Enforcement Notices should be drafted, in the event that alternative action was not progressing as envisaged.
4. Application S/2010/1058 appears elsewhere on the agenda. This report focuses solely on the temporary camping activity at the site during 2010, the need for planning permission for such activity and whether in the event of a clear breach being established, enforcement action would be expedient.
5. Part 4 (temporary buildings and uses), Class B of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO), permits the temporary use of land for, amongst other things, the stationing and habitation of tents for not more than 28 days per calendar year. Certain 'noisy activities' (such as motor sports), are further limited to 14 days temporary use. Camping by members of certain recreational organisations including the Scouts and Guides, is also permitted by Part 27 of the GPDO for unlimited periods.

6. Members will also recall that in June, the owner gave a Unilateral Undertaking under Section 106 of the Town and Country Planning Act (the Section 106) the effect of which was, amongst other things, to prohibit temporary uses including camping for more than 28 days in total in a calendar year on part of his land known as the rally field site and an adjoining paddock.
7. The Council has received third party representations to the effect that camping had taken place in excess of the permitted 28 days. After an initial investigation in June, which included viewing both the owner's records and a resident's diary of events, it became clear that what the site owner and the third party regarded as a 'day' of camping activity for the purposes of 'counting' the 28 days at variance with one another. This appeared to be largely because the owner records nights stayed (i.e. as a hotel or B&B establishment would); whilst the resident was recording days, which included, for example, the campers packing up on the morning after an overnight stay. At the time, it was not possible to conclude one way or another whether a breach had occurred.
8. Additionally Officers subsequently established that adjoining land within the same ownership (but outside of the area restricted by the Section 106) was now being used for camping, largely when the rally field area covered by the Section 106 was not in use. This appeared to Officers to be an attempt to circumvent the requirements of the Section 106 and the owner was immediately advised that this camping activity was unauthorised and proceeded at his own risk. He subsequently claimed that the site was two 'planning units' (see further below).

Interpretation of the GPDO

9. Officers therefore consider it important firstly for the Council to establish for the purpose of certainty for all parties, as to exactly what amounts to a 'day' of activity for the purposes of the GPDO. Having researched the matter further with the assistance of Legal Services, Officers reached the view that no relevant case law precedent under planning legislation could be located in respect of whether the example of an overnight stay amounted to 'one' or 'two' days for the purposes of the GPDO. The only relevant case law focussed on the nature of the permission granted under the GPDO for temporary uses, the Courts clarifying that a fresh planning permission of a days' duration was granted for each of the available 28 days.
10. Furthermore, no Planning Inspectorate appeal decisions could be located which dealt directly with this issue. Officers researched appeal decisions concerning similar temporary uses and established as follows. (i) In an appeal decision from another authority, use of land for motor racing was argued not to have extended beyond 14 days as only associated activities and not racing itself was carried out. This was rejected by the Inspector

determining the appeal since it was clear that the related days were directly associated with racing and were necessary in order for it to take place. The primary purpose was for motor racing and ancillary activities were classed as part of that use. (ii) By contrast in another appeal decision, it had been alleged that land had been used for more than 14 days per calendar year for the holding of markets in breach of the limit in the GPDO. However the inspector rejected this argument and concluded that a market could not be established unless actual trading had occurred and therefore the parking of vehicles on the site could not be construed as the holding of a market.

11. In the absence of any precedent and having sought legal advice, Officers reached the view that on a strict interpretation, the generally accepted definition of a "day" as being from one midnight to the next midnight, should be applied. Therefore, any part of the day when the site is in use for camping (or any other temporary use) would count as one day for the purposes of counting the 28 -day entitlement for temporary uses under the GPDO.
12. Whilst the owner then apparently sought Counsel's advice on the interpretation of the GPDO as it applies to temporary camping, it appears from information given by him that the conclusion reached in this advice did not offer any different interpretation to that offered by the Council.
13. Officers do consider however that in any regulatory regime it is necessary to exercise a degree of common sense and reason in applying legislation. In particular, Officers consider it reasonable that there should be discretion in considering whether a particular day should reasonably be regarded as a continuation of the temporary use. The above is relevant in the case of, or example, the 'morning after' an event where all campers have left and the use has ceased promptly. The campsite is operated so that campers cannot arrive before 1200 noon and have to leave by that time on the day of departure, so in the case of a one night stay at the site, the campers would not be there for longer than 24 hours. It should also be borne in mind that camping is not one of the 'noisy activities' limited to 14 days under the GPDO. This however would effectively be the outcome of adhering to the literal interpretation referred to above.
14. Further, it is considered that Officers' views as outlined above seems to fit more closely with the case law on the nature of the temporary planning permission-i.e. for an event of one day's duration. Officers are also of the view that the above would be more likely to be the approach taken by a Planning Inspector in the event that the matter ever came to an appeal against an Enforcement Notice, as the Inspector will not be bound by any previous judgement. It is also a view shared by Officers of an adjacent authority.

The situation now

15. A resident making continuing representations to the Council has alleged that up to 76 events had taken place on the site as a whole up from January to the end of August and provided a record of dates and times. It has been assumed that this record is as a result of personal observation. It is however also fair to point out that the resident in question lives at the other end of the village. Officers have also in parallel viewed the owner's records (as they are entitled to do by the Section 106). These records suggest that camping took place on the site as a whole a total of 52 times in the same period. After careful analysis of both records, Officers concluded for various reasons, if a literal interpretation of the law is taken, a total of 64 days of events in the last calendar year for the owner's land as a whole, was probably more accurate, if the resident's figures are accepted as a basis for assessing the overall level of use. Using the approach in paragraph 13 above however, the number of camping events held at the site overall, may be around the number suggested by the owner. The exact number of tents stationed on the land has not been regularly recorded, therefore there is no distinction between say, one tent on the land and thirty tents.
16. It is perhaps inevitable that there will be differences between the owner and resident's records, largely due to how the respective figures have been compiled and days counted, but also it should be noted that the resident has counted the two fields as the same unit. As noted above the owner however regards the site as having two distinct parts in planning law terms-the 'rally field' (i.e. the area of land subject to the Section 106) and 'campfire field'. This proposition is examined in more detail below.
17. The 'rally field' was closed at the beginning of July but re-opened for an event in mid -August and a rally over the August bank holiday. At the time of writing, the owner considers that there have been 25 events on this area, this calendar year. Again, applying a literal interpretation and having regard to the resident's records, it would appear that a total of 37 events is possibly more accurate. If this figure were accepted, the owner would also be in breach of his Section 106 Undertaking.
18. The owner has advised the Council that he has three more days of events planned on the land this year. In the event that Officers obtain evidence of further events on this land, either in between the date of writing this report and the date of the Committee or subsequently, Legal Services would be asked to investigate commencing proceedings to enforce the Section 106, provided they are satisfied with the evidence. In terms of enforcement of the Section 106, the outcome would largely depend on whether in the first instance, Legal Services were satisfied that there was robust and credible evidence to substantiate the Council's case and also whether the costs involved in pursuit of the case were commensurate with the benefits of

doing so. The effect of a successful enforcement of the Section 106 would be to render further camping outside the provisions of the GPDO an offence.

19. The 'campfire' field (outside of the Section 106 land) has been used for camping since early June, largely to replace camping on the Section 106 land. The owner considers that there has been 26 events on this land, this calendar year to date. Officers however suggest that a total figure of 36 events may be more accurate if a literal interpretation is used and again having regard to the resident's records (the reason that activities on both fields add up to more than 64, is that sometimes events have been taking place on both fields simultaneously).

Whether there are one or two planning units

20. The 'planning unit' is a planning law concept developed, usually to assist in determining whether a material change of use has taken place. Relevant case law (*Burdle v Secretary of State for the Environment* [1972]) suggests three broad tests to determine the planning unit:

"First, that whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered ... But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land.

Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit."

The Judge went on to point out that the assessment was a matter of fact and degree and as a useful working rule, that it should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

21. At first sight, Officers would regard all the owner's holding, including both rally field and campfire field, as part of the same 'planning unit'. For example, the parcels of land concerned are physically adjacent, appear to comprise the same farming unit/unit of occupation and are largely in the same ownership (but see 24 below). The principal activity on the land as a whole would appear to be low-key agriculture, with caravan and camping

activities run by the owner, who also lives on part of the site. The rally field is accessible from the rest of the land and whilst it can be accessed independently, it can also be serviced from adjoining land in the same ownership.

22. The camping and caravan activities would currently appear to be undertaken to aid farm diversification and in respect of the former, the land appears to revert to an agricultural use as part of the owner's holding when camping has ceased. Camping etc. has taken place across both areas of land and evidence such as the owner's website suggests that the camping activity all forms part of the same business. As such, these uses appear to be secondary and interdependent to the main use of the site as a whole for agriculture and the activities on both areas of land could be regarded functionally interrelated-i.e. grazing, caravanning and camping – with the activities at the rest of Summerfield Farm. Therefore the use of the site would appear to fall within the scenario described first by the Judge in the above case.
23. Other case law also confirms that a farming unit and planning unit can be contiguous, where the former can be identified as having a single ownership and with a single main purpose, to avoid the prospect of temporary activities being moved from field to field on a farm holding and thereby benefitting from further periods of temporary use under the GPDO. The above would tend to suggest that the 28 days available under the GPDO should therefore relate to the owner's land as a whole and not apply to both the rally field and Summerfield House. In this respect it is hard to see how the circumstances at this site can be distinguished significantly from any other farming unit who may seek to utilise their 28 days of temporary uses under Part 4 of the GPDO.
24. However, this issue is not as straightforward as it would initially appear. For instance until 2005, the 'rally field' etc. land was not in the same ownership and it is still largely physically separated by fencing from what was the former Wisma poultry farm site. Moreover land including the 'camp fire' field is in a separate ownership, nominally owned by two limited companies (albeit with links to the owner) and is normally accessed independently to the rally field land. Events on both areas of land have alternated, although there have also been overlapping days. The owner contends that issues of amongst others, separate ownership, separate accesses, physical boundary separation, separate planning history, historic planning uses, rating records and services, all point to the site comprising two planning units in planning law terms. He states that Summerfield House is his private home and used for horses and sheep whilst Stonehenge Campsite is for tourism use-caravans, tents and grazing.
25. The owner's analysis therefore is that the third scenario envisaged by the Judge in the above case is applicable to his land. The above does go some way towards countering any analysis which concluded that the land was physically and functionally interdependent and therefore part of the same planning unit. Officers disagree with the owner's analysis, however it is considered that to take enforcement action on the basis of a conclusion

that there is one planning unit would therefore carry some risks. Nevertheless it is felt that this part of the case, which is fundamental to the need for planning permission for temporary camping on land outside of the area of land covered by Section 106, is nevertheless arguable on a fact and degree basis. It will be for an appellant to prove that there are two planning units, not for the Council to disprove it.

26. Moreover, irrespective of whether in planning law terms there is one or two planning units, planning harm must still be being caused by unauthorised development in order to make enforcement action expedient (see 27 onwards below).

Planning merits

27. In the event a breach of planning control is clearly established, it is then be necessary to consider the expediency of enforcement action. As Members are aware, enforcement action should not be taken solely to remedy the absence of planning permission and to do so would be regarded as unreasonable behaviour in the event of a subsequent appeal.
28. Officers have visited this site on several occasions including at weekends. Excepting when large scale events have taken place (i.e. camping over the Bank Holidays and the Summer Solstice, when around 25-50 tents would appear to have been present), the camping viewed by Officers has been relatively limited in terms of scale and magnitude, with around 5 -15 tents being present on the site as a whole, the lower number being more typical. At visits during the week, both fields have been unoccupied. The details supplied by the resident to date give no further details of the nature and scale of camping activity observed at the site to suggest that it differs from that viewed by Officers
29. It is considered that the camping is of temporary duration and from an overall perspective Officers consider that there is little evidence of adverse impacts in terms of landscape, neighbouring amenities or highway safety for example, which would merit enforcement action being taken in the public interest and which could be use to defend the issue of a Notice in a subsequent appeal.
30. In coming to the above conclusion, Officers are nevertheless aware that some events at the site have caused noise and disturbance to neighbours, notably through the playing of amplified music, and that camping activities have moved around the site, sometimes in close proximity and without due regard to, neighbouring property. Such activity could reasonably be controlled by imposing planning conditions in the event that a planning application being made for the use and would not in itself be a good reason for taking enforcement action, although of course it is of note that the owner has not applied for permission for these activities. Noise nuisance arising from such activity is also a matter for the Council's Environmental Protection Team.

31. In the event that the situation changed, i.e. more regular camping at a similar scale to the bank holidays taking place or more regular noise and disturbance, this conclusion could and would be reviewed. The part of the site including the 'campfire field' has permission for redevelopment to provide an office building, which also indicates that use of that part of the site will be discontinued at some stage in the near future. Given the seasonal nature of camping activity, it is now unlikely that there will be more than a handful of events on the land this year, which would be likely to take place before any notice took effect even if it were served promptly.
32. All the above leads to the balanced conclusion that it would not be expedient to enforce against the current level of camping activity at the site at this time, even if the Council could ultimately sustain its argument that there has been a breach of planning control.
33. Article 4 of the GPDO provides for the Council to make a direction removing 'permitted development' rights where they consider it expedient to do so. Such rights should only be withdrawn in exceptional circumstances and where the Council has identified a 'real and specific threat'. Such directions have been used in the past by other authorities to, for example, restrict agricultural 'permitted development' rights in parts of an Area of Outstanding Natural Beauty and National Park, restrict householder development in a Conservation Areas and; prevent the subdivision of agricultural land into small plots.
34. Article 4 Directions require confirmation by the Secretary of State and if confirmed, a direction may also require the Council to pay compensation to the owner in respect of abortive expenditure or other loss or damage attributable to the withdrawal of permitted development rights. The compensation provisions only appear to arise where permission has been refused or conditions have been imposed. A Direction need not only deal with permitted development under Part 4 of the GPDO but also Part 5 (caravan sites) and could be focused on part or all of the land owned. Seeking a Direction would be an unusual step given the context set out above, nevertheless it is open to Members to ask Officers to investigate this option further.

Conclusions

35. The interpretation of the planning legislation in particular the '28 -day rule' under the GPDO and its application to the owner's holding is not straightforward. Officer's conclusions are that on a strict legal interpretation, there have been more events at the site than that permitted under the GPDO, even if it were accepted that there are two planning units. However Officers would also question whether to adopt a rigid approach to counting the 28 days is consistent with the discretionary nature of the planning regime. Officers disagree with the owner on the

'planning unit' point as on a fact and degree basis, as they consider that the site could more accurately be described in planning law terms as one planning unit.

36. Officers are well aware of the depth of feeling locally concerning the site and camping activity in particular. The representations received by and large focus in particular on the fact that development has taken place for which permission is required and has not been obtained, as opposed to identifiable planning harm caused by such development.
37. Ultimately however, planning harm has to be identified to make enforcement action expedient and attempting to do so has presented Officers with significant problems. As such, Officers are currently of the view that given what they consider is the limited planning harm which has arisen from any breach at present, it would not be expedient to take enforcement action in relation to camping at this time.
38. Members' attention is drawn to the principle that planning enforcement powers exist to remedy planning harm caused by a breach, not to punish individuals, whatever the opinions are on their conduct. Further and whilst it may seem unsatisfactory, the planning system expressly allows for the situation to arise where there is little planning harm for an unauthorised use to be allowed to continue to operate notwithstanding the absence of planning permission. The site will continue to be monitored for the foreseeable future and the above conclusion could be reviewed in the event that circumstances change.
39. In the event that having taken account of all the above advice, Members nevertheless consider it expedient that enforcement action should be taken, they should also bear in mind the significant risks that such a course of action may carry, both in terms of uncertain outcome, revenue and reputational considerations and the need for substantial robust and credible evidence of planning harm to support any reasons identified as to why it is expedient that enforcement action should be taken. In particular the Council would need to clearly demonstrate why action has not been taken solely to remedy the absence of planning permission, to defend against a claim of unreasonable behaviour at appeal.
40. Members should also be aware that even if enforcement action were taken and were successful, the owner would still have a 'fallback' position of 28 days temporary use on the holding in 2011, as enforcement action cannot take away "permitted development" rights. Such rights can only be removed or limited by an Article 4 Direction.
41. Application S/2010/1058 for retention of the altered access, track, earth bund and fencing, hardstanding, electrical hook ups, lighting and buildings, appears elsewhere on the agenda. Members' decision on that application is likely to have further enforcement implications, which will be the subject of a separate, brief update report from Officers at the meeting following determination of that application, having regard to the previous resolution of the Committee at its 3rd June meeting.

Recommendation

A: That Members note the contents of this report.

B: In the event that Members reject recommendation A above, that the Area Development Manager (South) be authorised to issue the following Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 and serve it on the appropriate person(s) as follows:

Alleging the following breach of planning control:

Without planning permission, the use of the Land for temporary events, in particular the use as a temporary camping site for the stationing and human habitation of tents, in excess of that permitted by Part 4, Class B of the Town and Country Planning (General Permitted Development) Order 1995.

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

- 1. Remove any tents stationed on the Land; and**
- 2. Cease permanently the use of the Land for temporary events, in particular the use as a temporary camping site for the stationing and human habitation of tents, in excess of that permitted by Part 4, Class B of the Town and Country Planning (General Permitted Development) Order 1995.**

Timescale for compliance with the Enforcement Notice:

Step 1: One month.

Step 2: 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 Land is also in close proximity to a number of residential properties. The unlimited use of the Land as a camping site for the stationing and human habitation of tents in excess of the 28 days per calendar year permitted by Part 4, Class B of the Town and Country Planning (General Permitted Development) Order 1995, 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 is outweighed by economic benefits or could be satisfactorily addressed through**

new landscaping. The use has also seriously adversely affected neighbouring and nearby residential amenities, by reason of the undue noise and disturbance caused by activities on the Land, in particular late at night, anti-social behaviour and associated comings and goings to and from the Land. To permit the development to continue 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.

That the Area Development Manager (South) also asks the Litigation Team to investigate enforcement against any breach of the Section 106 Undertaking in respect of temporary camping in excess of that permitted by Part 4, Class B of the Town and Country Planning (General Permitted Development) Order 1995.

Report Author:

Stephen Hawkins, Lead Principal Planning Enforcement Officer

Date of report 16th September 2010

Background Papers

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

None.
