

<b>Bath and North East Somerset Council</b>			
MEETING: <b>Development Control Committee</b>	AGENDA		
MEETING DATE: <b>13 March 2013</b>	ITEM NO:		
<b>REPORT OF David Trigwell, Divisional Director of Planning and Transport Development.</b>			
<b>REPORT ORIGINATOR: Ms Lisa Bartlett, Development Manager (Tel. Extension No. 7281).</b>			
DATE PREPARED: 24 <sup>th</sup> January 2013			
AN OPEN PUBLIC ITEM			
<b>BACKGROUND PAPERS: Enforcement file 12/00372/UNAUTH</b>			
<b>TITLE: Enforcement Report: Red Hill House, Red Hill, Camerton, Bath BA2 0NY</b>			
<b>WARD : Bathavon West</b>			

## **1.0 PURPOSE OF REPORT**

**A decision on this matter was deferred at the last Development Control Committee meeting on 13<sup>th</sup> February 2013 for members to carry out a site meeting. This report has been updated to reflect both verbal updates from the last meeting together with further information received to date.**

To seek Members view on the harm caused to highway safety and landscape character and amenity of the area with respect to the unauthorised material change of use of a single dwellinghouse to a mixed use of dwelling, daily yoga classes, weekend retreats and other associated business activities. Officers are seeking Authority from Members to issue an enforcement notice to require the use of the dwelling for business purposes, yoga classes and weekend retreats to cease.

## **2.0 LOCATION OF PLANNING CONTRAVENTION**

Red Hill House, Red Hill, Camerton, Bath BA2 0NY (“the Property”), as outlined in bold on the attached site location plan (Appendix 1).

## **3.0 OUTLINE OF PLANNING CONTRAVENTION**

Without planning consent the material change of use of a single dwellinghouse to a mixed use of dwelling, daily yoga classes, weekend retreats and associated business activities.

## **4.0 RELEVANT PLANNING HISTORY**

08/00669/FUL – Conversion of car port to sun room – Permitted  
08/04291/FUL- Change of use of existing sun room to provide yoga classes and creation of hardstanding for associated parking (retrospective) – Refused  
09/01515/CLPU – Use of dwelling to teach yoga classes (Certificate of Lawfulness for a Proposed Use) – Refused  
09/03166/CLPU – Use of dwelling to teach yoga classes (Certificate of Lawfulness for a Proposed Use) – Refused, appeal dismissed.  
11/05201/FUL - Change of use from dwelling to mixed use dwelling and yoga school (Retrospective) – Refused

**For information only and not for consideration in this report** - Members are advised that on 1st February 2013 a Tree Preservation Order (TPO) was made covering all the trees on the site. The deadline for representations to the Order is 10<sup>th</sup> April 2013. On 11th February 2013 an application to fell one Sycamore and one Cherry was received, reference 13/00604/TPO. The target date for a decision is 8 April 2013.

## **5.0 BACKGROUND**

On 15 April 2008 planning permission was granted, reference 08/00669/FUL, for the conversion of the existing car port to a sun room. In November 2008 an application was submitted for the change of use of existing sun room to provide yoga classes and creation of hardstanding for associated parking (retrospective), reference 08/04291/FUL. It was proposed that clients would park on land opposite Red Hill House and the applicant would stand in the highway to stop traffic and see clients across the road. This application was subsequently refused on 10 February 2009 for the following reasons:

- 1. The proposed change of use of the residential dwelling to business use will result in an increase in pedestrian movement to and from the dwelling (when operating as a Yoga studio) both along the carriageway and to the proposed car park at a point where there is insufficient visibility to ensure the safe crossing of the highway. This is in conflict with policy T24 of the Bath and North East Somerset Local Plan.*
- 2. The proposed change of use of the residential dwelling to business use will result in an increase in vehicular movements to and from the western and eastern side of Red Hill to the detriment of students of the Yoga studio and other road users. This is in conflict with policy T24 of the Bath and North East Somerset Local Plan.*
- 3. The proposed creation of a formal parking area on land located on the eastern side of Red Hill within open countryside would detract from the rural character of this part of Red Hill contrary to policy D2 of the Bath and North East Somerset Local Plan.*

Since this time there have been a number of applications seeking permission to operate a yoga business at this location all of which have been refused due to highway safety implications. The applicant has appealed the Council's decision on one occasion namely the decision against a refusal to grant a certificate of lawful use or development, reference 09/03166/CLPU which was refused on 11 June 2010. The Inspector in his decision letter dated 5 April

2011 stated “the vehicle movements associated with the proposed yoga classes would, as a matter of fact and degree, bring about a material change of use in the character of the use of the appeal property, compared with its use as a single dwellinghouse”. The appeal was subsequently dismissed.

Since this time activity has increased, Yoga classes, workshops and retreats continue to take place at Red Hill House. The current level of activity includes at least 16 regular classes per week at various times in the day including morning, afternoon and evening. It is advertised that each class has no more than 13 students. In addition, there are occasional Saturday workshops throughout the year and additional monthly classes. There are approximately 7 instructors. A number of weekend retreats take place throughout the year. The property is also advertised as being available for rent for private classes and weekend workshops able to cater for up to 40 people seated. The main house is offered as a bed and breakfast facility with up to 6 bedrooms capable of sleeping up to 15 people.

In an attempt to overcome highway concerns the owner has suggested various alternative parking proposals. The attached plan shows the alternative parking proposals which have been considered which include parking on land on the opposite side of the road to Red Hill House, utilising parking at an existing restaurant site approximately 720m to the north of the site, and the use of an existing car park at Travis Perkins. More recently the owner has proposed parking in an adjacent field directly to the North of Red Hill House. Each of these proposals has been considered however Officers consider that none of the proposals overcome highway safety concerns. Furthermore, it is considered the proposals to create a parking area within the open countryside would detract from and have an adverse impact on the rural character of the area contrary to Policies D.2 which seeks to reduce the impact of car parking on the character of an area and NE.1 which seeks to retain and enhance local landscape character in resisting development which does not conserve or enhance the local distinctiveness of the landscape.

The Council wrote to the owner in August 2012 advising that an alternative venue should be sought. Since this time the yoga business has continued to operate. In January 2013 Officers agreed with the owner that the unauthorised business activities would cease on or before 31<sup>st</sup> March 2013 and that the owner would make enquiries to relocate to more suitable premises. It became evident that this was unlikely to happen before 31<sup>st</sup> March and therefore the matter was reported to the Development Control Committee on 13<sup>th</sup> February 2013.

On 27<sup>th</sup> February 2013 a site meeting was held at Red Hill House attended by Ms Martinus (owner), Ms Wake (Greenvale Design) on behalf of the owner, and the Council’s Highway Officers, Senior Arboricultural Officer and Principal Planning Enforcement Officer. The following issues were discussed:-

### **Visibility**

Some clearing of vegetation at the entrance to the site has been made resulting in a marginal improvement to visibility. However, in order to make

significant improvements to visibility to provide a safe means of access, considerable alterations to the bank, hedge and trees would be required. Whilst the bank area immediately south of the entrance could be cut back a little way to effect some further visibility improvement, the extent of the works necessary to achieve the minimum highway requirements would necessitate the loss of mature trees and the excavation of a significant length of the bank which Officers consider is unacceptable due to the adverse effect on the landscape character and amenity of the area.

The level of appropriate visibility for an access onto Red Hill, having regard to the recorded speeds on this road (85th percentile of 35-40mph), would be splays of 2.4m by 70-90m in accordance with standards in Design Manual for Roads and Bridges, which are considered to be the most appropriate standards for this type of road. It should be noted that the lesser standards for visibility in Manual of Streets which requires splays of 2.4m by 45m, could still not be achieved without unacceptable impact on hedges and trees.

Of the two existing mirrors opposite the site entrance, one provides a good quality view of the traffic from uphill. The other existing mirror provides a distorted view to the right and it is the owner's intention to replace this with a high quality mirror to improve visibility and to position a third, high quality mirror further downhill, on the opposite side of the road from the entrance, with a good sightline to traffic coming around the sharp bend from downhill.

The suggested use of existing and new mirrors to aid movements out of the access is not recommended or supported by the Highway Authority, as they can distort images and give false representation of distances.

### **Parking and Vehicle Access Management**

At the meeting the owner produced a parking and turning area layout plan which officers agreed provides a better management of parking and turning within the site. However, this plan does not show the position of existing trees nor reflect their potential loss. On 28th February 2013 Members were sent a copy of this plan by Ms Wake. In addition new rules for accessing the site and parking have now been introduced by the owner at the Yoga Centre, these are:

- No right turn out of the site allowed
- A no parking turning area is marked out to ensure vehicles can exit site without reversing
- Maximum of 6 vehicles to be parked on site at any time.

Whilst the owner has outlined how these rules will be applied, it is Officers opinion that the Council would not be possible to regulate or enforce such rules.

To date five third party representations have been received in support of the yoga centre. Comments include:

- The centre is a special place that provides affordable yoga classes and workshops for the local community.

- Positive effect on health and wellbeing that yoga provides.
- Enjoy having the Universal Yoga Centre in Camerton.

All representations of support received acknowledge the difficulty of parking and manoeuvring when visiting classes.

Six third party representations in objection have been received all of which express concerns in relation to the highway safety of both pedestrians and vehicles.

To date an acceptable resolution to the current situation has not been found and the use of this dwelling in connection with a yoga business remains unacceptable. Your Officers are therefore seeking authority to take appropriate action.

## **6.0 DEVELOPMENT PLAN**

Of particular relevance to this matter is the Bath and North East Somerset Local Plan (including minerals and waste policies) adopted October 2007 (the Local Plan). Of particular relevance are T.24 and T.26 relating to highway safety and parking provision.

National Planning Policy Framework (“NPPF”) was published March 2012 and is a material consideration. Local Plan policies T.24 and T.26 are consistent with national policy contained in the NPPF.

## **7.0 EXPEDIENCY OF ENFORCEMENT ACTION**

Red Hill House is a large residential dwelling located to the north of the Camerton housing development boundary. It has seven bedrooms and stands within grounds of approximately 0.25ha.

Red Hill is a classified road of relatively limited width. The road is well used by local residents and also provides a link/short cut between the Radstock /Bath road (A367) and the Timsbury/Bath Road (B3115). The highway does not benefit from a footway in either direction to/from the application site and due to the line of the road, including bends, does not provide a safe pedestrian access to the property.

The programme of classes is currently advertised by way of a website, social media sites and local leaflet distribution. The classes are advertised as ‘taking place in a purpose built studio’ (a former sun room which was granted planning permission in 2008). In addition, bed and breakfast, retreats and weekend workshops as well as private classes to all levels, ages and abilities are also advertised. The Council is of the opinion that the overall use by virtue of the number and nature of classes held (including weekend retreats); the frequency of the classes; the number of attendees; staffing levels; and the levels of associated traffic, greatly exceed that which would reasonably be expected in association with purely domestic occupation. The current and

potential increased use of the sub- standard access is prejudicial to highway safety. Furthermore, the Council consider that the trees provide an important contribution to the landscape character and amenity of the area and their future removal to improve visibility would result in unacceptable harm.

In the circumstances, enforcement action against the unauthorised yoga classes, weekend retreats and associated business activities is therefore considered expedient as all likely alternative parking facilities have been explored and considered unacceptable. Furthermore, Officers are of the opinion that were an application received for this use, there are no conditions which could be attached to permission that would overcome the serious highway safety concerns and at the same time safeguard the appearance of the area.

## **8.0 HUMAN RIGHTS**

8.1 It is considered that Article 1 of Protocol 1 (peaceful enjoyment of possessions) and Article 8 (right to respect for private and family life, home and correspondence) of the European Convention on Human Rights may apply in this case. However, those rights must be weighed against the public interest in preserving the character and appearance of the surrounding area. Given that the unauthorised works are harmful and contrary to the Development Plan and given that there are no material considerations which outweigh the harm. It is considered that Enforcement Action would be a proportionate interference in the wider public interest.

## **9 RECOMMENDATIONS**

That delegated authority be granted to the Development Manager, in consultation with the Planning and Environmental Law Manager, to take any necessary enforcement action on behalf of the Local Planning Authority in respect of the alleged planning contravention outlined above, by exercising the powers and duties of the Authority (as applicable) under Parts VII and VIII of the Town and Country Planning Act 1990 (including any amendments to or re-enactments of the Act or Regulations or Orders made under the Act) in respect of the above Property.

### *General Note*

*This specific delegated authority will, in addition to being the subject of subsequent report back to Members in the event of Enforcement Action either being taken, not being taken or subsequently proving unnecessary as appropriate, be subject to:*

- (a) all action being taken on behalf of the Council and in the Council's name;*
- (b) all action being subject to statutory requirements and any aspects of the Council's strategy and programme;*

- (c) *consultation with the appropriate professional or technical officer of the Council in respect of matters not within the competence of the Head of Planning Services, and*
- (d) *maintenance of a proper record of action taken.*