

MINUTES OF THE DEVELOPMENT CONTROL COMMITTEE

Wednesday 18th February 2009

291 ENFORCEMENT ITEM - LAND AT FORMER FULLER'S EARTHWORKS, ODD DOWN, BATH (Report 11).

Referring to the Report and the Minutes of this Committee held on 29th October 2008, the Committee considered the joint report of the Divisional Director of Planning and Transport Development and the Planning and Environmental Law Manager which gave the Committee the opportunity to consider the alleged planning contraventions afresh having regard to (a) the responses received on the Planning Contravention Notices (PCN's), and (b) the accusations made by Gazelle Properties Ltd, the owners of the land, in the Judicial Review proceedings claim against the Council to the Committee's decision of 29th October regarding the above land.

The report to the October meeting set out the requirements for enforcement action, namely:

- (i) residential use at Nos 1 and 2 The Firs (within Use Class C3) be allowed to continue
- (ii) use of land at "The Works" and adjoining hardstandings for the purposes within Use Class B2 be allowed to continue (within Area "A" of the CLEU Plan);
- (iii) cessation of all non-agricultural use outside of Area "A" (on the CLEU Plan) including:
 - the storage and repair of scaffolding
 - building/engineering/stone mason' contractors' yard
 - skip-hire/storage yard
 - storage of aggregates, hard core and green waste
 - the production/distribution of concrete
 - the siting and use of a hot food takeaway trailer; and
 - storage of an advert trailer, metal cages and other scrap items
- (iv) demolition of the hopper and aggregate storage bays; car parking areas (CP1 and CP2); all fencing and concrete slab on the compound within Area "E"; and demolition/removal of portacabin
- (v) removal of the bund currently forming the north east boundary of the site and, following this, the levelling of the land to match the adjoining land; and
- (vi) restoration of the land to its former condition following compliance with the foregoing, including the covering with clean top soil and sowing of grass seed.

The report to today's Committee meeting set out the responses from occupiers of the site to the PCN's. It was considered that these responses confirmed the conclusions in the October Committee report regarding the mixed use of the land.

The report went on to discuss the expediency of enforcement action. It recommended that the B2 use be allowed to continue on part of the land (albeit a smaller part than had previously been accepted by the Council as having a B2 fallback use). Elsewhere non-agricultural activity should be ceased (apart from residential use of Nos 1 and 2 The Firs). It also considered that the encroachment of the mixed use for the various businesses close to the residential properties of Nos 1 and 2 The Firs would have a harmful impact upon the living conditions at those properties. The structures including the concrete manufacture and batching plant, storage silos, aggregate storage bays, ancillary metal buildings and the permanently sited office building were considered unacceptable.

The Development Manager read out the following statement:

"It is the view of Officers that the land outlined in bold on plan at Annex D is now in a mixed use. This view has been reached after careful consideration of the history of the site and to any fall back B2 Use (General Industrial) that may have existed at the time of the "call-in " Inquiry in 2002. You will see that the site area for the "call-in" Inquiry application at Annex G is smaller than that shown on the current site location plan and as such any B2 fall back position agreed at that time can not in any case cover the whole site within the Freeholding of the Owner. There is, however, disagreement between the Council and the Owner as to the significance of what was agreed within the Statement of Common Ground at the Inquiry.

The land does not have the benefit of planning permission; its status is therefore subject to evidence and the Council must take into account any material information that comes to its attention.

As such, a different view was taken by Officers regarding the extent of the B2 fall back position following the processing of the CLEU application in 2006. There is no consideration of planning merits when certificate applications are assessed but instead it is necessary for evidence submitted by the applicant to be assessed along with any other information that the Council has available such as the aerial photographs referred to in the main report. The aim of the application was to establish a general B2 use throughout the site. However, after detailed assessment of the evidence, your Officers did not consider that the application could demonstrate on the balance of probabilities such an established use across the area within the red line. No formal determination was made in relation to the CLEU as it was withdrawn by the Owner. Therefore, neither the SOCG or the CLEU were formal determinations.

It is acknowledged that the Council in the past accepted that the land which formed part of the application site at the 2002 "call-in" Inquiry had a B2 fall back use and it would have been inexpedient at that time to take enforcement action. However, this was based on evidence available to the Council at that time.

The site visit in September 2008 provided more evidence to Officers, which has subsequently been endorsed by the returned PCN's, that a material change of use of the land has now taken place as there are currently several uses taking place on the land and over a wider area than has historically been the case, although they do retain a link with the central use of the site.

This change of use has taken place within the last 10 years and so is unauthorised. It would not be possible now to revert back to a previous B2 use without the grant of planning permission or compliance with an enforcement notice. The Owner does not concur with this view.

In terms of the presentation, it would be helpful if Members could have open before them Annex F attached to the main report as I will show you photographs of various parts of the site and link them back to this plan.

For clarity, the Officer recommendation then is seeking your authority to take enforcement against the uses and operations listed in the main report."

The Development Manager then took the Committee through the presentation which included a series of photographs of the site.

The Planning and Environmental Law Manager reported on legal aspects of the matter and referred to the Judicial Review challenge made by the owners of the property regarding the decision made by the Committee at its meeting on 29th October 2008. The Committee then heard the statements by the public speakers. (Note: During the statement made by Mr White, the Chairman had to ask him to refrain from making references to his proposals for the site.)

It was then moved by Councillor Eleanor Jackson and seconded by Councillor Colin Darracott to delegate authority as set out below.

RESOLVED that delegated authority be granted to the Divisional Director of Planning and Transport Development, in consultation with the Planning and Environmental Law Manager, to take any necessary action on behalf of the Authority in respect of the alleged planning contraventions set out above by exercising the powers and duties (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 land.

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 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 Divisional Director of Planning and Transport Development; and

(d) maintenance of a proper record of action taken.

(Note: The voting on this matter was 7 in favour and 2 against with 3 abstentions.)