

**To: The Deputy Leader and Members of the Planning and Development Board
(Councillors Simpson, Bowden, L Dirveiks, Fox, Jenkins, Lea, Morson, B Moss, Sherratt, M Stanley, Swann, Sweet, Winter and Wykes)**

For the information of other Members of the Council

This document can be made available in large print and electronic accessible formats if requested.

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For enquiries about specific reports please contact the officer named in the reports

PLANNING AND DEVELOPMENT BOARD AGENDA

16 NOVEMBER 2009

The Planning and Development Board will meet in the Council Chamber at The Council House, South Street, Atherstone, Warwickshire on Monday 16 November 2009 at 6.30 pm.

AGENDA

- 1 **Evacuation Procedure.**
- 2 **Apologies for Absence / Members away on official Council business.**
- 3 **Declarations of Personal or Prejudicial Interests.**
(Any personal interests arising from the membership of Warwickshire County Council of Councillors Fox, Lea, B Moss and Sweet and membership of the various Town/Parish Councils of Councillors Fox (Shustoke), B Moss (Kingsbury), Sherratt (Coleshill) and M Stanley (Polesworth) are deemed to be declared at this meeting.)

PART A – ITEMS FOR DISCUSSION AND DECISION (WHITE PAPERS)

- 4 **Planning Applications** – Report of the Head of Development Control.

Summary

Town and Country Planning Act 1990 – application presented for determination.

The Contact Officer for this report is Jeff Brown (719310).

- 5 **Progress Report on Achievement of Corporate Plan and Performance Indicator Targets April 2009 – September 2009** - Report of the Chief Executive and the Director of Resources

Summary

This report informs Members of the actual performance and achievement against the Corporate Plan and Performance Indicator targets relevant to the Planning and Development Board for the second quarter April 2009 to September 2009.

The Contact Officer for this report is Robert Beggs (719238).

PART C - EXEMPT INFORMATION (GOLD PAPERS)

- 6 **Exclusion of the Public and Press**

Recommendation:

That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business, on the grounds that it involves the likely disclosure of exempt information as defined by Schedule 12A to the Act.

- 7 **Breaches of Planning Control** - Report of the Head of Development Control.

The Contact Officer for this report is Jeff Brown (719310).

JERRY HUTCHINSON
Chief Executive

Agenda Item No 4

Planning and Development Board

16 November 2009

Planning Applications

Report of the Head of Development Control

1 Subject

- 1.1 Town and Country Planning Act 1990 – applications presented for determination.

2 Purpose of Report

- 2.1 This report presents for the Board decision, a number of planning, listed building, advertisement, proposals, together with proposals for the works to, or the felling of trees covered by a Preservation Order and other miscellaneous items.
- 2.2 Minerals and Waste applications are determined by the County Council. Developments by Government Bodies and Statutory Undertakers are also determined by others. The recommendations in these cases are consultation responses to those bodies.
- 2.3 The proposals presented for decision are set out in the index at the front of the attached report.
- 2.4 Significant Applications are presented first, followed in succession by General Development Applications; the Council's own development proposals; and finally Minerals and Waste Disposal Applications. .

3 Implications

- 3.1 Should there be any implications in respect of:

Finance; Crime and Disorder; Sustainability; Human Rights Act; or other relevant legislation, associated with a particular application then that issue will be covered either in the body of the report, or if raised at the meeting, in discussion.

4 Site Visits

- 4.1 Members are encouraged to view sites in advance of the Board Meeting. Most can be seen from public land. They should however not enter private land. If they would like to see the plans whilst on site, then they should always contact the Case Officer who will accompany them. Formal site visits can only be agreed by the Board and reasons for the request for such a visit need to be given.
- 4.2 Members are reminded of the "Planning Protocol for Members and Officers dealing with Planning Matters", in respect of Site Visits, whether they see a site alone, or as part of a Board visit.

5 Availability

- 5.1 The report is made available to press and public at least five working days before the meeting is held in accordance with statutory requirements. It is also possible to view the papers on the Council's web site www.northwarks.gov.uk

- 5.2 The next meeting at which planning applications will be considered following this meeting, is due to be held on Monday, 7 December 2009 at 6.30pm in the Council Chamber at the Council House.

Planning Applications – Index

Item No	Application No	Page No	Description	General / Significant
s	PAP/2009/0322 PAP/2008/0571 PAP/2008/0607 PAP/2009/0324 PAP/2009/0323 PAP/2009/0326 PAP/2009/0325 PAP/2009/0327 PAP/2009/0441	4	Heart Of England Old Hall Farm Meriden Road Fillongley Coventry	General
s	PAP/2009/0440	120	Atherstone Station Long Street, Atherstone Listed Building Consent for demolition of station footbridge (as part of a wider scheme to create DDA compliant access to the station)	General

General Development Applications

(1) Application No PAP/2009/0322

Heart of England Ltd, Old Hall Farm, Meriden Road, Fillongley

PA 2008/0571

Improvements to an existing access and retention of gates 18 metres from the road and fencing,

PA 2008/0607

Variation of Condition 21 of permission 2007/0503, to permit use for construction traffic and for public access to the land in association with the recreational use of land,

PA 2009/0324

Variation of Condition 22 of permission 2007/0503 for the importation of material from 10000 cubic metres to 36000 cubic metres

PA 2009/0322

Variation of Condition 7 of permission 2007/0503 to use the lake and adjacent land on Sundays from 0900 to 1800 hours in addition to the present permitted hours

PA 2009/0323

Variation of Condition 3 of planning permission 1381/2002 and appeal decision APP/R3705/A/05/1189445, to open the buildings and land on Sundays from 0900 to 1800 hours in addition to the present permitted hours

PA2009/0326

Retention of beach, rockery and first aid building

PA 2009/0325

Retention of pump house and electrical plant room

PA 2009/0327

Retention of jetty

PA 2009/0441

Erection of building for use in association with the approved recreational use of the land

all for Heart of England Ltd

Introduction

The receipt of all of these applications, apart from the last (2009/0441), was reported to Board on 21 September. That report amongst other things, described the site; outlined the proposals, provided a planning history of the site, referred to the relevant Development Plan policies and other material planning considerations pertinent to the determinations, and suggested a way in which to approach so many applications. That report is attached at Appendix A, and Members are requested to refer to this in their consideration of the applications – both reports refer to material planning considerations. This current report will bring the Board up to date in respect of outstanding matters as well as to describe the latest application (2009/0441). In this way it is considered that a comprehensive view can be taken of the submitted proposals at this site.

The report is effectively divided into three sections – the first will deal with the planning applications and end with a series of recommendations as usual. The second section will then look at the expediency of enforcement action should any application be refused, as well as looking at current breaches of planning control on the site not covered by the submitted planning applications. Again a series of recommendations will be made. The final section will explore future issues.

Outstanding Information Requested

From the previous report it will be seen that a Traffic Impact Assessment was requested from the Highway Authority. This has not yet been received. Additional assessments were requested from the Warwickshire Wildlife Trust, the County Council Ecologist, and the Forestry Commission on the impacts of the current and proposed developments on nature conservation and bio-diversity interests as well as on the Ancient Woodland. None have yet been received. The Environment Agency was concerned about the impact of the works being unlicensed and saw no reason for the proposed increase in importation of material. No further information has been submitted to alleviate its concern, although it is understood that discussions are underway with the applicant. As a consequence further assessment of the impacts arising from these applications is materially no further forward.

The applicant has been requested to provide additional information but no clear dates have been given for its receipt. Meanwhile the applications remain undetermined. The applicant has been made aware that determination reports are being considered by this Board, but still nothing has been received at the time of writing.

The applicant has however submitted a noise report in response to representations made by local residents concerned about the noise that they say was being generated as a consequence of activity associated with the “beach”.

In general terms this leaves the Council and other Agencies in a difficult position. Due to the length of time that has lapsed since these applications were requested and submitted, and the clear breaches of planning control undertaken by the applicant during the summer, it is considered that the public interest is now best served through their determination with the information as submitted. This will not prejudice the applicant, as he can respond and react accordingly, depending on the outcome of his applications.

Two letters have been received from the applicant, and they should be treated as material considerations. These are at Appendices B and C.

Further Consultation Responses

Environmental Health Manager – In commenting on the noise report referred to above, he comments that it would be possible to repeat conditions similar to those included in the 2007 permission, but these have been disregarded and breached. Additionally, there remains the potential problem that large numbers of people may generate considerable noise, and whilst this may not be at a level that would cause a statutory noise nuisance, it could still cause annoyance or disturbance to neighbouring properties.

Further Representations

Since the preparation of the last report, a further 7 representations have been received from local residents. They repeat many of the matters referred to in the previous report, but draw attention to the adverse impacts arising from the public's access to the site over the August Bank Holiday weekend citing noise and visual impact as their main concerns. They also draw attention to the material set out on the applicant's web site and to the introduction of caravanning and camping on the site. Traffic and highway safety remain as issues. They all are concerned about the loss of rural character.

Update on Other Material Planning Considerations

Since the date of the last report (21 September), the Inspector dealing with representations into the Phase Two revisions of the Regional Spatial Strategy has published his findings and recommendations. There is no material change recommended to any of the policies identified in the 21 September Board. The policies as listed thus remain and carry weight in the determination of these applications.

Enforcement Matters

The report at Appendix A, states that the Enforcement Notice relating to the unlawful erection of two marquees at the site was upheld at appeal – the full decision letter is at Appendix D. The compliance period was 13 October 2009. Inspections have revealed that the Notice requirements have only partially been complied with, in that the smaller marquee and its base have been removed, but the larger one substantially remains. This will be referred to later in this report.

Secondly, Appendix A confirms that an Enforcement Notice was served at the end of August, alleging the construction of an agricultural building not in accordance with the approved plans. An appeal has been lodged against this Notice. No date has yet been fixed for it to be heard, and neither has the appeal procedure been agreed.

New Application

It was reported above that a further application had been submitted since September (2009/0441). This is for the erection of a building in association with the recreational use of the land. In essence it is for a permanent extension to one of the original buildings at the site so as to replace the space lost, as a consequence of the eventual removal of the marquees referred to above. It would be physically attached to an existing building via a small intervening link. It would be used on weekdays and on Sundays.

The location plan of this is shown at Appendix E. It is for a building of 23.5 metres by 16.4 metres and 5.5 metres to its ridge, with a low pitched roof and would appear as an extension to an existing building – see Appendix F. This was one of those included in the original 2004 permission and it has a lawful recreational use. Members will recall it as containing the suite of function rooms from their visit. The extension would be to the south, and stand on the site of one of the unlawful marquees. It would be constructed in facing brickwork with a green steel clad roof and be highly fenestrated along three elevations. For comparison purposes the larger of the two unlawful marquees amounted to 276 square metres in floor area; the proposed extension would amount to 357 square metres. It represents about a 40% increase in floor area of the building to which it would be attached.

The applicant has submitted a statement in support of the proposal and this is attached at Appendix G. In essence this says that the additional space is required in economic development and tourist terms to replace the business that would have taken place within the marquees, and thus it is needed in order to keep the whole business viable, and to support the local economy through the provision of local jobs and contracts. It expresses concern that Green Belt policy can be deemed to thwart business expansion.

The Fillongley Parish Council raises no objection, but four objectors consider that the building is unnecessary; that there is no justification for replacing a temporary building with a permanent one, and that it would further destroy the Green Belt.

The Environmental Health Manager has no objection subject to conditions controlling noise amplification, and that openings be closed to prevent possible noise pollution.

The Highway Authority objects because there is Traffic Impact Statement provided giving information and detail about traffic generation figures and their impact on the capacity and adequacy of the existing access.

Observations – Planning Applications

a) The Approach

The September report outlined a way forward to approach these applications – firstly to establish an overview of the site, and then to consider the applications in a logical sequence, with the most substantive ones being dealt with first. This is the approach that will be taken here. Any enforcement matters will be dealt with separately. The report will refer to matters included in both this report and that of 21 September.

The applications are clearly related, and thus the material considerations and impacts arising from one will affect others. As a consequence, each of the sections dealing with the applications will provide an overall conclusion as to how they should be determined, with the detail to follow in the recommendations that follow at the end.

b) The Overall View

In the absence of any overall master plan or document submitted by the applicant that could be taken as a material planning consideration, or indeed any site specific reference in the Development Plan, the Council's starting point must clearly be the two substantive planning permissions for the site. In short, it has consented to the use of land and buildings, as well as for the construction of a lake for recreational purposes, subject to conditions that limit the extent of that use. The 2004 and 2007 permissions thus provide the scope for the applicant's use of the site. Indeed the letter from his agent at Appendix B, confirms that this is the case, and that he considers that he is working within the scope of those permissions. It is thus important to establish what these permissions cover.

The 2004 permission covers only part of the site – the original agricultural buildings – and this established the change of use of the land and buildings for recreational use (see Appendix H). This permission was conditioned in order to limit that use. The key conditions restrict the hours of that use; all Sunday use, the use of motor vehicles, shooting, and the clearance of all equipment following each event. In this particular case, the term "recreational" was found to include the use of the buildings as a restaurant, following an appeal decision (see Appendix I). The Inspector found that in the absence of conditions defining the scope of the use, it could include the use of existing catering facilities by the public.

The 2007 permission covers a further portion of the site (see Appendix J). It enabled the formation of a lake and wetland area for use by water and other sports in association with the recreational use of the land. It too was conditioned. The key limitations on the scope of the use permitted are that only named activities are allowed on the land, and that all motorised activities, and all shooting activities are excluded; only named activities on the lake are permitted and all motorised activity on the lake is excluded, that hours of use are restricted, including no Sunday use, and that all temporary structures and equipment are removed after each event, together with requirements to provide and implement a Habitat Management Plan for the lake, the land and adjoining woodland.

Additionally, the Development Plan, and Government Guidance provide a planning background for the land. The site is wholly in the Green Belt, and the use of such land for outdoor recreation and sports use is by definition an appropriate use. This is subject to any associated buildings and structures being essential for the implementation of that outdoor use, and that they are small in scale. Members will be fully aware of the range of uses that could be appropriate in these circumstances – for example, golf courses; playing fields and stables.

However, in this case, the Council has defined the scope of the outdoor recreation and sports uses that it considers are appropriate to this particular site, through the 2002 and 2007 permissions. This establishes the Council's overall view of how it sees the site in planning terms. This is essentially for outdoor uses that are temporary in nature, which

would not impact on the openness of the Green Belt or the rural character of the countryside, and uses that provide for nature conservation enhancement, and protect designated woodland. In other words they provide for a balanced approach to the site. This would also reflect Government Guidance in PPG2. Whilst one of the objectives of the Green Belt is to provide opportunity for outdoor sport and recreation, other objectives are to retain attractive landscapes, and to retain land in agricultural use. With such an approach, a reasoned assessment of the following applications can be made by exploring how well they “fit” with this balance established through the two substantive permissions, and thus whether that measured approach would be altered. If that causes benign impacts, then the development proposals might be acceptable; if that would lead to adverse impacts, then they might not be acceptable.

Before looking at the applications, it is opportune to highlight some of the factors arising from the recent use of the site, in order to put them into the overall context as set out above. The applicant will point out that, although heavily conditioned, neither of the two substantive permissions prevent the site being used by the general public; control the number of people on site at any one time or the number of vehicles that can park here. He will also argue that most of the uses that are currently on site, and for which the development proposals below would enable, are outdoor recreational activity not prohibited by the planning conditions. Additionally, he will argue that the description of the site as a “resort”; as an “Adventure Park” or as a “destination” is not unlawful, given the current permissions. These arguments are all accepted, but they have to be qualified. That qualification is that the purpose of the Green Belt, and the objectives for including land within them, is not wholly a one way consideration ie – recreation/tourism activity at all costs. These activities have impacts that may materially affect the other purposes and objectives of Green Belt policy –eg: safeguarding the countryside from encroachment; retaining attractive landscapes, to secure nature conservation interest and to retain land in agricultural use. In other words recreation proposals can fail, if they go against these other objectives. This emphasises the context set out in the preceding paragraph where the key determinant will be how far these applications “depart” from the base line established by the permissions already granted.

c) Application 2009/0324 – Variation of Condition – Importation of Material

This application is considered first as permission already exists for a new lake, and to some extent the issues here are unrelated to the use of the lake and the surrounding land, as the application in part, seeks retrospective agreement to vary the amount of material brought onto the site as a direct consequence of alterations made to the shape and size of the lake as it was being constructed.

Whilst in the location approved by the 2007 permission, the current lake is larger and of a different shape than that approved. The applicant has said that these changes arose from a combination of operational reasons – including the poor quality of the imported clay for the liner; the poor nature of the material that was to be used from the site itself to create the surrounding bunds, advice from the Environment Agency about the retaining bund being of insufficient in size, and the hydrology on the site itself. As a consequence, the applicant says that the condition limiting the maximum import of material into the site of 10000 cubic metres was exceeded, as more material had to be imported - 26000 cubic metres in total. The applicant as stated above, says that the quality of the imported clay was poor, but that on-site clay was found to be adequate, and this was taken, thus creating the “borrow pit” presently on the site. The removed top soil from this pit is stored on site too. The sandstone for the artificial cliff was removed at the same time. The current application seeks the import of a further 10000 cubic metres of inert material onto the site so as back fill the borrow pit. Once completed, the top soil will be replaced and the whole area levelled. The current application seeks variation of the condition from the importation of 10000 cubic metres to 36000 cubic metres – 26000 of which is retrospective, and the remaining 10000 still to come in to fill the borrow pit.

The Environment Agency disputes the reasons claimed by the applicant for moving away from the approved plans for the lake, but that is matter for them to pursue. In planning terms the Council needs to come to a view on the lake as seen presently – its shape, profile and

appearance. Whilst it is larger, it is not considered that it is so visually intrusive, or that it is so out of keeping with the profile of the surrounding contours as to warrant a refusal. The greatest impact will be on its northern side where the retaining bund is located. This does create an artificial feature when viewed from downstream, but when considered against the approved bund, the height increase of around 1.2 metres is not considered to be material. As a consequence, whatever the reason for the import of an additional 26000 cubic metres of material, the outcome in visual terms of the current lake, is not objectionable.

The reason for the import of an additional 10000 cubic metres of inert material, is to back fill the void of the current borrow pit on the site. This would amount to some 1250 loads over a three month period according to the applicant. In the absence of support from the Highway Authority for a continuation of the use of the second access for a further period, and the lack of analysis as to whether this material could in fact be found wholly or partially on site, it is considered that the application should not be supported.

The current application seeks a variation, in part, of a condition affecting the amount of imported material. The condition also requires completion of the lake in accordance with an approved numbered plan. The applicant has submitted plans illustrating the final landform for the lake and its surroundings, taking into account the proposed import of the whole of the 36000 cubic metres of material, and whilst not requested explicitly by him, they can be treated as proposed amendments to the approved scheme, and thus should be treated as seeking a further variation of this condition. As stated earlier, there is no objection on visual grounds to the revised shape or size in the lake, but there remains concern about the loss of the nature conservation benefits shown on the approved plans, and the bio-diversity enhancements specifically built in to the approved plans. These are not replicated or replaced by other measures on the proposed amended plans. The responses from the nature conservation agencies about the changed lake are not supportive at all, and very little additional comfort has been supplied by the applicant to allay their concerns. It has been stressed throughout this report, that the 2007 permission sought a balance between a number of interests. The loss of nature conservation enhancements, and the devaluation of the lake in bio-diversity terms, is considered to be material, and the amended plans can thus not be supported.

Additionally, the Forestry Commission has expressed concern about the potential for back flooding from the lake along the ditch that feeds the lake, thus raising the water table in the woodland. This ditch has been bridged by the circular track that runs around the lake, and the Environment Agency is currently investigating this. Both the Agency and the Commission are also concerned about the retaining dam infrastructure of the lake and its sluices. Until these technical matters are agreed, it is not considered appropriate to approve the amended plans.

As a consequence of all of these matters, this application can not be supported.

d) Application 2009/0326 – The Beach and Rockery

This application is significant, as it introduces the concept behind the current use of this part of the site. This moves away from the use of the lake as an extension of activities in association with existing visitors to the site, to the use of the lake as a “destination” in itself, by the general public. It will first be necessary to explore the visual impact of the beach and rockery on the character and appearance of the countryside hereabouts, and whether they add or detract from the nature conservation benefits established under the current 2007 permission. Normally that would be the extent of the issues involved. However here, the beach is the source and focus of the activities now made of this part of the site, and indeed it gives rise to the submission of the other applications. The issues involved are whether the change in scope and nature of the activities is acceptable in planning policy terms.

It is considered that there is a visual impact here. The beach and rockery are clearly visible from the public footpaths that run alongside the lake and that cross the site, and because of their size, and the white sand, they are very noticeable. Their appearance is artificial – (see Photographs taken from the footpaths at Appendix K). The key issue is whether they have

an adverse impact on the rural character of the countryside here. It is considered that they do. Because of their size and prominence these are incongruous and harsh features, which taken together, are not what one would expect to find in the countryside, as they are not akin to a natural feature. The character of the countryside hereabouts is agricultural in appearance following a traditional Midland pattern of woodlands, hedgerows and trees. This feature is out of place and reduces the quality of the landscape.

It could be argued that as golf courses are appropriate uses of land in the Green Belt, then sand bunkers are also an acceptable attribute in the Green Belt, and that this feature could be likened to that. This argument ignores the setting and appearance of the respective landscapes – bunkers are appropriate in a golf course setting, not in an agricultural landscape. The artificial cliff could be said to replicate a natural sandstone outcrop within fields. Whilst this could be the case, it ignores the combined appearance of the two features, their engineered appearance and their combined visual impact on the landscape.

The 2007 permission for the lake, and the plans approved there under, explicitly recognised the importance of that feature as a nature conservation asset and one that would incorporate features to enhance the bio-diversity of the area. Those overall benefits, according to the consultation responses, have been substantially lost with the introduction of the beach and cliff. This is serious, as it upsets the balance achieved between recreational and ecological interests secured under the 2007 consent. The balance has shifted materially towards a recreational feature with no added value.

The other issue here is that the introduction of these engineering operations has led to the site being used in a different way with different impacts. It has now enabled the site to be used as a “destination” in its own right. It has directly led to an intensification of use with additional developments both as a consequence of building and engineering operations, and to greater patronage. That has had direct consequences on the appearance of the whole site, such that the rural landscape and character has materially been altered, and the openness of the setting compromised. This change in approach has led to conditions attached to the 2007 permission being breached ie- installation of floodlighting contrary to condition 8; installation of a sound amplification system contrary to condition 9, the holding of night time beach parties contrary of condition 7, and the long term siting of structures and equipment contrary to conditions 6 and 10. The reason for restricting or controlling recreational activity in this open setting through those conditions was to protect that setting. The impact of ignoring those conditions, has upset the balance achieved by that permission, and the cumulative adverse visual impacts are now to be clearly to be seen on site – the erection of a raised platform and balustrade (used for children’s mini cars); children’s play equipment (climbing frame/slide/swings), a permanent surfaced volleyball court, equipment such as bouncy inflatables, deck chairs, benches and tables, parasols, signage, flags, goal posts and fairground rides.

It is considered that the beach and artificial cliff, together with the wooden structure within the cliff, have materially altered the appearance and setting of this site, to its visual and ecological dis-benefit, and that the consequential recreational use and activity then undertaken as a consequence has materially upset the balance achieved through the 2007 permission, to the detriment of other objectives for retaining land within the Green Belt. This application will be recommended for refusal.

e) Applications 2008/0607 and 0571 – Access

The change in approach as to how this site is now used, and the increased patronage have led the applicant to consider alternative access arrangements. Again this clearly demonstrates a shift away from the base line established under the 2004 and 2007 permissions with the single point of access. This might well be acceptable if it were supported by the County Council as Highway Authority. Regrettably, no Traffic Impact Statement has been submitted by the applicant, despite requests, and thus there is no evidence upon which the County can make a meaningful consultation response. The approved scheme was conditioned such that the second access was used only for HGV’s during the temporary period of the construction of the lake. That was for sound highway

reasons given the poor visibility to the south west of that access and the speed of traffic on the B 4102. Local residents have referred to these factors in their representations. Because of the lack of information from the applicant in respect of potential traffic generation figures, the impact can not yet be properly assessed. However he has indicated that 130 cars have been on site on occasions, and this figure suggests heavy use if the use of the site is used throughout a season and with the activities outlined on the website, rather than through these applications. In the absence of support from the County Council, the application to vary that condition such that the second access also include public use, will be recommended for refusal. If this is the case, and an appeal lodged, it is very likely that the applicant will be speaking to the County Council, and providing the appropriate Statement, seeking the County's support for use of the second access. This may result in any refusal reason being withdrawn.

The applicant has already undertaken some alterations to this second access so as to enable greater public usage and in his view to reduce any highway safety risks through turning or stationary traffic waiting to enter the site. These works involve setting the gates back some 18 metres from the carriageway; widening the track from those gates into the site to 5 metres, widening the access crossing with the carriageway to 20 metres, and providing fencing. It is further proposed to remove up 100 metres of existing hedgerow on the south western side so as to provide a vision splay of 3.6 by 215 metres, and to plant a new hedgerow on that splay. He has supplied survey information indicating that this hedgerow is "important" as defined under the Hedgerow Regulations 1997. A photograph of the access "before" he undertook the works is attached at Appendix L, and the position "after" the works is also shown.

As indicated above, in the absence of any comments from the Highway Authority it is difficult to offer a recommendation on the retention of these works from a highway safety point of view. However it is quite clear that no approval should be recommended presently until the value of retaining the hedgerow has been fully assessed, and then its retention has to be weighed against any highway benefit in opening up this second access to far greater public use. As the Council is not in a position to assess this balance, the application will be recommended for refusal.

f) Applications 2009/0322 and 0323 – Sunday Use

Both the 2004 and the 2007 permissions prohibit use of the site for the permitted uses on Sundays. The 2004 permission contained a condition limiting weekday and Saturday use to 1800 hours, but an appeal was allowed extending the period to 2330 hours. The 2007 permission also contains a condition limiting weekday and Saturday uses to 1800 hours. The two current applications seek variations on both of these two consents, so as to allow permitted uses from 0900 to 1800 hours on Sundays.

The reason for the imposition of these conditions in both the 2004 and 2007 permissions, was in the interests of the residential amenity of neighbouring residents. In exploring the proposal by the applicant to extend the weekday hours of the use of the buildings under the 2004 permission, the Inspector too considered that the main issue was the effect of extended opening hours on the living conditions of nearby residents, with particular regard to noise and disturbance (see Appendix M). He extended the hours because he did not have evidence of complaints from neighbours, and because the condition affected the internal use of existing buildings. The situation with the 2007 permission is materially different. Here the uses are all in the open, and there has been a series of complaints from local residents concerning noise and disturbance on a regular and frequent basis attributable to the activities introduced to the site subsequent to the provision of the beach and its promotion as a "resort" destination. This is first hand evidence of actual adverse impact affecting residential amenity. The Council's Environmental Health Manager remains concerned about the potential for activities here to create noise. Additionally any greater use by the public will lead to increased disturbance through greater activity on site and greater numbers of coming and goings. All of this strongly points to the need to retain control and balance between the uses and activities at this site, and other planning considerations as expressed in the 2007 permission. It is considered that the proposed variation will upset that balance as experience

has shown that there have been consequential adverse impacts as a direct result of breach of this condition.

The applicant will argue that outdoor activities can take place here in addition to those permitted under the 2007 permission due to permitted development rights associated with the temporary use of land. Additionally he will make the case that the weekend use of the site will be crucial to the viability of the business and its success, in that these days are likely to see the most significant patronage of the site. These arguments carry weight, but as recounted elsewhere in this report, the use of the site under such circumstances can lead to the adverse impacts described in this report and upset the balance between the different planning objectives for the site. It is considered that the 2007 permission sets out a range of uses that respects all of these objectives, and which would control the adverse impacts that are now apparent through unauthorised developments – noise, disturbance, and erosion of the rural character of the area through intensification and prolonging the use. It therefore carries more weight than the applicant's arguments, and this application will be recommended for refusal.

The other application in this section, seeks to vary the 2004 permission for Sunday use. This relates to the internal use of the buildings for the permitted uses. No reasons have been submitted for this variation, but it is assumed that it is to seek greater use over a longer operational period. Taking the same approach as the Inspector in dealing with the proposed extended week day hours, it is clear that there have been no complaints concerning noise and disturbance arising from use of the buildings, and that the Environmental Health officers have not objected to the introduction of Sunday use. As a consequence there is no substantive reason for refusal.

g) Applications 2009/0325 and 0327 – Jetty and Pump Houses

These applications are for minor works. Whilst the jetty was not part of the original approval for the lake, it is considered reasonable that as that permission allows use of the lake for boats, then a jetty is acceptable. It would extend some 24 metres into the lake and is some 2 metres wide. It has little visual impact.

There is no objection to the retention of the electrical plant housing as this is well located and not visually intrusive. However that can not be said of the main pump house that has been disguised as a light house on the lake's island. It is noticeable in the landscape because of its size – 2 by 2 metres in floor area and 7 metres tall – and because it presently is painted in red and white stripes. Even with a more natural colour it would still be intrusive. No evidence has been submitted to show that it has to be of this size or in this location. Moreover there are concerns from the wildlife consultation responses that regular maintenance and repair will require access to the island, and that that will have an adverse impact on the ecology of that otherwise inaccessible land. This application will be recommended for refusal.

h) Application 2009/0441 – New Building (the extension)

It is necessary first of all to establish whether this proposed building is appropriate or inappropriate development in the Green Belt. The construction of new buildings in the Green Belt, is inappropriate unless it is for one of a number of defined purposes as set out in PPG2. One of these is for an "essential facility for outdoor sport and recreation". Essential facilities are required under PPG2 to be "genuinely required for uses of land which preserve the openness of the Green Belt, and do not conflict with the purposes of including land within it". The examples given are all for small scale and unobtrusive developments.

It is considered that this particular building is inappropriate development. The reasons are firstly that it is not small in scale. It would be of substantial size and visible from the public footpaths crossing the site. Moreover it is of a design and appearance that is not associated with an agricultural building such that one might expect in a rural setting. It adds to the built form and mass of the existing complex of buildings. Secondly, it is not considered that it is an "essential" facility for the outdoor sport and recreation use of the site as whole. The

Inspector found that the unlawful marquees were used in conjunction with the other buildings at the site for a wide range of events including wedding receptions, conferences, corporate functions and displays. The applicant in his supporting documentation indicates that the new building would function in the same manner, accommodating indoor activity. As a consequence it can not be said that the new building would be used wholly for the furtherance of outdoor sport and recreational activity on the adjoining land. To pass the test of being “essential”, it would have to wholly meet the accommodation requirements of outdoor activity. Thirdly, the building conflicts with the purposes of the Green Belt, in that it does not assist in safeguarding the countryside from encroachment because of its size, appearance and visibility.

If it is agreed that the building is inappropriate, then the presumption is that the application should be refused planning permission, unless there are very special circumstances of such weight that override its inappropriateness. The applicant argues that following the grant of the planning permissions here, it is reasonable to assume that there would be a requirement for more permanent buildings in order to maintain the viability of his business; to expand to meet demand, and to meet customer expectations. He argues that this is a local company and that he currently employs 86 staff and contributes to the local economy through local suppliers and traders to the value of around £1million. He sees it as essential to the retention of his business that he is allowed to expand and to develop, and so contribute to the local economy.

This argument carries weight, but insufficient to override the presumption set out above. Firstly, the recreational use of the land here was approved with a substantial volume of existing buildings being available to accommodate essential requirements to run the outdoor uses. There is nothing in that permission that assumes that there would be a relaxation of Green Belt policy to construct other buildings. Secondly, “essential” requirements for Green Belt purposes are not the same as “essential” requirements for the running of a business. The applicant has not shown that the building is genuinely required in connection with the outdoor use of the land. Thirdly, the additional building here, because of its size would affect the nature and nature of the use here- with far greater emphasis on indoor activity, and on activity that may well not be recreational. Fourthly, and tellingly, the economic development argument was presented to the Inspector handling the marquee appeal. He concluded that to argue that the expansion of a rural based business, alone, was a very special circumstance, would substantially undermine Green Belt policy given that it is only in the Green Belt that there is a presumption against the grant of planning permission, and that the whole range of reasons for including land within a Green Belt, including retention of its openness could be compromised.

The application will be recommended for refusal.

Recommendations

A) Application 2009/0441 – The New Building

That planning permission be **REFUSED** for the following reason:

- i) The proposed building is inappropriate development in the Green Belt because it is not small in scale, and because it has not been shown to be essential to the outdoor recreation activities operated from the premises. It is considered that there are no very special circumstances of such weight to override the presumption of refusal, because of the reliance of the applicant in arguing that the building is essential for his business at the expense of Green Belt objectives. The development is therefore contrary to saved Policy ENV2 of the North Warwickshire Local Plan 2006, and to Government Guidance in PPG2.
- ii) It has not been shown to the satisfaction of the Local Planning Authority that the traffic likely to be generated by this development can be adequately and safely accommodated through use of the existing access onto the B4102. The proposal

does not therefore accord with saved Policy ENV14 of the North Warwickshire Local Plan 2006.

B) Application 2009/0324 – Variation to Increase Imported Material

That planning permission be **REFUSED** for the following reason:

- i) It has not been shown that it is essential to import an additional 10000 cubic metres of material, or that the continued use of the access by HGV traffic onto the B4102 is acceptable to the Warwickshire County Council as Highway Authority. The proposal is thus contrary to saved Policy ENV14 of the North Warwickshire Local Plan 2006.
- ii) The amended plans submitted to vary the shape and profile of the lake do not provide nature conservation features of such value, nor do they enhance the bio-diversity of the lake, such that they do not accord with saved Core Policies 3 and 11, together with saved Policy ENV3 of the North Warwickshire Local Plan 2006, and Government Advice in PPS9.

C) Application 2009/0326 – Retention of Beach, Rockery and Building

That planning permission be **REFUSED** for the following reasons:

- i) It is considered that the beach, rockery and building are incongruous features within a rural landscape because of their size, visibility and appearance. They detract from the appearance and character of the area. These features are contrary to saved Core Policies 3 and 11, and saved policy ENV1 of the North Warwickshire Local Plan 2006, as supplemented by the Warwickshire Landscape Guidelines, together with Government Guidance in PPS1 and 7.
- ii) The introduction of these features has led to a material change in the appearance and character of the wider site such that it has led to adverse visual impacts, and enabled the intensification of use of the site, to the extent that the purposes and objectives of retaining this land within the Green Belt have been put at risk. The proposals are not considered to comply with saved policy ENV2 of the North Warwickshire Local Plan 2006, and to Government Guidance in PPG2.

D) Application 2008/0607 – Variation of Condition to allow public access, and the use of the access for construction purposes

That planning permission be **REFUSED** for the following reason:

- i) It has not been shown to the satisfaction of the Council that the increased use of the access by the public would be safe in highway terms, in view of the existence of an existing agreed single point of access; the speed of traffic on the B4102 and the limited visibility to the left of the access when exiting. The proposal does not accord with saved policy ENV14 of the North Warwickshire Local Plan 2006.

E) Application 2008/0571 - Alterations to the Access

That planning permission be **REFUSED** for the following reason:

- i) The alterations have an adverse visual impact on the rural character of the landscape hereabouts because of their size; engineered appearance, and the presence of an existing large access close-by. It has neither been shown that it is essential to remove the length of hedgerow to the left of the access when exiting. As such the proposal is contrary to saved Core Policies 3 and 11, and saved policy ENV4 of the North Warwickshire Local Plan 2006.

F) Application 2009/0322 – Sunday Use of the Lake and Surrounds

That planning permission be **REFUSED** for the following reason:

- i) It is considered that Sunday use of the land would lead to increased noise and disturbance for neighbouring residential occupiers beyond that which they could reasonably expect. The proposed variation is thus contrary to saved Policy ENV11 of the North Warwickshire Local Plan 2006.

G) Application 2009/032 – Sunday Use of the Existing Buildings

That planning permission be **GRANTED** for the continued recreational use of land and buildings without compliance with conditions 1,5,7,8 and 10 of Consent reference 0214/2002 at Old Hall Farm, Fillongley in accordance with application 2009/0322 submitted on 10 July 2009, without condition number 3 attached to that permission, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to the following two conditions:

3a. No activity in connection with the approved use shall take place in the open air on the land other than between the hours of 0800 and 1800 on Mondays to Saturdays, and between 0900 and 1800 hours on any Sunday.

3b. No activity in connection with the approved use shall take place within the buildings on the site other than between the hours of 0800 and 2330 on Mondays to Saturdays, and between 0900 and 1800 hours on any Sunday.

H) Application 2009/0327 – The Jetty

That planning permission be **GRANTED**.

I) Application 2009/0325 – The Pump House and Plant Room

That planning permission be **REFUSED** for the following reason:

- i) It is considered that the pump house is of such a size and appearance that it is in an incongruous feature in the rural landscape hereabouts. It is detrimental to the area, and thus contrary to saved Core Policy 3 and saved Policy ENV13 of the North Warwickshire Local Plan 2006.

Observations – Enforcement Matters

a) The Marquees

As indicated above, the Enforcement Notice requiring the removal of the two marquees and their bases, had only partially been complied with at the time of officer's last inspection (26 October). The remedy to secure compliance with this Notice is prosecution through the Courts. It is recommended that this course be followed. If this is agreed, the applicant should be first informed that this is the Council's resolution and that a further and final inspection will be made prior to implementing this resolution. There will be an impact here on the applicant's business through the loss of this facility. That too may well have a wider impact on the local community through the loss of jobs and the loss of local contracts. However, the marquees were erected unlawfully and the applicant exercised his right of appeal, arguing that they should be retained using the impact arguments outlined above. They were rejected, and the principle of the Notice and its requirements were upheld. It is now a matter of fact that those requirements have not been complied with. Any loss of business is considered to be due to the risk taken by the applicant in first breaching planning control. Moreover as this report has shown, it is considered that there is a strong case here in the wider public interest to uphold Development Plan policy in respect of the Green Belt, when this particular matter is seen in the context of the site as a whole.

The applicant could argue mitigating circumstances in that the application for the new building (2009/0441 above) is seen by him as a replacement for the unauthorised marquees. Hence if that is refused, he would appeal and argue that the Council should wait for the outcome, before enforcing the Notice and thus preventing for a temporary period, any loss of business. This is not accepted. The Inspector upheld the Notice in the full knowledge of the impact on the applicant's business, concluding that the marquees were harmful to the Green Belt. That position remains.

b) The Retrospective Applications

Dependent on the decisions taken by Board on the applications recorded above, it may be necessary to consider the expediency of enforcement action given that the applications in most cases are for retrospective developments. Each will be looked and assessed in turn.

i) 2009/0326 – The Beach, Rockery and First Aid Building

If this application is refused as recommended, it is considered expedient to follow enforcement action given the visual harm that is being done to the site and to the fact these features enable intensification of the use of the site beyond that which is considered reasonable. There will be impacts on the owner. Resources will have to be expended on the removal of these features together with the restoration of the site. That is not considered to be unreasonable given that the bulk of the material to be removed came from the site itself. The sandstone and sand can be removed and replaced with grass as shown on the approved plan. The building can easily be removed. The far larger impact on the owner will be the loss to his business. However he undertook these operations at his own risk without seeking advice beforehand, and with little attempt to compromise. This approach carried no weight with the Inspector dealing with the marquee case, and it is considered that that is material to the whole site, given that the consequences can be seen presently on site.

The requirements of the Notice will be to remove the sand and sandstone to an agreed location and to demolish and remove the building. The surface would then be levelled to match the existing ground levels, and planted with grass or turfed. A reasonable compliance period would be three months.

ii) 2009/0325 – The Pump House

The refusal here relates to the pump house (the “lighthouse”) and not to the electric plant housing. The issue here is the visibility of the pump house and its dominance in a rural landscape. Enforcement action would be expedient to remove this incongruous feature. The issue of a Notice would have an impact given that resources would be expended to remove it and to replace it in another location. There might well be a hydrological impact in the siting of an alternative location. This needs to be explored. As a consequence, given the refusal, officers should discuss the relocation of this facility to see if it can be re-located; if it can be reduced in size, and if its impact can be mitigated through the use of alternative coloured paint. As a consequence it is recommended that enforcement action be postponed and a further report brought back to the Board once the matters referred to above have been examined.

iii) 2009/0322 – Sunday Use

If this application is refused, it is considered expedient to commence enforcement action given the direct adverse impact arising from Sunday use as described above. Such action should be through the issue of Breach of Conditions Notice. As a matter of fact, there has been a breach of the 2007 permission through Sunday use and this would be the appropriate course of action. There is no appeal against such a Notice, but continued breaches can lead to the Council upholding the Notice through the Courts. The applicant can appeal any refusal of the application to vary the condition, and the outcome of such an appeal may lead to the withdrawal of the Notice. It is recommended that a Breach of Condition Notice be issued requiring compliance within one month of the date of the Notice.

iv) 2008/0571 and 607 – The Access

As indicated in the report above, the future of the use of the second access and its geometry, awaits the advice of the Highway Authority. Enforcement action should wait the outcome of that advice. If these applications are refused, it is assumed that appeals will be lodged, and that the applicant will be seeking to resolve the highway matters prior to those appeals being heard. As a consequence revised applications might be submitted that meet with the County Council’s support. Enforcement action is thus to be held in abeyance.

v) 2009/0324 – Importation of Material

The refusal recommended above relates to the additional material to be imported to fill the borrow pit, and to the loss of conservation features for the new lake. It is considered that enforcement action here is not expedient as the advice of the County Council and other Agencies is not known. A further report will be needed if this is received. The provision of nature conservation features will also depend on the final outcome of the advice received.

c) Other Matters – Unauthorised Developments

The September report at Appendix A, outlined other breaches of planning control involving unauthorised building and engineering operations, and breaches of conditions attached to the 2007 permission, associated with the development of the site as an “Adventure” Park or as a themed “beach” resort. Whilst action against the source and focus of this unauthorised development – the beach – is recommended above, it will not address the planning issue of a conglomeration of other structures and buildings on the site that detract from the rural setting. Given the thrust of the arguments for the issue of the refusals as outlined above, it is clear that enforcement action would be expedient in order to restore the balance between different interests at this site. Because the issue here is the cumulative impact of these unauthorised developments, it is considered that this should be recognised through the issue of one Enforcement Notice encompassing several developments. From the Member’s site visit; officer’s inspections, and the evidence of the owner himself, it is clear that developments occur on site in an ad hoc way. It is considered therefore that action should be focussed presently on the main unauthorised developments, where they are causing harm to

matters of acknowledged importance. Hence the Enforcement Notice should cover the permanent surfaced volleyball court; the raised platform and balustrade used for the children's mini cars, the formation of permanent roadways, the statue in the lake, and the erection of children's play equipment. A compliance period of one month is considered reasonable.

d) Other Matters – Breach of Conditions

As described above there have been breaches of conditions attached to the 2007 permission. However before recommending the issue of Breach of Conditions Notices, it is necessary to explore the actual wording of the conditions. In respect of Condition 9 (the installation of a sound amplification system) there has been a clear breach, as a system has been installed without prior approval. It would be appropriate to issue such a Notice requiring the removal of the current installation within one month so as to comply with the condition. In respect of condition 8 (the installation of flood lighting), then whilst lighting has been installed, the condition is worded such that details of lighting have to be agreed as a pre-commencement requirement. In other words details have to be submitted prior to work starting on the lake. This is not now enforceable through a Breach of Conditions Notice, and also because one of the lights is located outside of the actual site to which the 2007 permission relates. It is recommended that a full Enforcement Notice is required for the removal of the lights. This is expedient given the dis-amenity that has arisen to local residents and because the installation alters the balance of interests approved at the site as explained throughout this report. In respect of condition 7 (no Sunday use), then there has been a clear breach of the condition in that the lake and surrounding land has been used on Sundays. A Breach of Conditions Notice is appropriate requiring compliance within one month. Additionally the long term retention of equipment on site is contrary to condition 6, as is the retention of the portable structures beyond 28 days (condition 10). These breaches too are leading to the adverse visual impacts as described. However the wording of these conditions leaves some doubt as to their interpretation, and thus Notices are not recommended. For instance condition 6 refers to removal of equipment after "events", and condition 10 would not prevent the erection of structures under temporary permitted development rights. This is not considered to be fatal, as the main thrust of enforcement action as recommended here, is to attack the "beach" and its associated unauthorised building operations.

Recommendations

That the Solicitor to the Council be authorised to issue the following Notices, and to take the action as recommended below:

J) To initiate proceedings in the Court under Section 179 of the 1990 Planning Act, following the failure of the owner to comply with the requirements of the Enforcement Notice relating to the removal of the two marquees dated 13 August 2009.

K) To issue an Enforcement Notice under Section 172 of the 1990 Planning Act, requiring the removal of the beach; the rockery and the building within the rockery, for the reasons set out in this report; with the Notice requirements as set out in this report and with a compliance period of three months.

L) To issue a Breach of Condition Notice under Section 187A of the 1990 Planning Act, in respect of condition number 7 of planning permission 2007/0503 dated 6 March 2008, requiring cessation of Sunday use of the site within a month of the date of the Notice.

M) To issue an Enforcement Notice under Section 172 of the 1990 Planning Act, in respect of the unauthorised lighting installation, with a requirement for its removal within one month.

N) To issue a Breach of Condition Notice under Section 187A of the 1990 Planning Act, in respect of condition 9 of the planning permission 2007/0503 dated 6 March 2008, requiring removal of the public address system at the site within one month of the date of the Notice.

O) To issue an Enforcement Notice under Section 172 of the 1990 Planning Act, requiring the removal of the raised platform and balustrade, the children's play equipment, the volleyball court, the bouncy castle, the statue in the lake, and fairground rides as located on the Notice Plan, within a period of three months of the date of the Notice, for the reasons outlined in this report.

and

P) That at the present time, it is not considered expedient to issue Enforcement Notices relating to the retention of the lake as existing; the pump house, the use of the second access and the engineering works undertaken to that access. Further reports will be brought to the Board in respect of these items.

Future Considerations

The focus of this report quite naturally has been directed to the determination of these outstanding planning applications and to the consequences if the recommendations are agreed. Members have been made aware of other concerns that will need to be brought to Board for consideration in the near future. The most significant of these are the alleged material change of use of the ancient woodland for recreational uses such as paintball games and for motorised activities, together with permanent associated unauthorised building and engineering operations; the possible material change of use of land for camping and caravanning, the alleged material change of use the residential accommodation on site for hotel use, and possible material change of use of additional land beyond the 2007 permission, for car parking areas. These matters are currently all under investigation and reports will be brought to Board when appropriate. It is important that the Council does explore these alleged unauthorised developments in view of the current "immunity" time periods.

Given the above additional work; this Board's involvement and experience with this site, the scope of this report and the potential for further appeal proceedings, it is considered that the owner be invited once again to consider his position if the determination of the planning applications follows the recommendations. It is therefore suggested that he be given the opportunity to review his use of the site, and to meet with officers and Board Members prior to the Council actually issuing any Enforcement Notices as recommended above. Whilst a similar meeting took place earlier this year, as recorded in Appendix A, no agreement was reached as to a way forward. With the determination of the applications now at hand, it would again be worth exploring if there is common ground between the Council and the owner so as to reduce the likelihood of continuing appeals and retrospective applications.

Recommendation

Q) That the applicant and his representatives be invited to meet the Chair and Vice Chair of this Board, together with the Shadow Planning spokesperson, in order to explore once again, the opportunity for seeking common ground on the future of the site.

R) That additional reports are brought to Board in light of the alleged breaches of planning control reported above.

BACKGROUND PAPERS

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

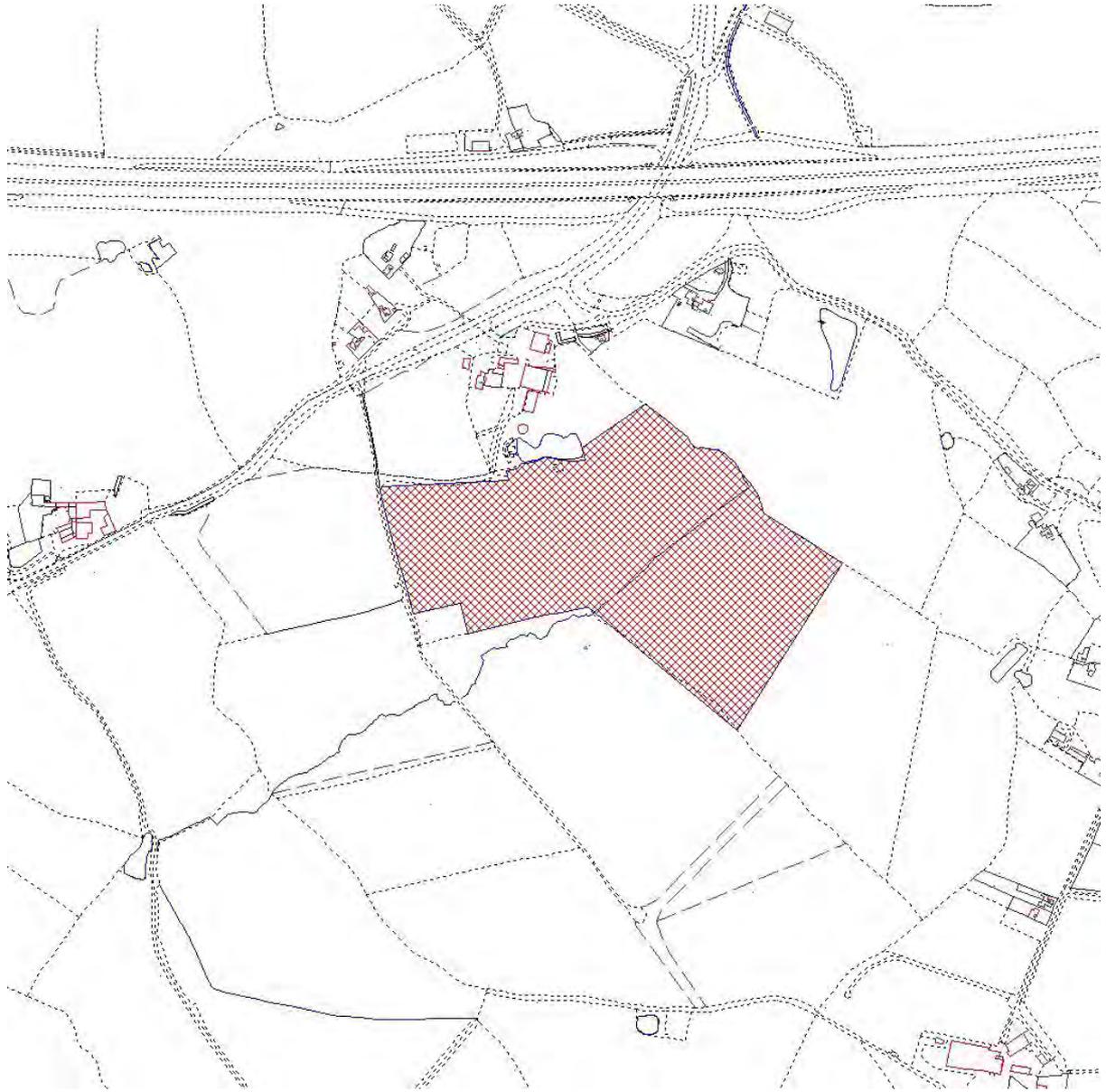
Planning Application No: PAP/2009/0441

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Applicants Agent	Planning Application Forms and Plans	6/10/09
2	Agent	Letter	14/10/09
3	D Smith	Objection	19/10/09
4	J MacDonald	Objection	24/10/09
5	Fillongley Parish Council	Representation	27/10/09
6	Mr & Mrs Hooke	Objection	29/10/09
7	Mr & Mrs McHugh	Objection	29/10/09
8	Environmental Health Manager	Consultation	30/10/09
Background Papers	All Other Applications		
9		Applications submitted	10/7/09
10	Mr & Mrs Burrin	Objection	19/7/09
11	M Gibson	Representation	20/7/09
12	Mrs McHugh	Objection	21/7/09
13	Coventry City Council	Consultation	22/7/09
14	T Onions	Objection	20/7/09
15	R Williams	Representation	19/7/09
16	Warwickshire Wildlife Trust	Consultation	7/8/09
17	County Highways	Consultation	31/7/09
18	The Hicks family	No objection	4/8/09
19	Corley Parish Council	Representation	15/7/09
20	Mr & Mrs Gibson	Objection	1/8/09
21	Environment Agency	Objection	3/8/09
22	P Morgan	Objection	3/8/09
23	J MacDonald	Objection	3/8/09
24	Mrs McHugh	Representation	29/7/09
25	County Highways	Consultations	28/7/09
26	Case Officer	E-mails	11/8/09
27	Mrs McHugh	Representation	30/7/09
28	County Ecology Unit	Consultation	7/8/09
29	Ramblers Association	Representations and Objections	29/7/09
30	Mr & Mrs Hooke	Objections	30/7/09
31	Case Officer	E-mails	18/8/09
32	Case Officer	Letter	18/8/09
33	Case Officer	E-mails	25/8/09
34	Agent	Letter	2/9/09
35	Mr & Mrs Burrin	Representation	2/9/09
36	M Gibson	Representation	1/9/09
37	Mr & Mrs Hooke	Representation	2/9/09
38	Agent	E-mail	21/8/09
39	Agent	E-mail	27/8/09
40	Agent	E-mail	4/9/09
41	Environment Agency	E-mail	4/9/09

42	Agent	E-mail	10/9/09
43	Forestry Commission	E-mail	10/9/09
44	Agent	E-mail	10/9/091
45	Agent	E-mail	8/9/09
46	Agent	E-mail	9/9/09
47	M Gibson	Representation	9/9/09
48	Mr & Mrs Hooke	Representation	9/9/09
49	Case Officer	E-mails	10/9/09
50	Agent	E-mails	16/9/09
51	Environmental Health Manager	E-mails	16/9/09
52	Case Officer	E-mails	15/9/09
53	Agent	Revised Plans	16/9/09
54	Environmental Health Officer	E-mail	17/9/09
55	Agent	E-mail	17/79/09
56	Case Officer	E-mail	22/9/09
57	Mr & Mrs Hooke	Representation	22/9/09
58	Mr & Mrs McHugh	Representation	21/9/09
59	Warwickshire Ecology	Representation	21/9/09
60	Mrs McHugh	Representation	16/9/09
61	Agent	Letter	22/9/09q
62	Warwickshire Ecology	Representation	25/9/09
63	Agent	E-mail	25/9/09
64	Environmental Health Officer	Consultation	5/10/09
65	Agent	Plans	12/10/09
66	Agent	Letter	14/10/09
67	D Smith	Representation	19/10/09
68	Case Officer	E-mail	21/10/09
69	Agent	E-mail	22/10/09
70	Case Officer	E-mail	26/10/09
71	Agent	Letter	27/10/09
72	Case Officer	E-mails	26/10/09
73	Case Officer	E-mail	28/10/09
74	Agent	E-mail	28/10/09
75	Case Officer	E-mails	28/10/09
76	Environmental Health Officer	Consultation	30/10/09
77	Case Officer	E-mail	3/11/09
78	Warwickshire County Council	Consultation	3/11/09
79	Case Officer	E-mails	4/11/09

Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.

A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.



21 September '09

Appendix A.
Planning &
Development
Board

(2)

Heart of England Ltd, Old Hall Farm, Meriden Road, Fillongley

PA 2008/0571

Improvements to an existing access and retention of gates 18 metres from the road, and fencing

PA 2008/0607

Variation of condition 21 of application 2007/0503 to permit use for construction traffic and for public access to the land in association with the recreational use of land

PA 2009/0324

Variation of condition 22 of application 2007/0503 for the importation of material from 10000 cubic metres to 36000 cubic metres

PA 2009/0322

Variation of condition 7 of application 2007/0503 to use the lake and adjacent land on Sundays from 0900 to 1800 hours in addition to the present permitted hours

PA 2009/0323

Variation of condition 3 of planning permission 1381/2002 and appeal decision APP/R3705/A/05/1189445, to open the buildings and land on Sundays from 0900 to 1800 in addition to the present permitted hours

PA 2009/0326

Retention of beach, rockery and first aid building

PA 2009/0325

Retention of pump house and electrical plant room

PA 2009/0327

Retention of jetty

All for Heart of England Ltd

Introduction

All of these applications will be reported to the Board for determination in view of the likely impacts of these proposals on the environment, the community and their significance to the applicant Company. Additionally, the site has been the subject of enforcement action, and refusal of one or other of these applications could involve further such action.

They will be reported together in order that the Board can consider them both on their individual merits, and cumulatively, not only in terms of their impacts, but also within the context of the lawful use of the site, and the enforcement action already taken.

The applications have currently attracted objections from several Agencies, as well as from the local community. These are recorded below. The Agencies in particular are requesting much more information and detail in order to come to conclusions. These requests have been forwarded to the applicant to address. It is important that he is aware of these, and that he responds. Members will be aware that in appeal proceedings, an applicant can claim that the Council has acted unreasonably, if he is not made aware of material consultation responses, and that he has not been given the opportunity to respond. In this case the applicant has confirmed that he will address these matters. As a consequence, these applications are not ready to be reported for determination to this meeting.

The opportunity has been taken however to use this report to include a significant amount of background information that will provide the context for the determination of these applications. It sets out the usual first sections of a determination report, and then highlights the approach that is to be taken when determinations are made, including identifying some of the key issues that will need to be considered at that time.

Members have already visited this site, and a note of that visit is attached at Appendix A.

The Site

The applicant owns several hectares of land, buildings and woodland, centred on the former Old Hall Farm holding. This is located on the south side of the Meriden Road, (the B4102), and Wall Hill Road just south of the M6 Motorway bridge over the B4102. This is 2.5 kilometres south of Fillongley and about a kilometre west of Corley Moor. The overall site is shown at Appendix B.

The former farm house and agricultural buildings form a complex of buildings in the northern part of the site with direct access onto the Meriden Road. The former access to the farm off Wall Hill Road is now closed. The main house is a Grade 2 Listed Building, and apart from a small range of single storey brick built buildings, the others here are modern steel clad former agricultural buildings.

The holding extends to the south comprising open fields and a newly provided lake. Beyond are large areas of woodland known as Birchley Hayes, and designated as Ancient Woodland. The land slopes down from the south west to the north east, with the land form of a small valley. There are hedgerows and trees within the remaining field boundaries. A public footpath (the M 292) crosses the site from east to west skirting the present lake, and a second runs along the eastern site boundary (the M293). These are shown on Appendix B.

There are three or four residential properties to the north east of the holding on Wall Hill Road. The closest of these is about 100 metres from the main complex of buildings and 250 metres from the lake. Four or five other residential properties lie on the north west side of the Meriden Road between it and the Motorway. These are 100 metres from the main entrance and 350 metres from the lake. There are more residential properties at Corley Moor, being some 7 to 800 metres from the lake to the east

Planning Background

a) The Lawful Use

In short, the majority of the site as described above has lawful use for recreational use, which is subject to a series of planning conditions. There are four permissions that provide and proscribe this lawful use.

In 2002, planning permission (ref: 1381/2002) was granted for the change of use of land and buildings comprising the former agricultural buildings, for recreational use. The extent of this is illustrated at "A" on Appendix C. This permission was conditioned. One of these conditions restricts Sunday use.

In 2007, planning permission was granted on appeal (ref: APP/R3705/A/05/1189445) to allow use of part of these same buildings as a restaurant. It again was conditioned so as to restrict Sunday use.

In 2007, planning permission was granted (ref: 2007/0503) for the construction of a lake and wetland area for use by water and other sports in association with the recreational use of the land. This was conditioned to there being no Sunday use, and restricting activities on the lake to "passive" uses. Construction traffic for the lake was to use an existing field gate access rather than the main site access. This would be closed when the lake was

completed. The extent of this permission is shown as "B" on Appendix C. The field gate access is at "C".

In 2005, details were approved at appeal (ref: APP/R3705/A/04/1166383) for a new agricultural and forestry building under an Agricultural Determination. This is located at "D" on Appendix C.

b) Enforcement

The Council has issued Enforcement Notices pertaining to alleged breaches of planning control at these premises.

A Notice alleging unauthorised use of part of the premises as a restaurant was quashed at appeal, and permission granted as described above (E on Appendix C).

A Notice alleging the erection of a tower, was upheld at appeal, and the tower has now been relocated to within the area covered by the 2002 permission (F on Appendix C).

A Notice alleging the unauthorised erection of two marquees was recently upheld at appeal. The compliance period for their removal expires towards the end of October this year (G on Appendix C)

An Enforcement Notice was issued at the end of August, alleging that the construction of the agricultural building as described above, has not been in accordance with the approved plans.

Planning Contravention Notices have recently been served requiring information about the use made of the woodland, as it is alleged that unauthorised structures and buildings have been erected here in association with the recreational use of these woods outside the areas granted consent for recreational use as described above.

In early June, the Council served a Temporary Stop Notice requiring cessation of engineering and building operations in connection with ongoing operations at the lake as it was not being constructed as approved, together with the creation of a "beach" and associated structures at the lakeside. This expired in mid July. Construction work on the lake ceased during this period. However, building operations did continue on structures associated with the "beach". Six planning applications as described above, were then submitted.

The Proposals

a) Background

The applicant Company acquired these premises and sought consent for their use in connection with the corporate hospitality and training events that it organised. The permission therefore enabled the buildings to be used for these purposes. The small range of brick built buildings was converted to offices; one of the large former agricultural buildings was used to store equipment and plant that was hired out for corporate events off site as well as for use on-site, and the main building was converted into a function room and smaller rooms for corporate use. Catering facilities were provided. Many of the on-site events involved outdoor recreational and sporting activities – hence the tower for abseiling and zip-wire use. Use was made of the woodland for paintballing; quad bike racing and other motorised activity. This woodland is outside of the area covered by the 2002 permission, but it was understood that these activities were being undertaken under permitted development rights for the temporary use of land.

The catering facilities on site were opened up for more general public use, rather than being confined to "delegates" in connection with the corporate use. This became "The Quicken Tree" restaurant, which is now lawful. The site has a Licence for conducting Civil

Ceremonies under the Marriage Act. Marquees were erected for both this use and as "expansion" space for corporate activities. These are now the subject of an extant Enforcement Notice. Occasional themed events take place on site run by the Company – Halloween parties for instance.

In 2008, permission was granted for the lake. This was to be used in association with the corporate activities run from the site, by offering a wider range of outdoor activity. The construction traffic would use an existing gated access, but this was to be closed on completion of the lake. People using the lake would already be on site because of the corporate events. As indicated above the use of the lake and its surrounding land was conditioned to "passive" uses so as to protect the amenity of occupiers of nearby residential property; nature conservation interests, and to retain the visual character of the open countryside.

Work commenced on the construction of the lake in late 2008. It is understood from the applicant that due to a combination of operational reasons, including the quality of the imported clay for the liner; the nature of the material that was to be used from the site to create the surrounding bunds, and the hydrology on the site itself, that the lake would not be constructed to the approved profile. As a consequence amended plans were sought.

b) Recent Developments

The current economic downturn has, according to the applicant Company, had a substantial impact on its core business. Because that business was no longer there, the Company sought to "diversify" in order to continue operating. It decided to open up the lake for use by the general public as a "beach". The lake's profile was therefore further amended so as to provide that beach on a portion of its perimeter, and to construct a sandstone wall for protection along its rear. The stone came from the site itself beyond the lake. In order to provide bunding for the wall, additional material from the site was used. Public access to the "beach" was to be via the gated access that had been permitted only for temporary use during the lake's construction period.

The "beach" theme was followed through by the Company with further developments, including a first aid post/shop on the beach; handrails along the top of the wall, access stairs and tracks to the lake, climbing frames, a beach volley ball area, decking for a roundabout, a jetty, and the provision of inflatables for a "bouncy kingdom". Two fields are used for car parks, one of which is outside of the 2002 and 2007 permitted areas and there is a car park entrance booth. The former field gate access has also been removed and replaced with more substantial gates and fencing.

The "beach" opened in mid-July, and has been in operation since then including Sunday use.

The agricultural building – "D" on Appendix C – has been constructed, but not in accordance with the approved plans. Structurally, a block of toilets and showers, an internal stair, a first floor and a cantilevered platform have been added together with an external superstructure to one side. These works are the subject of a recent Enforcement Notice. The building is also now in mixed use. Part of the ground floor is used to garage agricultural/forestry vehicles, but the toilets and showers are available to the public; the first floor provides a café/shop, and the cantilevered platform provides an outside sitting area for customers.

c) The Applications

The current outstanding applications as set out above, are an immediate response by the applicant to the issue of the Temporary Stop Notice. However they were submitted whilst the "beach" concept was still being developed on the site. As a consequence they do not include a number of other unauthorised developments presently on the site – e.g.: the associated "beach" structures, the car park areas and access tracks. They neither address several breaches of conditions relating to the use of the lake and its surrounding land as permitted in

2007 – the retention of equipment on site beyond 28 days, the failure to remove temporary equipment, the use of the "train" and quod pods as motorised vehicles, the playing of recorded music, failure to discharge conditions and failure to comply with nature conservation requirements. These matters have been raised with the applicant, and an opportunity has been given for the Company to address them.

d) The Applicant's Perspective

The applicant Company has stressed two main factors, and considers that the Board should give them significant weight - see Appendix D.

Firstly, the Company is operating a business that has significant local economic and community benefits. In particular local employment opportunities are present on the site – up to 41 jobs; he uses local businesses in connection with his operations, from florists to provide arrangements in the main buildings, to local garages who maintain and service his vehicles, and he supplies local businesses through his off-site operations. Moreover, visitors to the site, return to the local area and frequent other local facilities. In terms of economic development and the promotion of business activity and recreational use, the Company argues that its operations are therefore fully compliant with Development Plan policy and Government objectives. The success of the business has been seriously affected by the current recession, and in order to maintain viability; retain the local contracts and provide local jobs, the Company has had to diversify. In this respect, it is argued that the introduction of the "beach" theme is unique to the area, and that it opens up new business opportunities that will benefit both the Company and the local economy and community.

Secondly, the Company argues that the lawful use of the site is for recreational purposes and uses, and the activities presently on site all fall under this designation. The introduction of the "beach" theme is thus wholly consistent with the lawful use of the land. Moreover, Government policy in respect of Green Belts is that outdoor recreation and leisure uses are appropriate to such a location. The Company therefore concludes that the use of the site and the activities it provides are lawful and appropriate.

e) A Comprehensive View of the Site

As can be concluded from this account, the development of this site has changed in character, and these changes have occurred incrementally. In order to ascertain if the applicant Company had an overall "vision" or concept of the future of the site, a meeting was held with its representatives, and the agreed minute is attached at Appendix E. It is clear that there is no master plan, nor overall view that is being worked towards, but there do appear to be a series of ideas and thoughts about its potential, and the evidence to date points to the applicant taking an opportunistic view about its future.

Further illustrations of the applicant's aspirations for the site are illustrated on the Company's web site (see Appendix F)

f) Local Concerns

The information on the applicant's web site, and the fact that unauthorised developments have occurred on site, have led to significant concerns from the local community. This is indeed frustrating, but Members are aware of the scope of current planning legislation, and in this case, the lawful use of much of this site is clearly relevant. Retrospective applications have been submitted, including the most significant ones seeking variations of conditions governing use and access. The applicant has now been given the opportunity to address outstanding matters on the site. This is the proper course for the Council to take.

Development Plan

a) Regional Spatial Strategy – 2004 ("RSS"): Policies PA10 (Tourism and Culture); PA14 (Economic Development and the Rural Economy), QE1 (Conserving and Enhancing

the Environment), QE6 (The Conservation, Enhancement and Restoration of the Region's Landscape), QE7 (Protecting, Managing and Enhancing the Region's Biodiversity and Nature Conservation Resources), QE8 (Forestry and Woodlands), QE9 (The Water Environment), T2 (Reducing the Need to Travel)

b) The Saved Policies of the North Warwickshire Local Plan 2006 ("Local Plan"): Core Policy 1 (Social and Economic Regeneration); Core Policy 3 (Natural and Historic Environment), Core Policy 6 (Local Services and Facilities), Core Policy 10 (Agriculture and the Rural Economy), Core Policy 11 (Quality of Development), Policy ENV1 (Protection and Enhancement of the Natural Landscape), Policy ENV2 (Green Belt), Policy ENV3 (Nature Conservation), Policy ENV8 (Water Resources), Policy ENV11 (Neighbour Amenities), Policy ENV13 (Building Design), Policy ENV14 (Access Design), Policy ENV 16 (Listed Buildings), Policy ECON7 (Agricultural Buildings), Policy ECON8 (Farm Diversification), Policy ECON10 (Tourism), Policy TPT1 (Transport Considerations).

Other Material Planning Considerations

a) RSS Phase Two Review 2009: Policies PA10, PA14, QE1, QE5, QE6, QE7, QE8, QE9 and T2.

b) Government Guidance: PPS1 (Delivering Sustainable Development); PPG2 (Green Belts), PPG4 (Industrial, Commercial Development and Small Firms), PPS7 (Sustainable Development in Rural Areas), PPS9 (Biodiversity and Geological Conservation) PPG 13 (Transport), PPG17 (Planning for Open Space, Sport and Recreation), PPG 18 (Enforcing Planning Control), PPG24 (Planning and Noise), PPS 25 (Development and Flood Risk), and the Good Practice Guide on Planning and Tourism.

Draft PPS 4 (Planning for Sustainable Economic Development)

c) Other Documents: Warwickshire Landscape Guidelines

Consultations

Environment Agency – The agency objects to the proposal to allow an increase of imported material onto the site. It considers that the need for this increase does not arise from any Agency requirement, guidance or advice. The works undertaken presently on site do not benefit from the terms of the current Exemption Licence for the working and deposit of material, agreed for the lake approved under the 2007 planning permission.

Warwickshire County Council as Highway Authority – The Authority objects to the proposals until such time as a full Transport Assessment is undertaken by the applicant. This should be undertaken in accordance with national guidelines and take into account all of the activity/use of the site already permitted, as well as that generated by the present activities. This is because the gate access presently used for the "beach" is considered to be substandard by virtue of poor visibility for wider use beyond that of temporary construction traffic. Given that there is an approved access to the site, it is appropriate to see if that can cater for increased generation, before agreeing to a second access.

Forestry Commission – The Commission has two main concerns. Firstly it considers that any increased activity in the woodland beyond the permitted development rights, will have irreparable damage to the Ancient Woodland environment. Secondly, the planning approval for the lake has not affected the condition of the woodland to date, but there is the potential to do so through poor maintenance and particularly in times of heavy rainfall. There could be changes to the water table as well as to the hydrology of the woodland, if matters are not properly monitored.

Warwickshire Wildlife Trust, and the County Council Ecologist - The proposed variations to the lake are not accompanied by any analysis of the impact on bio-diversity and conservation management. The proposals are unlikely to have any enhancement value and

are not likely to deliver the gains that would have arisen from the approved scheme. If additional material is to be brought onto the site this should solely be for hydrological reasons and not to support amenity features. The pump house on the lake will reduce the ecological value of the island. The beach and rockery "grossly limit" the available habitat for water vole conservation as originally envisaged. The rockery will have very limited ecological value. The beach and the nature of the use of the lake have been changed since the original approval, with priority being given to the beach and to the increased use by the public that will result. Sunday use too will exacerbate this problem. The overall "vision" for the lake has therefore severely limited its nature conservation value, and thus these proposals do not meet the objectives of PPS9.

Representations

Rambler's Association – Any alterations to ground levels should not impact on the public footpath therefore impeding access. The beach and rockery are not natural features of the Arden Landscape.

Corley Parish Council – There is a general objection to the importation of material onto sites, as this seems to be increasing and is unmonitored. The field gate is unsuitable for HGV traffic bringing in any more material. The artificial beach is incongruous with the rural character of the surrounding landscape and is considered not to comply with policies ENV3 and 1 of the Local Plan. The lighthouse is visible and has an adverse visual impact not complying with policy ENV3 of the Local Plan. There are serious concerns about the use of the second access by the public. There have been fatalities here. There is no objection to Sunday use provided that this does not cause problems for nearby residents.

Local Residents (Objections) – Six letters of objection have been received to date. In general terms the objectors are concerned about the change in character of the area and the traffic and noise impacts arising from the use of the "beach" and its associated activities. Matters covered refer to a number of areas:

- Traffic and Highways - the amount and impact of more HGV traffic, the nature and standard of the local road network, the accident record of this stretch of road, the potential traffic generation from seven day use
- Visual Impact – the beach and rockery are incongruous features, the other "beach" features are intrusive and not in keeping with the rural setting, the lake mounding is not in keeping, the nature conservation assets have been removed, impact on the rural character of the Green Belt, not removing equipment thus adding to the impact, tannoy system
- Noise and Disturbance – seven day use, existing problems with the site would be exacerbated, experience from the last few weekends has led to increased noise levels and disturbance, proposals for further noisy activities
- Disregard to Planning system – blatant disregard to both planning policy and to the planning process, retrospective applications
- Agricultural Building – not built as approved and now used for non agricultural purposes
- Other matters – concerns about health and safety, water quality issues

Local Residents (No Objections) - Two letters have been submitted that do not object to the proposals. The reasons given are that the site provides employment opportunities for the local population; the site supports local businesses, the site needs support in the current downturn, and the site (the beach) can not be seen from the surrounding roads.

Observations

a) The Approach to Be Taken

One of the difficulties with considering these applications is that they are initial responses to works that are evolving on site, and thus they do not include all of the developments now occurring. Secondly, they do not thoroughly reflect all of the changes made to approved plans, either in terms of built development or through breaches of conditions. In order to steer a course through this, it is considered that the Board should not focus on any one particular application in the first instance, but rather look at the wider perspective. If that is established, then the applications and their impacts can be properly assessed.

In essence, the critical issue is thus for the Board to establish its approach to this site as a whole, and then to assess whether or not, these applications "fit" or "enable" that approach. In order to establish that overview, the Board's starting point will be the scope of the existing planning permissions for the site; all of the relevant policies of the Development Plan, including those pertaining to economic development and recreational use, together with Government guidance on planning and economic development issues

b) Consideration of the applications

Once this overview is established, the applications can be considered. The section below deals with the applications as submitted at the time of preparing this report. As indicated in the Proposals section above, the applicant has been given the opportunity to address other outstanding matters. Should further applications be submitted, then consideration of these will also need to be dealt with. However it is considered that the ones already submitted deal with the substantive issues, and that any decisions taken on these will not prejudice subsequent applications. This is because those applications should all be consequential to the introduction of the "beach" and its use. If the Board's overall approach is agreed, then the determination of subsequent applications should have a background context.

It is evident that some of these are more significant than others, and it is important to deal with them accordingly. Planning permission exists for a lake at this site, and all of the applications before the Board stem from the alterations made to that permission, in terms of both operational development and the use made of it and the surrounding land. The first application to be considered should be that covering the engineering operations that have led to a different size, shape and profile of the lake originally permitted (Application 2009/0324). The three main issues involved here will be whether the lake itself now on site has an adverse impact on the character and appearance of the countryside hereabouts; whether the lake as altered can also provide the nature conservation benefits as approved under the original approval, and thirdly whether there are any impacts, in particular on the hydrology of the area, including the adjoining woodland. The original permission set out HGV access to the site for the lake's construction, and it will be necessary to establish whether this arrangement can continue under the current application.

The second application to be considered should be that introducing the beach and rockery to the lake shore (Application 2009/0326). This is the most significant application submitted, as it introduces the concept behind the current use of this part of the site. This moves away from the use of the lake as an extension of activities in association with existing visitors to the site, to use as a "destination" in itself, by the general public. It will be necessary first to explore the actual creation of the beach and rockery themselves. The two main issues are their visual impact on the character and appearance of the countryside hereabouts, and secondly whether they add or detract from the nature conservation benefits established under the current consent. Normally that would be the extent of the issues involved. However here, the beach is the source and focus of the use now made of this part of the site, and indeed it gives rise to the submission of the other applications. The issues involved will be whether the change in scope and nature of the recreational use of the site is acceptable, and if not to establish the planning reasons for that conclusion.

The third and fourth applications to consider need to be looked at together – namely the use of the approved "construction" access as the main access to the "beach resort", together with its improvement (Applications 2008/ 0607 and 571). Dependant on the conclusions reached above it will be necessary to establish the best means of access to the site as a whole – whether via a single access as at present, or through the introduction of a second access. This matter will heavily depend on the advice of the Highway Authority, together with the visual and ecological impact of any engineering works required to establish the most appropriate access arrangements.

The fifth and sixth applications to be considered again need to run together. These are the ones proposing Sunday use of the main complex of buildings, including the restaurant, and secondly for the "beach resort" (Applications 2009/0322 and 323). Dependant on decisions reached above, the issues here will revolve around assessment of the impacts of Sunday use on the residential amenities of surrounding householders; on traffic generation and the adequacy of the local road network, and any potential nature conservation or visual impacts arising from greater accessibility.

The final applications to consider will be the ones for the minor building operations – the jetty together with the pump and electrical plant houses, including the lighthouse (Applications 2009/0325 and 327). The main issues here are the assessment of the visual impact of these buildings and whether they have adverse nature conservation impacts.

c) Enforcement Issues

As indicated above there are a number of breaches of planning control apparent on the site – either as a consequence of unauthorised operational development, or through breaches of conditions. Some of these may be addressed through further applications, and they will be dealt with accordingly. However others may not. Once determination of the current applications is made, the approach to the site will be established and hence the expediency of enforcement action can then be considered.

However there is one significant breach of planning control that needs to be addressed – that of the material change in use of the approved agricultural building (D on Appendix C). As recorded above, the Board authorised an Enforcement Notice requiring this building to be built in accordance with the approved plans. This Notice has now been issued. However it is apparent from site inspections, including the visit made by Members, that there is now a mixed use of this building. This is use for agricultural/forestry purposes together as an amenity block, café and shop in association with the recreational use of the lake and the surrounding land. This change of use is material by fact and by degree, given the scale of the alterations made to the building; their nature and appearance. The Board is therefore requested to consider the expediency of enforcement action requiring the cessation of the additional uses, and the consequential removal of all plant and equipment required for those uses to function. A compliance period of three months would be appropriate.

It is necessary however to first establish whether the consideration of the expediency of enforcement action in this case would pre-determine any decisions on the outstanding applications. It is considered that it might be construed in this way, and thus this matter will be referred to the next meeting. Clearly the use of the building in association with the recreational use of the lake and surrounding land, will be affected by any decisions made on the continuation and nature of that recreational use. The Board however should be aware that there is an Enforcement Notice served in respect of the building requiring re-instatement to its approved structure for agricultural use. That Notice still stands.

d) Conclusions

Officers will bring Members up to date on matters at this site at the meeting. It is indeed frustrating that these matters remain undetermined, but the report sets out the reasons for this together with outlining the difficulties that there are in how to treat the applications and other matter at the site.

Recommendations

That the present position in respect of these applications be noted



**Board Site Visit
Old Hall Farm, Corley
Sat 15 August 2009 – 1000 hours**

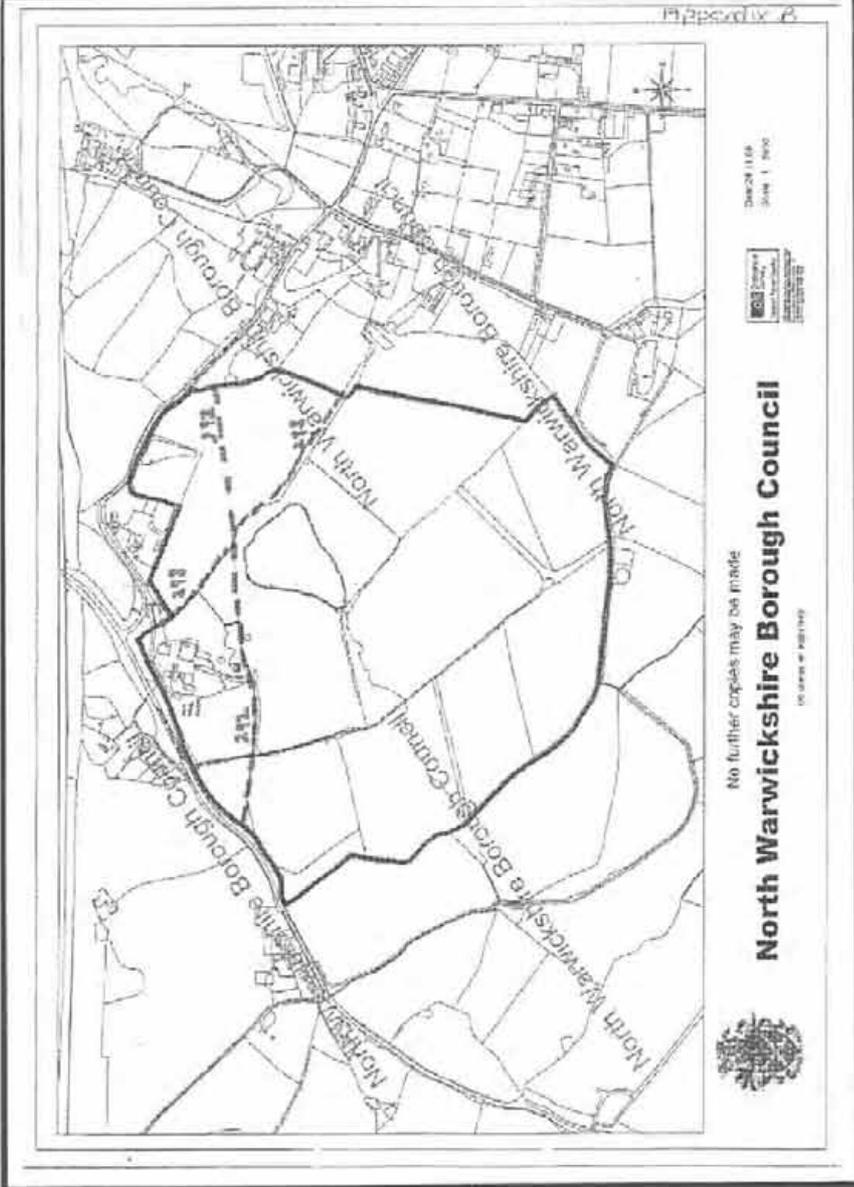
Present: Councillors Simpson, Fox, Jenkins, Lea, Sherratt, Sweet, Winter
Together with A McLaughlan, E Levy and J Brown

1. The purpose of the visit was to look around the premises of the Heart of England Company's site at Old Hall Farm, given the issue of a Temporary Stop Notice, and the subsequent receipt of six further planning applications relating to developments at the lake on the site. In particular these were connected with the use of the lake and the surrounding land as an Adventure Park based on the beach created at the Lake.
2. The owners gave an initial description of how they have used the premises up to now, and explained the reasons for the introduction of the "park" theme to the site, also outlining the educational and social side of the activity.
3. Members then passed through the main function room and into the restaurant area, before moving into the marquee area. The outlook from the restaurant was observed taking in the views over the remainder of the site, including the lake.
4. From here, Members walked down to the lakeside in order to see the beach and the "rockery" cliff. The jetty, the pump house and lighthouse together with the First aid post/shop were all seen from here. The access to the beach was seen as were the "bouncy kingdom" a beach volleyball area; a roundabout, a climbing frame and swings, and a small area set aside for junior quad bikes. Whilst on site Members could see the double decker bus, the small train driving around the site and the swan "pedalos".
5. Members also saw the area beyond the lake where the earth moving had to be completed, and now the subject of a variation application.
6. The route of the public footpath across the site was pointed out.
7. Members inspected the agricultural building. They noted the balcony/viewing area; the toilets at ground floor, the garaging of tractors at the other end of the ground floor, the cafe/shop at second floor and the access to the viewing area. The whole site could be seen from this platform. The access from the road was identified together with the two fields that had been used as car parks for visitors to the park.
8. Members then returned to the main complex of buildings, completing the visit at around 1115.

Members asked several questions. The responses were:

The most number of visiting cars has been 130
The parking fields alternate depending on ground conditions.
Cars queue inside the site if there is a hold up at the gate house – up to 30 can wait off the road.
The hours are intended to be from 1000 to 1700
Access in the evenings is being considered for barbecues to be run by the site.
The water is checked for cleanliness every month.
The water comes from a borehole on site

Sand has had to be imported to the site to "top" it up in order to compensate for that which has blown away or been washed into the lake.
No swimming is allowed - only paddling - in an area about 10 metres from the beach.
No swimming is allowed beyond this area.
The site is really for families with small children.
The surface below the lake here is Astroturf to prevent mud etc.
Ideas for the future include other activities for the children when it is raining etc.
These potentially include "den" building within the woodland areas.
The area to the rear of the Boat House is being used to house a generator and as a maintenance area.



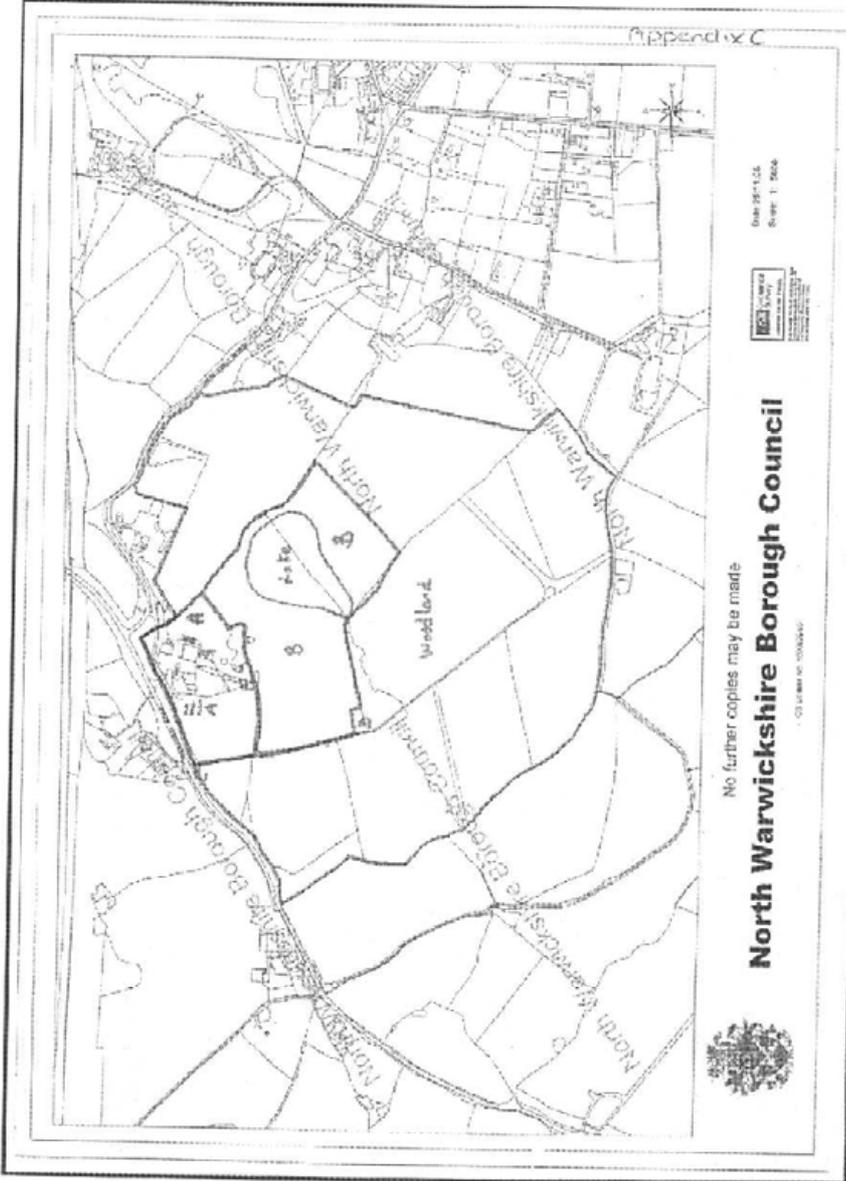
Drawn 11/06
June 1 2010



North Warwickshire Borough Council

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North Warwickshire Borough Council



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Rev: 1.006



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From: Steve Hammon [mailto:stoveh@heartofengland.co.uk]
Sent: 19 June 2009 16:05
To: Brown, Jeff
Subject: FW: letter edited

Dear Jeff Brown

Following recent economic events, and the recession that has hit this country, as a local businessman I set about thinking of ways that I could develop my own business in a manner which would survive the situation.

In doing this, I have also managed to develop a situation where I am also supporting the local tourist industry, the local economy and dramatically increasing job opportunities for the local community.

You would think that this would be perceived as an incredible success story within the midst of redundancies and factory closures.

So, imagine my dismay, this morning, when I received a 'stop' notice from the local council.

Let me give you a little more background.

I started my company 25 years ago - Heart of England Promotions Ltd. 8 years ago, I purchased a dilapidated farm, upon which I built a conference centre and fine dining restaurant. Since then, I have

19/06/2009

been successfully providing corporate events, weddings and parties; and running a successful restaurant. Then, the recession hit. Corporate customers began to cut back on their event spend...quite naturally cautious. This had an immediate impact on my business. I employ around 25 full time staff and over 25 part time staff and I was concerned that I was able to continue to secure their employment, as well as the future of the business.

I looked at our resources. We have a large site, with medieval woodlands and fields. We're in a rural position, but ideally situated just ten minutes from Birmingham Airport. I realised that whilst commercial conferences were on the decline, tourism was also on the decline. People were staying at home, rather than going abroad. I developed the idea of creating an adventure park together with England's most central sandy beach and lake - right in the centre of England.

I developed this project with the utmost sensitivity to the environment. There is now a beautiful lake, natural beach and cove and acres of clear fields, surrounded by our carefully tended woodlands. Offering access to the park would give local people - together with those from further afield, the opportunity to spend a family day on the beach, without travelling far from home.

The park is due to open to the public on 12th July. The local press, TV and radio are excited at the new development. Local people are buying season tickets. And, great news for the local economy, we've this week placed an ad for many careers and jobs. We're offering full time, part time, job share, casual, temporary and flexible positions. We're inviting applications from people of all ages and skill levels. We quite literally have the entire range of jobs available. (I've copied some of them below).

I'm asking for your help. The council have issues with some minor planning matters...OK, I admit, there are a few elements that have been overlooked. But nothing of great note, nothing that could not be resolved amicably with some support from the local authority.

I have received no help, grants or funding. I have fought every step of the way to provide something that can only be positive for local people, local industry and for the economy. This, on top of the increase in rates - from an original rate value of £1100, they have been increased to £33,000 and now to £35,000. This, too, is proving crippling to my business.

I am appealing for common sense - a realistic attitude to what we are doing here and the massive positive impact it will make on so many people's lives.

This is a desperate time for our country - businesses need to support the economy by diversification and flexibility without being constricted by bureaucracy.

I would invite you to look at our business, to come along and visit us, see what we are doing here - and make a decision based on the benefits to all of us.

Thank you for reading this email

Stephen Hammen
Managing Director
Heart of England Conference and Events Centre
Meriden Road
Nr Meriden
Warwickshire

19/05/2009

VACANCIES AT THE HEART OF ENGLAND CONFERENCE AND EVENTS CENTRE

Would you like to work within a beautiful park, woodland, beach and lakeside resort? We're recruiting many new positions for the park, and also our existing Conference and Restaurant facilities.

Sales and Business Development Manager (Conferences and Events)

Enthusiasm essential! With experience of a busy conference/events environment or similar customer-led environment.

Head Park Ranger

Good people management skills and woodland or land management experience or qualifications are particularly sought. Responsible for managing the park, and co-ordinating staff.

Park Rangers

A fantastic opportunity to work with the general public in a fabulous leisure environment. Varied role, will include helping the public, providing tours etc. Flexible working, inc weekends.

Food and Beverage Manager

To manage the restaurant and food & beverage operation to a high standard. Promotion and business development is a key requirement.

Food and Beverage Supervisor (Job Share)

To manage the restaurant and food & beverage operation to a high standard. Promotion and business development is a key requirement.

Accounts Assistant

Reporting to the Accounts Manager, assisting with various roles in the accounts department. Experience useful.

Attraction Supervisors

To take tokens from visitors and control various attraction sessions. Attractions include pedaloes, rowing boats, trampolines, bouncy castles etc. Friendly personality essential!

Café Staff

Providing a counter service, operating till, serving visitors with snacks, hot and cold drinks and simple meals. Various shifts available between 10am and 5pm, seven days a week, on a rota.

Shop Assistants

Working on the beach! The rock shop is an indoor store, embedded into the cove. You'll be serving customers so a friendly personality and ability to work on own initiative essential.

Drivers

For our Supertruck, Haglander, Land Train and Land Rover - taking our visitors on trips around the park and woodlands.

Park Maintenance

Staff General maintenance staff, for grounds, attractions etc. Varied, flexible role.

Security Personnel

24 hour vacancies for security personnel to patrol the park during opening hours, and out of hours, on a shift/rota basis.

19/06/2009

Park Cleaners

Conscientious cleaning staff required to keep our park sparkling!

Full time, part time, temp, job share & casual positions available.

DOWNLOAD APPLICATION FORM

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19/05/2009

Heart of England Ltd

Minutes of a Meeting held on 17 August 2009
Held at the NWBC Offices commencing at 1630

Present:

Mr Hammon (SH) the owner of Heart of England
Mr Williams (BW) from Alder Mill, acting as planning advisor to Heart of England
Councillor Simpson (MS) Chair of the Council's Planning and Development Board
Councillor Sweet (RS) Opposition Planning Spokesperson on the Planning Board
Ann McLauchlan (AM) Director of Community and Environment – NWBC
Jill Brown (JB) Head of Development Control – NWBC
Erica Levy (JLL) Senior Planning Officer and case officer for the site – NWBC

1. AM opened the meeting, pointing out that the discussion would be on a "without prejudice" basis. Members and officers present could not pre-empt or guarantee any planning outcome. The Council's Planning Board is concerned that at present, the Council and Heart of England appear to be reacting to each other's actions. The Board felt that it was important for it to understand the overall vision of the Company for the site, and wished to hear this from the owner. In this way it could better understand what is presently going on at the site. Moreover, the meeting could also explore that vision, and to see if there was common ground between the Council and the Company. The Board was interested to know how that vision might fit with Council's own planning policies and objectives.
2. BW thanked the Council for giving his client the opportunity to present his vision and proposals for the site. He outlined how the Company had built up a successful corporate hospitality and entertainment business, involving off site activities (through the hire of equipment etc) as well as those on the site. This was impacting on the local economy through providing opportunities for local employment, and for the use of local businesses and contractors working with and for the Company eg: local florists, and Filongley Garage. The Company had also always wanted to encourage the public to visit the site. He now had the restaurant on site, and themed events had taken place.
3. In the past eighteen months, the corporate events side of the business had reduced considerably due to the national economic situation. In order to retain the viability of the business, the Company had to "diversify". It had done so through providing greater access to the site by the public. This was through an Adventure Park, largely based on the theme of a "beach". In order to attract the public to the site, it had to be treated as a "destination" and one with activities to keep the public on site. The site is therefore now multi-functional. The Company's view is that the Park and beach theme fits within the terms of the planning permission for the site for recreation activity.
4. When the upturn occurs, then the Company will return to its core business. However if the Park is successful too, then the Company would retain this activity. Moreover, it would also be looking at other ways/activities in order to diversify and retain the economic and community benefits for the local area. The Company is seeking long term business continuity as a recreational destination, based on activities and experiences that are not offered elsewhere.

5. The Company was concerned that overall, it considered that it had been met with a "negative" attitude from the Council. That experience to date, gave a general perception that the Council was preventing the business from continuing and indeed developing.
6. MS confirmed that it was not in the interest of the Council to be anti-business, and that its record in respect of its approach to planning matters showed that to be the case. The economic and community benefits from business and commerce were essential, and tourism was recognised as a key activity in helping to provide those benefits. The Council's planning policies and priorities reflected this approach, and these were always considered when appropriate in the planning process. However there are other policies and interests that the Council has to consider when it decides on future planned developments. These include the Green Belt and the need to have these developments in the right places, and indeed there might well be occasions when certain developments were inappropriate in principle. The Council's role therefore was often one of balancing conflicting issues and policies. Whilst decisions might be seen as negative to the Company, others would be seen as negative to the local community if greater weight was given to economic development and tourism interests.
7. One of the issues with the Company's development of its site had been the lack of an overall vision or Masterplan for the site. It was thus true that it was reacting to individual developments because these were seen as incremental. In these circumstances it was difficult to come to a balanced decision because we lacked an overall objective.
8. BW indicated that the Green Belt and the countryside were the assets that gave the site its success. However the activities here need to use both land and buildings. The Company was presently doing all that it wanted to.
9. MS reminded the Company that that as a matter of fact, that involved unauthorised developments.
10. SH confirmed that his perception had always been that the Council had taken a negative attitude towards his business. The Company had had a series of refusals and had been served with Notices. These had to be fought through appeals. He felt that he could work with the Council if it recognised the significance of his business to the locality, and the importance of retaining its viability in order to protect that significance.
11. JB expanded on the other issues that the Council had to consider when coming to a balanced view on new developments at this site – namely the importance of retaining the openness of the Green Belt and protecting the rural character of the countryside hereabouts. The Company had indicated that the site's setting was its asset. This was common ground with the Council, but there needed to be recognition that such an asset carried certain requirements and obligations in planning terms. The key issue is how to balance business interests in the Green Belt without conflicting with the retention of the openness of the Green Belt.
12. JB referred to an earlier meeting of several years ago, when he suggested that what was needed for the site was an agreed outline or guidance relating to future development proposals, which offered the Company confidence and surety, whilst still protecting the Council's interests. This could take the form of a Section 106 Agreement or a Memorandum of Understanding. Whilst this had not been followed through at that time, it was perhaps worthwhile looking

at this approach again. The references and guidance to Annex C sites in PPG2, and the introduction Local Development Orders suggests that such an approach was something that could be developed. The approach would need to identify and recognise the "very special circumstances" surrounding the Company's use of the land; the weight that should be given to these, and perhaps to the identification of zones or areas where certain developments/ activities might take place and those where they should not.

13. The Members asked to look at the display material that had been brought by the Company. It was noted that there was reference here to an "Eithos" village and to a Waterside Hotel. There was surprise that these issues had not been raised when the Company was asked to outline its overall vision for the site. The Company indicated that these were purely ideas and thoughts at this time.
14. At the conclusion of the meeting, JB indicated that he would write to BW with a minute so that this could be agreed, and that the letter would invite the Company to consider the approach set out in paragraph 12 above. In the interim EL would be writing to BW outlining all of the matters that had arisen from the recent applications and as a consequence of the Member site visit on Saturday 15 August.
15. The meeting closed at 1730 hours.



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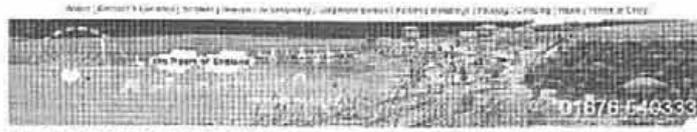
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Heart of England Adventure Park is part of the Heart of England Group | Market Road, New Market, Warwickshire, CV7 9JL
Registered in England number 02048104. Click here to visit the Group website.



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We also have a special service for the beach - our lifeguard service. Our lifeguard service is specially trained to provide a safe and fun experience for all our guests. The beach is specially designed for a safe and fun experience, and it's the best beach in the park.

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History, Year 5 and 6, The Castle, The Park, Parkland, Look for us again, Food and Drink, Gemmy Trees, In-Closed Hedge Cuts, Big Trees, Adventure Park, 01676

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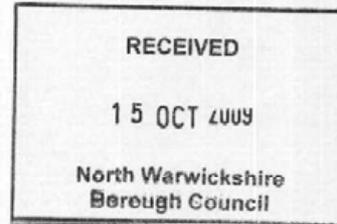
ALDER  MILL

SHEEPY ROAD, ATHERSTONE,
WARWICKSHIRE. CV9 3AH
Telephone: (01827) 716666
Facsimile: (01827) 718111
e-mail: aldermill@btconnect.com

Ref: rw291015

14 October 2009

Mr J G Brown
Planning Control
North Warwickshire Borough Council
South Street
Atherstone
Warks
CV9 1DE



Dear Mr Brown

Re: Heart of England

I have been giving some thought to this project and I have held various meetings with Mr Hammon and his advisers.

I first refer you back to the appeal decisions dated 21/06/2006. I also refer you back to the recent unsuccessful appeal dated 13/08/2009, at which your solicitor and Mr Gittins raised the issue of the site being used as a conference centre.

In planning terms, the formal decision was granted by the inspector, section no.48, for the continuation of recreational use of land and buildings. This was with the full knowledge as in section (2) that the company organised corporate hospitality days and the appeal was for Heart of England Conference and Events Centre.

The conferences organised are usually some form of display of goods followed by an outdoor event, then followed by an evening event, which I conclude falls well within the appeal decision. The lake area and the adjacent land to the buildings are deemed to have recreational use within the restriction of the conditions attached to the planning permission granted. None of these permissions restrict members or groups, which could be defined as the general public.

The recreational use was defined by the court case of which you have been furnished with a copy.

From this you may conclude, as did the inspector in section 38 of his decision, that the changes of use i.e. a different recreational use, is not inappropriate within the Green Belt.

Currently the main changes are that there are now more people, i.e. the general public, visiting the site than previous. This was set out as an objective in the planning application for the lake.

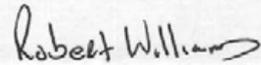
ALDER MILL
Planning & Design Consultants
Associates: Innis - Williams

So whilst I am asking you to consider the sand/walls, equipment, etc, the end use of the area remains the same. I will have to leave it to you to consider if the changes to the lake are acceptable or not on other issues. The use of the land and buildings remain as approved.

You have asked on a number of occasions for an overall plan. I answer thus, my client wants to operate within the planning permission granted with the exception of either planning permission applications already put to you on applications that vary the condition attached to the permission. He sees no benefit to himself to do otherwise.

Finally, I am waiting for information on the wood before I make a further application with regard to the motorised vehicle condition.

Yours sincerely



R WILLIAMS
ALDER MILL

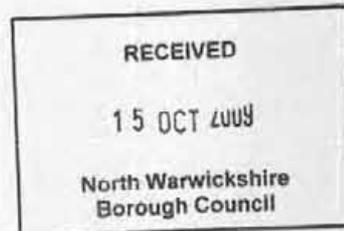


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e-mail: aldermill@btconnect.com

Ref: rw291014

14 October 2009

Mr J G Brown
Planning Control
North Warwickshire Borough Council
South Street
Atherstone
Warks
CV9 1DE



Dear Mr Brown

Re: Heart of England, Meriden Road, Fillongley

On Saturday morning, 10 October 2009, I was invited to a meeting at Heart of England site with Mike O'Brien QC MP, at Mr Hammon's request, as Mr Hammon has a view that your Authority, i.e. Planning Control, is unsupportive of his efforts. Previously, on his behalf, I sent letters to the addressees of the letters attached.

It is likely that Mr O'Brien will at some point raise the issue with you and the local councillors of the ward. I have no wish for this to happen without prior knowledge to you.

Yours sincerely

R WILLIAMS
ALDER MILL

ALDER MILL
Planning & Design Consultants
Associates: Innis - Williams

Ref: rw290820

19 August 2009

Rt Hon Lord Peter Mandelson
Department for Business, Innovation & Skills
1 Victoria Street
London
SW1H 0ET

Dear Sir

Re: Heart of England, Fillongley, Warwickshire

I am sure that businesses consistently complain about the planning regime in place now. I thought you should be aware of this case because in rural areas the planning system is harshly implemented and where a local authority places 64% of its landmass in the Green Belt, the restrictions to local businesses is unenviable.

You appear to be trying hard to promote business and jobs, but other sections of the government do not consider that jobs are fundamental to their wellbeing and their welfare. This is clearly demonstrated by the comments made by a government appointed inspector. You have little hope of entrepreneurs taking up the challenge of providing jobs in rural areas when planning policies are designed to work against anyone who is successful.

I hope you can speak to the Minister, Mr John Healey, and perhaps help to look at the planning policies in the future. I have enclosed a letter to him for your consideration.

Yours faithfully

Robert Williams

R WILLIAMS
ALDER MILL

Ref: rw290820

19 August 2009

Rt. Hon. John Healey MP
Minister of State (Local Government)
Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU

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WARWICKSHIRE, CV9 3AH
Telephone: (01827) 716666
Facsimile: (01827) 718111
e-mail: aldermill@btconnect.com

Dear Sir

Re: Heart of England, Fillongley, Warwickshire

I write to you concerning a recent inspector's appeal decision relating to my client's site. Whilst most appellants are either pleased or disappointed on the outcome of an appeal, in this case I consider the inspector's views are worth bringing to your attention.

In this case, the inspector was asked to consider the merits of an application to retain a marquee within the Green Belt. In all cases, this is judged against the document PPG2 Green Belt. This document gives advice as to what is or is not permissible in relation to built development.

The difficulties encountered from businesses that use existing buildings in the Green Belt to operate from become apparent when they look to expand. I can see that if a small factory was set up using farm buildings, say making widgets, which outgrew its premises. It could re-locate to an industrial site. However, in my client's case, this is not possible as the recreational use of the site involves approximately 38 hectares of arable land, 30.6 hectares of woodland and a lake.

North Warwickshire Borough Council has approximately 64% of its landmass in the Green Belt and 10% of land covered by flood plains. Around 15% built development, leaving approximately 10% of the land reasonably restrained but with poor access roads. Therefore, to relocate this business to a new location would mean moving it to another county.

The design and access statement sets out the contribution this business makes to the local rural economy. The inspector put little weight to this and comments: "*If allowed, other business could use the same reasoning.*"

It appears to me that as this business has been successful and without help has grown from a one-man business to now employing 37 permanent people and 10 temporary staff in around seven years, this should be of consideration.

Similarly, the business could grow further, but once the existing buildings have been outgrown, permission for new buildings or extensions are almost impossible to obtain, due to the paragraph 3.5 PPG2 because as is the case here, the inspector took the view at the inquiry that the building was not essential; not a view I concurred with, and the business could survive.

It is interesting how little concerned the inspector was with employment opportunities and the impact on the local economy and the government in his views regarding this site and the outputs clearly shown in the design and access statement taken from the accounts over the last three years.

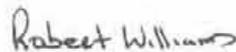
Someone must be concerned that unemployment is rising possibly to 4 million, with the devastation to family life unemployment brings and the cost to government in benefits, etc. In rural areas, the situation is worse than in large cities and towns as the opportunities are less. A letter from the leader of the local conservative council confirms this point.

In my view based on conversations with the appellant yesterday, at least 10 employees will lose their jobs over the next two months with the knock-on effect of a similar loss to suppliers employees. This is due to the restriction in place and the inspector's views that business holds little weight as paragraphs 17, 19 and 21 in the inspector's report explains.

Section 3 of the PPG2 has always been difficult to interpret and I would ask that you give some consideration in the future to clearly defining paragraph 3.5, so that it is not left to the whim of an inspector whether he considers the building to be essential or not.

I have sent a copy of this letter to Rt. Hon. Lord Peter Mandelson, Secretary of State for Business, Innovation and Skills and Rt. Hon. Mike O'Brien QC, the local MP.

Yours faithfully



R WILLIAMS
ALDER MILL

Copy to:
Rt Hon Lord Peter Mandelson, Secretary of State for Business, Innovation and Skills
Rt Hon Mike O'Brien QC MP

Enclosures:
Letter Colin Hayfield March 2009
Appeal decision 13/08/09
Design and access statement
Proof of evidence on behalf of the appellant

APPENDIX 1



Appeal Decision

Inquiry held on 5 August 2009

by **Steven Fox BA MA MRTPi**

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PH

☎ 0117 372 6372
email: enquiries@pin.gov.uk

Decision date:
13 August 2009

Appeal Ref: APP/R3705/C/09/2097185
Old Hall Farm, Wall Hill Road, Fillongley CV7 8DX

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Heart of England Promotions Ltd against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 5 January 2009.
- The breach of planning control as alleged in the notice is the erection of two marquee structures.
- The requirements of the notice are to demolish and remove the marquee structures and any associated foundations from the land.
- The period for compliance with the requirements is two months.
- The appeal was made on the grounds set out in Section 174(2)(a) (c) (d) (e) (f) and (g) of the Town and Country Planning Act 1990 as amended. The ground (e) appeal was withdrawn at the inquiry.

Decision

1. ***I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.***

Procedural Matters

2. At the inquiry the Council sought an award of costs against the appellant. This is the subject of a separate decision.

Preliminary Matters

3. The two marquees that are the subject of the notice lie to the south of a complex of former farm buildings and hardstandings now used in association with an extensive area of land for a range of leisure and recreational activities and for the holding of conferences and other events. The larger, rectangular marquee is linked to a former farm building described as a conference and events centre which also incorporates a restaurant and outside seating areas. This marquee has an aluminium framed, ridged roof construction, the frame being fixed to the ground by metal base plates and ratchet ties attached to heavy duty anchors. At the time of my visit its concrete floor was carpeted. The smaller structure is open-sided with a frame comprising eight telegraph poles sunk into the ground. It has an aluminium roof structure with a canvas cover. The floor is hard-surfaced with a covering of sand.
4. There is no dispute between the parties that the marquees fall within the definition of buildings set out in S336(1) of the Act and that their erection constituted building operations for which planning permission was required

under S55 of the Act. Having regard to their size, permanence (they have been on the land since 2003/2004) and physical attachment to the ground I am satisfied that their erection amounted to building operations for the purposes of the ground (c) and (d) appeals.

The Ground (c) Appeal

5. The appellant argues that the marquees were permitted by the planning permission granted on 6 September 2004 (Ref: 1381/2002); the description of the development being to 'continue recreational use of land and buildings without compliance with conditions 1, 5, 7, 8 and 10 of consent ref. 0214/02'. Reference was made to the wording of the permission including 'land and buildings' and the undisputed presence of the marquees that were used in connection with the permitted recreational activities on the land at that time.
6. The Council drew my attention to the case of *Wivenhoe Port Ltd v Colchester Borough Council [1985] JPL396*, where it was held that planning permission for a change of use of land did not extend to the erection of buildings. The circumstances of the appeal before me differ from *Wivenhoe* in that the structures in question at Old Hall Farm were on the land at the time the use was approved. Nonetheless, references to the distinction between operational development and the use of land are relevant. Further, S55 distinguishes between these two limbs, and this distinction is reinforced by the definition of 'use' at S336(1) as excluding the carrying out of building or other operations on land.
7. Against this background I consider the interpretation of the September 2004 permission to be clear. It permits a change of use of the land but does not authorise or in any way regularise the carrying out of operational development that requires planning permission in its own right. It is incontrovertible that the erection of the marquees constituted operational development and that express planning permission was not obtained for this development. Consequently I conclude that the carrying out of the development alleged in the enforcement notice required planning permission and in the absence of such permission there has been a breach of planning control. Therefore the ground (c) appeal is unsuccessful.

The Ground (d) Appeal

8. There is no dispute that the marquees were erected in late 2003 and early 2004 and have remained in position since that time. The enforcement notice was issued on 5 January 2009 and the Council are relying on the second-bite provisions of S171B(4)(b) of the Act. This permits the taking of further enforcement action within four years of action already taken, or purported to be taken. On 4 November 2005 the Council issued a breach of condition notice alleging failure to comply with condition 4 attached to planning permission ref 1381/2002 (already referred to above in respect of a ground (c) appeal). The condition in question states: '*all structures, materials and equipment used in connection with the use hereby approved shall be removed from the fields immediately following any event and shall be stored inside the building included under this permission*'. The notice requires the removal of '*all unauthorised structures erected within the last 10 years from the field*'.

9. The Courts have held that for second-bite provisions to apply enforcement action must have been (or purported to have been) taken within the four year time limit and the subsequent action must relate to the same actual breach. The 2005 notice was found to be defective in that it was incorrectly served. Nonetheless, it represents the taking (or purported taking) of enforcement action for the purposes of S171B(4)(b). The January 2009 notice clearly falls within the four year time frame.
10. As to whether the two notices concern the same breach I was referred by the Council to *Jarmain v Secretary of State for the Environment, Transport and the Regions* [2000] 2PLR.126, where a first-bite breach of condition notice was withdrawn and followed by a second-bite operations notice. This case reinforces my view that the term 'that breach' in S171B(4)(b) relates to the actual development that took place rather than how it is described.
11. I see no need to go behind the 2005 notice to ascertain the nature of the breach that is the subject of the enforcement action taken. The allegation is that of non-compliance with condition 4 and the requirement is to remove all unauthorised structures erected within the last 10 years. The evidence is that the marquees in question were on the land identified by the notice plan at the time of issue and that they were unauthorised structures. The Council explained that prior to the issue of the 2009 notice the marquees were the only unauthorised structures remaining on the land, consequently the notice was directed solely at them and, because their erection involved building operations, it was appropriate to issue an operational development notice.
12. Had the first notice not been defective the marquees would have been caught by it, along with any other unauthorised structures. The fact that they were not specifically referred to does not alter this position. My conclusion in relation to the applicability of S171B(4)(b) is that the January 2009 notice was issued within four years of the November 2005 breach of condition notice which, although defective, concerned the same actual breach of planning control.
13. The marquees had not achieved immunity at the time the 2005 notice was issued. The second notice was issued within four years of the first and as both notices were directed at the same breach of control, by virtue of S171B(4)(b) the development was not immune from enforcement action. Consequently the ground (d) appeal fails.

The Ground (a) Appeal

14. The appeal site is within the Green Belt, where saved local plan policy ENV2 says that government policy set out in Planning Policy Guidance note 2 (PPG2) will be applied. In determining applications and appeals in the Green Belt the first consideration is whether or not the development is appropriate. Both parties agree that in the case of the appeal before me the erection of the marquees constitutes inappropriate development. This is a view that I share. Although the permitted use of the land is for recreation the appellant does not maintain that the marquees are essential facilities as described in paragraph 3.5 of PPG2. Therefore the main issue is whether the harm through inappropriateness, together with any other harm, is clearly outweighed by other considerations.

15. The marquees are permanent structures of not-insignificant size and although located close to former agricultural buildings now operated as a conference and events centre, and hardstanding areas where a range of vehicles including lorries and buses are parked their presence consolidates built development on the site to the detriment of its open character. During my visit I was able to assess the visual impact of the marquees at close quarters and from various points along a public footpath that crosses the appellant's land to the south. Although immediately to the south-west and south tall hedges and vegetation around a pond screen or filter views of the marquees this screening effect would be significantly reduced during winter months. In views from the south-east and east across more open land the incongruous, harsh appearance of the marquees is particularly evident. Although there is a backdrop of former agricultural buildings and farmhouse these are the type of buildings one would expect to find in the countryside. The marquees are not. The larger marquee is prominently sited and because of its size and light colouring it represents a jarring contrast to its immediate surroundings and a discordant feature in the wider rural setting. The smaller marquee is less imposing but nonetheless appears out of place in relation to its surroundings.
16. Therefore in addition to harm through inappropriateness I find there to be further serious harm to the open character and rural appearance of the area.
17. At the inquiry the appellant gave details of the way the marquees are used in connection with the business carried out at Old Hall Farm. Essentially they are used in conjunction with other buildings and open areas for a wide range of events including wedding receptions, conferences, corporate functions and displays. The smaller marquee also provides cover and reception facilities for people undertaking recreational and leisure activities on the surrounding land. It was said that the use of the marquees is an integral and important part of a successful leisure enterprise that employs 37 full-time staff and many more on a part-time basis, and that their removal would have serious ramifications for the business.
18. The appellant maintains that if the marquees cannot be retained on a permanent basis there would be a fallback consideration in that other marquees could be put up for specific events and removed afterwards in order to comply with conditions 4 of the 2005 planning permission. In view of the success and nature of the business the appellant estimated that this would be a frequent occurrence and given that large marquees may take four or five days to erect and fit out the situation would be that the effect on openness and the character of the area would be no different to retention of the marquees on a permanent basis.
19. As far as the importance of the marquees to the businesses is concerned this is not a factor to which I attach significant weight. It is an argument that could be repeated all too often where unauthorised buildings have been erected and used as part of a business. If it were accepted the credibility and integrity of the planning system, especially in areas of special protection such as Green Belts, would be seriously undermined.
20. I recognise that because of the nature and scale of activities taking place at Old Hall Farm there is a realistic prospect that from time to time the erection of marquees may well serve the purposes of the enterprise in catering for specific

events. But this is provided for in the 2005 permission and controlled by condition 4. Evidence as to the likely incidence of marquees being erected was imprecise and conflicting in terms of frequency and seasonal fluctuations. Whilst appreciating that the fallback position does exist and is a relevant consideration it is my view that there is a material difference in the likely impact of marquees erected for short periods as and when required and those retained permanently on site, in terms of their effect on the character and appearance of the area.

21. As PPG 2 says, substantial weight attaches to harm to the Green Belt and in this case there is additional harm to the rural character and appearance of the area. Against this the appellant maintains that compliance with the notice would seriously harm his business operations and affect employment opportunities and that the fallback position would result in the presence of marquees on the land such that the effect on the character and appearance of the area would not be materially different. For the reasons given above I consider that the claimed effects of these other factors are overstated. Consequently, on balance I conclude that the matters raised by the appellant do not outweigh the harm that would result from the retention of this development.
22. I have taken into account all other matters raised but find nothing to alter this conclusion. Consequently the ground (a) appeal is unsuccessful.

The Ground (f) Appeal

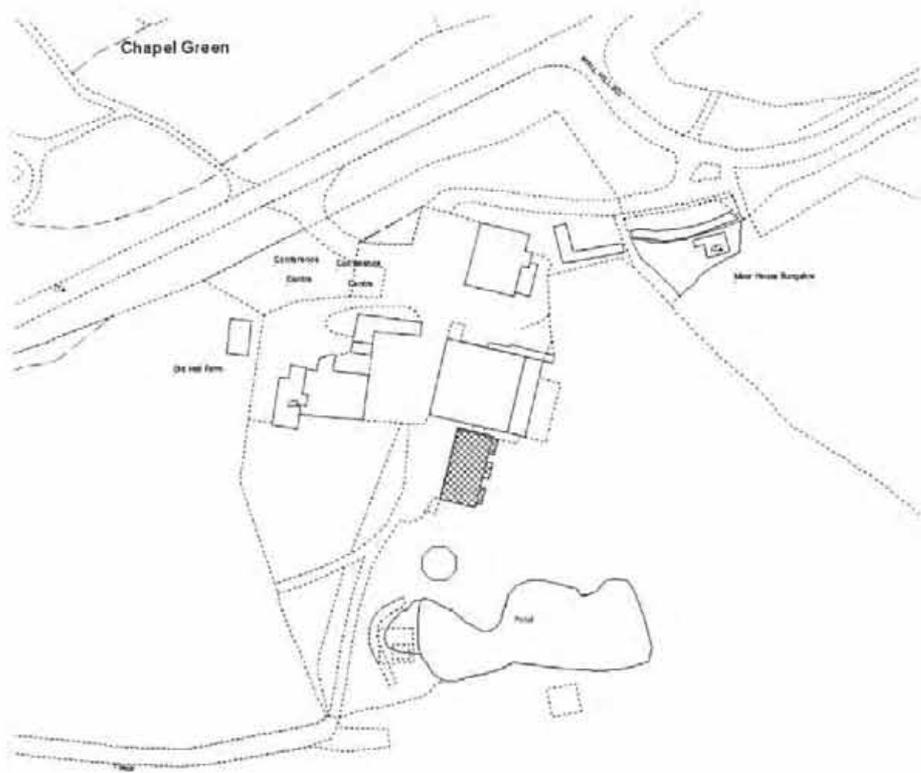
23. The appellant is seeking to vary the requirements of the notice to provide for the marquees to remain on site from April to the end of September each year. Also, that the concrete foundations be allowed to remain in place on the basis that they would not affect the openness of the Green Belt. In my view retention of the marquees on a seasonal basis would not overcome the fundamental conflict with Green Belt policy and the serious harm caused to the character and appearance of the area. The concrete foundations are part and parcel of the marquee structures and it is not unreasonable that the notice requires their removal. If they were left in place they would erode the open rural character of the site. I see no reason to relax the requirements as requested by the appellant. Therefore the ground (f) appeal fails.

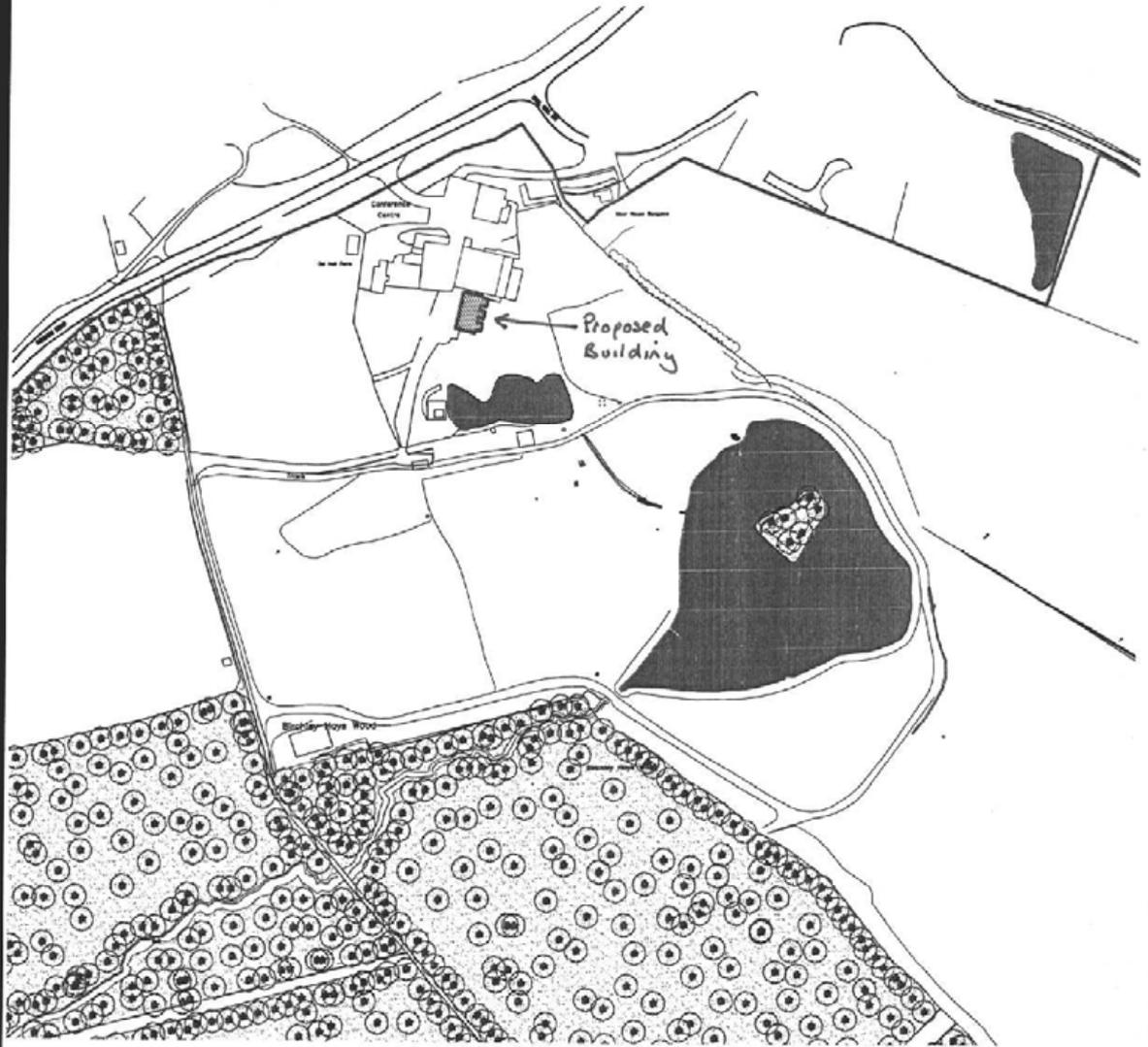
The Ground (g) Appeal

24. Because of the implications in respect of bookings already made and the need to reduce staff requirements an extension of the period for compliance is requested. I can appreciate that bookings may well have been taken which involve the use of the marquees but the appellant, who was professionally advised, must have been aware that he was running a risk by doing so. Bearing in mind the possibility exists that marquees could be erected on a temporary one-off basis for specific events I do not see any justification for extending the period for compliance. The ground (g) appeal is unsuccessful.

Steven Fox

Inspector





2009 / 0441

NORTH WARWICKSHIRE BOROUGH COUNCIL
- 6 OCT 2009
PLANNING DIVISION

Appendix G

Planning application for an extension to existing facilities

**Heart of England Promotions Ltd, Meriden Road, Fillongley,
Coventry, Warks CV7 8DX**

DESIGN AND ACCESS STATEMENT

LOCATION:

Heart of England is located alongside the B4102 between Fillongley and Meriden. The site lies within an area designated as the Green Belt.

THE PROPOSAL:

The proposal is to construct an extension to the existing permission used in conjunction within the recreational use of the site.

PURPOSE AND USE OF THE BUILDING:

The proposed building is to replace permanently the marquee, which is erected on site in accordance with the condition attached to the planning permission. The building will be used in support of the recreational use, which takes place on the site. This will provide weather protection and catering facilities for groups of people attending site for events. This will include bespoke weddings, sporting events and gathering of people who need covered space for their comfort.

It is hoped that it will expand the business and its activities over a longer season.

THE SITE:

The main areas are the existing buildings, which have been converted from former farm buildings and the land, which has permission for recreational use.

There are two areas of land still in agricultural use and adjacent ancient woodland.

Within the confines of the original farmyard is a Grade II Listed Building. There are two public footpaths crossing the land to the south and east of the site.

LOCATION ADVANTAGE:

Once land has been placed within the Green Belt, the land use is defined in PPG2 Green Belts. Then it has a positive role to play.

- a) To provide opportunities for access to the open countryside for the urban population.
- b) To provide opportunities for outdoor sports and outdoor recreation near urban areas.

- c) To retain attractive landscapes and enhance landscapes near where people live.
- d) To improve drainage and derelict land.
- e) To secure nature conservation interests and to retain land in agricultural/forestry and related uses.

The current site with its location and land facilities, i.e. lake, open land and forest, combined to give this site a location advantage for the activities that take place as the landscape setting provides a backdrop for the activities whilst still providing high quality environmental areas for people to enjoy.

The Good Practice Guide on planning for tourism recognises that some areas have a location advantage over other areas, due to naturally occurring landscape.

DESIGN APPRAISAL:

The style of the building is generally agricultural in its appearance. The elevation facing the public footpath has been considered and is designed to produce shadows and encompass landscaping to tone down the brickwork.

The roof is green metal cladding. Windows will be brown PVC to match the existing.

The building is substantially lower in height than the existing building to minimise the effect on the skyline.

All brickwork to match existing buildings.

All access points are designed to offer safe access for the disabled.

MATERIAL CONSIDERATION:

The Taylor Review of the Rural Economy and Affordable Housing and the Government's response.

This document recognises that farms were once an industrial hub and these premises as a whole have an important contribution to make to rural economies.

Within the section "Living, working countryside", this brings into question the needs of people who live in rural areas and the need to provide jobs locally.

See Annex 1: Pages 45/46 of The Taylor Review.

Heart of England provides recreational services to both corporate and the general public.

The Local Plan:

- **Core Policy 1 – Social and Economic Regeneration** states: The Local Plan will support the economic and social regeneration of the area, primarily by seeking to ensure local people have access to a range of high quality employment, housing, shopping, leisure, education and other community facilities.
- **Policy ENV1 – Protection and Enhancement of Natural Landscape.** It is not considered that the design of the building with its agricultural approach will affect the overall character of the site.
- **Policy ENV7 – Development of existing employment land outside defined boundaries.** It is considered that this policy supports the development proposed.
- **Policy ECON10 – Tourism.** The justification criteria of this policy is supported by the Warwickshire Structure Plan Policy 1.8, which advises that the creation of new and expansion of existing facilities should be supported in Local Plans where this would result in the retention or creation of jobs and environmental improvements.
- **North Warwickshire Tourist and Economic Strategy 2003-2008** is to promote the area for tourism.

NATIONAL POLICIES:

PPG2 Green Belts
PPS7 Sustainable Development in Rural Areas
PPG4 Industrial and Commercial Development and small firms

PPG2 advises that development in the Green Belt is inappropriate unless it meets laid down criteria. Recreational use is one such criterion. New building is considered to be inappropriate, unless it is essential to the business. It is considered that this building is essential to the existing business.

PPS7 advises that it supports rural employment and supports sustainable rural tourism.

PPG4 supports expansion to existing business within the rural areas and advises of conditions, which may be applicable to allow a local firm to expand. It advises that where a local firm needs to expand if it is sufficiently exceptional to justify departure from the local Authority's policy of restraint, then conditions can be appropriate to deal with this issue.

Regional Planning Guidance for the West Midlands:

RSS11 encourages tourism as a means of employment generation. It identifies the need to broaden economic base in rural areas.

Warwickshire County Council Structure Plan:

Policy 1.8 and 1.1 support the expansion of existing businesses and expansion of the service sectors. It advises that Local Plans should support new tourism, leisure, and recreational development that would retain and create new jobs.

PPG24 Planning and Noise:

A noise survey has been carried out on four separate occasions. The latest survey is attached. There appears limited disturbance from the site within the local area.

GOVERNMENT ADVICE:

PPS1 Sustainable development
PPS7 Rural areas
PPG2 Green Belts
PPG4 Industrial/commercial
The Good Practice Guide for Tourism
Local Plan in force: North Warwickshire Borough Council
Warwickshire County Council

OTHER MATTERS:

North Warwickshire has four other tourist facilities, which it identifies as important tourist sites. These are Kingsbury Water Park, Hartshill Hayes Country Park, Pooley Fields Heritage Centre and Hartshill Wharf. All have some form of tourist activities taking place and are owned by Warwickshire County Council. The most popular of these is Kingsbury Water Park, where it is developing wider commercial activities.

GREEN BELT ISSUES:

The building proposed will replace the marquee, which was subject to a recent appeal, and whilst the permanence of this structure was refused, there remains the option of constant erection of a marquee in this position.

The applicant sees the use of a permanent structure as essential for his business, to allow expansion and provide the level of high quality service their customers require. This includes provision of hospitality before, during, and after an event has taken place.

This month (September 2009), a wide spectrum of events is taking place. These include:

- The National Archery contests.
- A Fun day for the families of the employees of the NEC
- The children and families, all of who have hearing difficulties, approximately 200 children.
- Fun days for young children who are carers to their dependent parents.
- A small party of blind children, who enjoy the climbing of trees, boating and sand areas.
- A national company holding small seminars for its employees based all around the country.
- Two themed weddings.

- Along with, most weekends, the increase in people visiting the site to enjoy the beach experience.

ECONOMIC:

Heart of England is a leisure and recreation industry. They do not manufacture widgets or usable items. What they do is manufacture enjoyment and enlightenment that lifts the spirit and the body of humans.

Currently, they employ 86 staff. For the last year, they have, through purchases and wages contributed to the local economy to the tune of £1,031,565.00. The government have benefited through taxes and national insurance paid, along with both Warwickshire County Council and North Warwickshire Borough Council through business rates to the sum of £200,000.

The core base of the recipients of fees paid out are local food supplies, computer services, flowers, electricians, builders, mechanics, taxis and bus companies, printers, human resource, cleaners and specialist suppliers of equipment.

SPECIAL CIRCUMSTANCES:

- 65% of North Warwickshire is in the Green Belt
- 10% is in the flood plain
- 15% is built development or allocated villages or towns

Leaving just 10% of the land to the north of the boundary outside areas of restraint and not in the Green Belt.

For the government, Warwickshire County Council and the local council to promote tourism, then it is reasonable to presume that outdoor recreation, which is allowed in the Green Belt, will at some point require permanent buildings. Up to this point the management of the site has been able to contain the business to existing buildings and a marquee, but in order for it to expand, there is now a requirement for permanent buildings to attain the level of excellence customers require. Where a local firm, which relies on its location for its business, and looks to expand and retain its workforce, such circumstances are considered special enough to be appropriate to allow extensions to an existing building within the Green Belt.

77. This all results in a 'sustainability trap'. In essence, otherwise beneficial development can only be approved if the settlement is considered sustainable in the first place. Failure to overcome this hurdle essentially stagnates the settlement – freezing it in time – potentially for the life of the adopted development plan. This cannot be sound planning, since it makes such communities less, not more, sustainable.
78. So many smaller rural settlements without certain services are written off as inherently 'unsustainable', in which case no new housing or economic development may be allowed at all. There is a widespread assumption that because smaller rural communities may have little or no services, shops, or public transport of their own they are fundamentally unsustainable – and therefore not suitable for development on the grounds of an implied greater need to commute and travel by car to access services and employment. This has translated into restrictive regional and local policy, and also reflects aspects of national policy.³¹ Increasingly decision making in rural areas is determined solely by reference to limiting car based travel. While current Government policy does provide a more pragmatic stance this is not the interpretation applied 'on the ground'.
79. An interesting parallel might be drawn with the widely accepted criticism of the "key settlement" approach to planning in the 1970s, where resources were concentrated on larger settlements and smaller ones left to dwindle and lose self sufficiency. Durham County Council in the 1950's, provides another parallel where villages defined as in "Category D" were left to decline, the populations encouraged to move away, and vacant homes demolished; though in fact many people refused to move.
80. This narrow view of sustainability is far too simplistic – and wrong. Indeed, it starts from the wrong premise, because it asks the wrong question. If people in rural areas can't live near where they work because it is unaffordable, or can't work near where they live because employment is increasingly directed to towns, restricting development has the effect of making communities even less sustainable environmentally, let alone socially and economically sustainable. **Since we are not going to bulldoze our villages and start again, and people are going to continue to live in them, the key emphasis of the planning system (at all levels) needs to move away from asking "is this settlement sustainable?", to "will this development enhance or decrease the sustainability of this community – balancing social, economic and environmental concerns?"**
81. Some steps have been taken more recently to try and address this situation, by building in explicit advice for the application of policy in rural areas. The *Planning and Climate Change Supplement to PPST: Delivering Sustainable Development*

advises that, "When considering the need to secure sustainable rural development, including employment and affordable housing opportunities to meet the needs of local people, planning authorities should recognise that a site may be acceptable even though it may not be readily accessible other than by the private car." Similarly, *PPS3: Housing* contains specific advice to planning authorities to provide housing in market towns and villages "to enhance or maintain their sustainability. This should include, particularly in smaller rural settlements, considering the relationship between settlements so as to ensure that growth is distributed in a way that supports informal social support networks, assists people to live near their work and benefit from key services, minimize environmental impact and where possible encourage environmental benefits".

82. These are very welcome steps, but as yet many planning authorities at all levels do not appear to be willing or confident in applying this more sensitive approach through their emerging Core Strategies and subsequent Development Plan Documents. They remain dominated by a belief that rural areas are inherently unsustainable because their inhabitants make more use of the car. Not only does this ignore the principle of adopting a positive and integrated approach to promote sustainable development, it also flies in the face of the evidence.
83. More recently (May 2008) Communities and Local Government commissioned research into how sustainability appraisals are being implemented, and how they influence plans and programmes. This research is an important opportunity to address these issues.
84. Continuing on current trends the future of many smaller rural settlements may be becoming even less sustainable as the direct if unintended consequence of planning practice that rules out development in many rural villages. Neither is it in tune with the Government's desire to create mixed communities in all areas, both urban and rural.⁵² The countryside we all enjoy needs people living and working in it to sustain it. Rural areas need to generate adequate wealth to support local services and more sustainable communities.



**North Warwickshire
Borough Council**

Planning Division
PO Box 6
Council House
South Street
Atherstone
Warwickshire
CV9 1BG

The Town and Country Planning Acts
The Town and Country Planning
(General Development) Orders

DECISION
Application for Planning Permission

Michael Lambert, Dip TP, MRTPI, Application Ref :PFILXX/1381/2002/FAP
MIED
Assistant Director (Planning)

1 To Addressee
BARLOW ASSOCIATES
PACKINGTON HALL
PACKINGTON PARK
MERIDEN
NR COVENTRY
CV7 7HF

2 Site Address
Old Hall Farm, Wall Hill Road, Fillongley.

3 Description of Development
Continue recreational use of land & buildings without compliance with conditions 1,5 7,8,&10 of consent ref 0214/02

4 Applicant
Heart Of England Promotions

5 Your planning application was submitted on 12 November 2002. It has now been considered by the Council. I can inform you that

Planning Permission is **GRANTED**, subject to the following conditions:

- 1 The development to which this permission relates must be begun not later than the expiration of five years from the date of this permission.

REASON

To comply with Section 91 of the Town and Country Planning Act 1990.

Continued.....

Authorised Officer

Date 06 September 2002



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PC32



DECISION
Application for Planning Permission

Page 2

Application Ref :PFILXX/1381/2002/FAP

- 2 For the avoidance of doubt, this approval does not authorise any recreational or leisure use involving motorised vehicles of any character or nature, nor the use of any shooting activity of whatever kind, unless otherwise agreed in writing by the District Planning Authority.

REASON

In the interests of the residential amenity of neighbouring residents.

- 3 No activity whatsoever in connection with the approved use shall take place on the site other than between the hours of 0800 and 1800 on Mondays to Saturdays. No activity shall take place on any Sunday.

REASON

In the interests of the residential amenity of neighbouring residents.

- 4 All structures, materials and equipment used in connection with the use hereby approved shall be removed from the fields immediately following any event and shall be stored inside the building included under this permission.

REASON

In order to retain the visual character of this area of open countryside.

- 5 No lighting shall be implemented whatsoever without details first having been submitted and approved in writing by the District Planning Authority.

REASON

In the interests of amenity.

Continued.....

PC32

Authorised Officer

Date 06 September 2004



INVESTOR IN PEOPLE
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DECISION
Application for Planning Permission

Page 3

Application Ref :PFILXX/1381/2002/FAP

- 6 No lannoy system or form of sound amplification shall be implemented without details first having been submitted to and approved in writing by the District Planning Authority.

REASON

In order to protect the residential amenities of nearby residents.

- 7 Within three months of the date of this consent full details of the landscaped belt fronting Meriden Road and as indicated on the approved plan shall be submitted to and approved in writing by the District Planning Authority.

REASON

In the interests of amenity.

- 8 The approved scheme of planting referred to in condition 7 above shall be implemented within the first planting season following its approval and any plant failures within the next five years following its approval and any plant failures within the next five years following planting shall be replaced within the next available planting season to the satisfaction of the District Planning Authority.

REASON

In the interests of amenity.

- 9 There shall be no use of fireworks at the site other than within seven days of the 5 November each year unless otherwise agreed in writing by the District Planning Authority.

REASON

In the interests of amenity.

Continued.....

PC32
Authorised Officer

Date 06 September 2002



INVESTOR IN PEOPLE
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DECISION

Application for Planning Permission

Application Ref :PFILXX/1381/2002/FAP

NOTES

- 1 The Development Plan policies which are relevant to this Decision are as follows:

Warwickshire Structure Plan - 1996 - 2011: GD6, RA4, I8 T5.

North Warwickshire Local Plan 1995: ENV1, ENV6, ENV24, REC1, BEM6.

First Deposit Draft North Warwickshire Local Plan Feb 2003: ENV1, ENV3, ENV14, ECON12.

- 2 The reason for the grant of planning permission is as follows:

The proposal complies with Development Plan Policies, and conditions can be attached to mitigate against adverse impacts. The permission is accompanied by a Section 106 Agreement relating to travel to the site and overall landscape/woodland management.

You are reminded that, in accordance with Section 78 of the Town and Country Planning Act 1990, you can appeal against conditions attached to an approval, or against a refusal, by contacting **The Customer Support Unit, The Planning Inspectorate, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN** - telephone number 0117 372 6372 - fax number 0117 372 8782. Appeal forms may also be downloaded from the Planning Inspectorate's web site (www.planning-inspectorate.gov.uk). The completed forms must be returned by post. You have three months to appeal from the date of this Notice.

This decision is for the purposes of the Town and Country Planning Act only. It is not a decision under Building Regulations or any other statutory provision. Separate applications may be required.

Authorised Officer _____

Date 06 September 2002

DIVISION IN PEOPLE
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PC32



Appeal Decision

Inquiry held on 1st July 2008

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.g

by **Clive Whitehouse** BA(Hons) MCD
MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

Decision date:
15 July 2008

Appeal Ref: APP/R3705/C/05/2005291

**Heart of England Conference and Events Centre, Old Hall Farm, Fillongley,
CV7 8DX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Heart of England Promotions Ltd against an enforcement notice issued by North Warwickshire Borough Council.
- The notice was issued on 4th November 2005.
- The breach of planning control as alleged in the notice is: without planning permission, the change of use of the land and buildings from the recreational use of the land and buildings to a mixed use, comprising of the recreational use of the land and buildings together with the addition of a public restaurant within Use Class A3.
- The requirements of the notice are to cease the use of the land and buildings for a public restaurant within Use Class A3.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
- This decision supersedes that issued on 21st June 2006. That decision on the appeal was remitted for re-hearing and determination by a consent order of the High Court.

Decision

1. I allow the appeal and direct that the enforcement notice be quashed.

The Consent Order

2. The previous decision on ground (c) was challenged on the basis that the term "recreational use", which is used on the relevant planning permission is not so ambiguous as to warrant recourse to extrinsic evidence to interpret its scope. The Courts have established the principle that the meaning of a permission should be apparent from its face and that extrinsic evidence might only be admitted to resolve any ambiguity, but not to alter the apparent meaning (Slough Estates v Slough BC [1969]). It is accepted that the term "recreational use" has a wide ambit, but is not ambiguous. The High Court Consent Order was made on the basis that I (in deciding the first appeal) erred in my interpretation of the relevant planning permission by taking into consideration extrinsic evidence in the form of correspondence and the planning history of the site.

Background

3. Planning permission 1381/2002, granted in 2004, authorised the "recreational use of land and buildings without compliance with conditions 1, 5, 7, 8 and 10 of consent reference 0214/02". Consent 0214/02 was for recreational use for a trial period. The 2004 permission removed certain trial period conditions and imposed others, but the conditions do not limit the use of the on-site catering facilities. My decision on appeal reference APP/R3705/A/05/1189445 (which was heard at the same time as the first hearing of this appeal) granted a new permission in the same terms as 1381/2002, but substituted different hours of operation conditions.
4. The main business of the company is to organise corporate events involving outdoor activities such as archery, team games and laser clay pigeon shooting. Most events include the provision of a meal and many involve a presentation or conference. A large agricultural-type building has been converted for the purpose and the dining area is within an extension permitted in 2004 as an "extension to kitchen and seating area". The dining extension is subject to a condition that it "be used solely for purposes in connection with the use of the remainder of the site by Heart of England Promotions Ltd as authorised by the Council". Therefore the use of the extension is tied-back to the "recreational use" of the whole site.
5. The restaurant has about 60 seats and is approached through the conference centre. It is used primarily for delegates at organised events, but is also open to the public. The appellant estimates that the restaurant is used about 70% by delegates and 30% by the public. Conferences and events are not held every day and they are less frequent in the winter months. Public access to the restaurant therefore provides fuller utilisation of the catering facilities and staff by taking up some of the slack time between events.

Appeal on Ground (c)

6. In the light of the Consent Order, the appeal is to be re-considered on the basis of the ordinary meaning of the words used in the permission.
7. The relevant permission does not expressly incorporate the application and plans into the decision in accordance with the tests established in the case of *R v Ashford BC ex parte Shepway DC* [1998]. The scope of the permission is therefore limited to the terms of the decision notice itself.
8. The appellant's case is that the additional use of the catering facilities within the conference centre by members of the public falls within the ordinary meaning of the words "recreational use".
9. The Council contends that the words "recreational use" on the permission must be given their ordinary planning meaning, rather than their widest meaning. The Council refers to the case of *R (on the application of Belgrave Land Ltd) ex parte Bedford Borough Council* where the term "district centre" was accepted to have a particular meaning in planning circles. Recreational use is not defined in Planning Policy Guidance 17: Planning for open space, sport and recreation, but in the Council's view it is generally linked to physical activities. The Council argues that the planning meaning of "recreational use" can be understood by reference to the Town and Country Planning (Use Classes) Order 1987 (UCO).

There, Class D2 deals with assembly and leisure, and D2(e) includes areas for "other indoor or outdoor sports or recreations", whereas a restaurant is within the separate A3 food and drink class.

10. The Council draws attention to the Court of Appeal judgement in the case of Rugby Football Union v SSSLGR [2002], where the court considered whether the use of Twickenham stadium for concerts fell within Class D2(e). It was held that the term "recreation" as used in D2(e) connoted some physical activity, and not merely pleasurable enjoyment. On that interpretation, the Council argues that members of the public dining in the restaurant are not taking part in a recreational use in the planning sense.
11. The appellant refers to the parts of the judgement in the Rugby Football Union case where the judge considers the distinction between the focus of Class D2(e) on sport or physical recreation, and the broad sense of "recreation" which can involve hobbies and other forms of pleasurable enjoyment.
12. The appellant contends that the Council could easily have narrowed the scope of the 2004 permission by relating it to Class D2(e), and that by failing to do so its meaning is left open to wide interpretation. The appellant does not rely on the interpretation of the UCO, but on the ordinary meaning of the words on the decision notice.
13. It seems to me that in granting the permission the Council must have relied on its understanding of the appellant's intentions, based on correspondence and the trial period. However, the actual words used on the face of the permission do not in my view encapsulate those intentions with any precision. I consider that "recreational use" is an inadequate way of describing the appellant company's conference and events business. I conclude that, by not limiting the permission to recreational use within Class D2(e), the decision notice is open to wider interpretation. Without such a qualification I am not convinced that the term "recreational use" has a narrower and widely understood "planning" meaning in the same sense that a "district centre" would be understood in planning circles.
14. I turn now to consider whether the use of the dining facilities by non-delegates falls within the wide ambit of the term "recreational use".
15. The Council accepts that the use of the dining area within the conference centre by delegates at organised events is ancillary to the permitted use. Since the first appeal, planning permission has been granted for further development in the form of a sizeable lake for water and other sports in association with the recreational use of the land. Work on the extended area was imminent at the time of this inquiry and the likely effect is an increased number of events at the site, and increased ancillary use of the dining area, so that public use may utilise a smaller percentage.
16. Nonetheless, the Council contends that a public restaurant use within Class A3 can not be bracketed with a Class D2 assembly and leisure type of use. In my view the partial use of the ancillary dining facilities by members of the public is not the same as a stand-alone restaurant in Class A3. The situation is similar to that at many sports clubs such as cricket or golf, where in my experience the catering facilities are used for both club functions and private functions without the dining area being regarded as a Class A3 restaurant use. In my

opinion the present dual ancillary/public use the dining area does not fall within Class A3. I therefore consider that the change is of a more subtle nature than is portrayed by the terms of the allegation in the enforcement notice.

17. I conclude as a matter of fact and degree that the dual use of the dining area by those attending organised events and by members of the public falls within the scope of the ordinary meaning of the words "recreational use", and is authorised by planning permission 1381/2002 dated 6th September 2004.

Conclusion

18. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed on ground (c). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under ground (a) set out in section 174(2) to the 1990 Act as amended does not need to be considered.

C Whitehouse

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Hugh Richards	Of Counsel, instructed by Alder Mill Planning and Design Consultants
He called	Robert Williams, BSc Arch, Alder Mill.

FOR THE LOCAL PLANNING AUTHORITY:

Steven Maxey	Solicitor to the Council
He called	Peter Gittins, MRTPI Senior Enforcement Planner

DOCUMENTS submitted at the inquiry

- 1 Judgment in case of Rugby Football Union v SSSLGR
- 2 Judgement in case of R(on application of Belmont Land Ltd) ex parte Bedford Borough Council
- 3 Approved layout for proposed lake area.



**North Warwickshire
Borough Council**
Planning Division
Council House
South Street
Atherstone
Warwickshire
CV9 1DE

**The Town and Country Planning Acts
The Town and Country Planning (General
Development) Orders**

DECISION
Major Full Planning Application

Application Ref : PAP/2007/0503

Michael Lambert, Dip TP, MRTPI, MIED
Assistant Director (Planning)

Mr R Williams
Alder Mill
Sheepy Road
ATHERSTONE
CV9 3AH

Site Address

Heart Of England, Old Hall Farm, Meriden Road, Fillongley, CV7 8DX

Description of Development

Formation of lake and wetland area for use by water and other sports in association with the recreational use of the land.

Applicant

Heart Of England

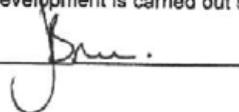
Your planning application was valid on 6 December 2007. It has now been considered by the Council. I can inform you that:

Planning permission is **GRANTED** subject to the following conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of this permission.
REASON
To comply with Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and to prevent an accumulation of unimplemented planning permissions.
2. The development hereby approved shall not be carried out otherwise than in accordance with the plan numbered AL/HE/01-07/13350, 180/27/1, 180/27/2 RevA and the plan showing the position of the lake within the applicant's wider land holding received by the Local Planning Authority on 7 August 2007 and the plan numbered 180/27/2 RevB received by the Local Planning Authority on 5 March 2008.

REASON

To ensure that the development is carried out strictly in accordance with the approved plans.

Authorised Officer 

Date 6 March 2008



3. For the avoidance of doubt; the recreational use of the land shall be limited to the following activities, unless otherwise agreed in writing by the Local Planning Authority:

- Team games
- Archery
- Electronic shooting
- Ball games
- School educational visits
- Tug of war games
- Inflatables games
- Rambling/Walking
- Orienteering

The recreational use of the land shall expressly exclude:

- All motorised activities, including quad biking, karting and off road driving.
- All shooting type activities, including clay shooting and paint balling (but excluding archery and electronic shooting).

REASON

In the interests of the residential amenity of neighbouring residents.

4. For the avoidance of doubt; the use of the lake shall be limited to the following activities, unless otherwise agreed in writing by the Local Planning Authority:

- Boating using rowing, electric motor, sailing or pedal boats
- Raft building
- Canoeing
- Fishing
- Water challenging events
- Swimming/snorkelling

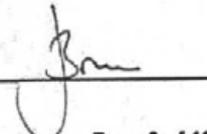
The use of the lake shall expressly exclude:

- Jet skiing
- Water skiing
- The use of all motorised boats or craft (with the exception of electric motor boats).

REASON

In the interests of protecting the residential amenity of occupiers of nearby properties and to protect the nature conservation interests of the area.

Authorised Officer _____



Date 6 March 2008

5. Prior to the commencement of development a Travel Plan, to indicate the means by which private car travel to the site is to be minimised, shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall address the cumulative travel impact of the development at the application site and the existing development at Old Hall Farm (currently the subject of a Travel Plan secured through a Section 106 Agreement dated 27 August 2004). For the avoidance of doubt the requirements of the new Travel Plan shall substantially reflect the requirements of the 27 August 2004 Travel Plan but shall not cease to have effect at any time, such that the Travel Plan is in force for the duration of the approved uses.

REASON

To minimise the use of private cars in the interests of sustainable development and to ensure that sustainable travel measures are implemented at all times.

6. All structures, materials boats, equipment, craft and apparatus used in connection with the use hereby approved shall be removed from the fields immediately following any event and shall be stored inside the buildings at Old Hall Farm, Wall Hill Road, Fillongley.

REASON

In order to retain the visual character of this area of open countryside.

7. No activity whatsoever in connection with the approved use shall take place on the site other than between the hours of 0800 and 1800 on Mondays to Saturdays. No activity shall take place on any Sunday.

REASON

To prevent disturbance to the occupiers of nearby properties.

8. No development shall take place on site until details of any flood lighting, including hours of operation, has been submitted to and approved in writing by the Local Planning Authority. The equipment shall be installed, operated and maintained in accordance with the approved scheme thereafter.

REASON

In the interests of the amenities of the area.

9. No public address or other sound amplification system shall be installed or used without the prior written approval of the Local Planning Authority. Such a system shall be used in accordance with any approved details.

REASON

In the interests of the amenities of the area.

10. The erection or siting of any temporary buildings or structures such as marquees, tents, caravans, portable buildings or other structures such as towers or apparatus shall not exceed 28 days in any calendar year unless agreed otherwise by the Local Planning Authority in writing.

REASON

In order to retain the visual character of this area of open countryside.

11. There shall be no use of fireworks at the site other than within seven days of the 5 November each year unless otherwise agreed in writing by the Local Planning Authority.

REASON

Authorised Officer _____



Date 6 March 2008

In the interests of amenity.

12. No development approved by this permission shall be commenced until a scheme for the provision and implementation of a surface water run-off limitation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved programme and details.

REASON

To prevent the increased risk of flooding.

13. No development approved by this permission shall be commenced until a scheme for the provision and implementation of compensatory flood storage works has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved programme and details.

REASON

To alleviate the increased risk of flooding.

14. Prior to the commencement of development a scheme for the reinstatement of the surface of Public Footpath M292 shall be submitted to and agreed in writing by the Local Planning Authority, in consultation with Warwickshire County Councils Countryside Recreation Team. The scheme shall incorporate a specification for the surface and timing of the reinstatement.

REASON

To ensure that there is no degradation of the existing public footpath.

15. Where the dam intersects with the line of Public Footpath M292 a ramp either side shall be provided with a width of 2 metres and a gradient of no more than 1 in 8 metres to the written satisfaction of the Local Planning Authority, in consultation with the highway authority.

REASON

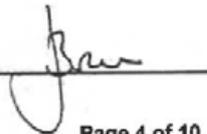
To ensure that there is no degradation of access to the existing public footpath.

16. No part of the development hereby permitted shall be commenced and nor shall any equipment, machinery or materials be brought onto the site until a scheme for the protection of all existing trees and hedges to be retained on site has been submitted to and approved in writing by the Local Planning Authority and has been put in place. This buffer must be at least 3m from the outer edge of the woodland tree and hedgerow tree and shrub canopies. The scheme must include details of the erection of stout protective fencing and be in accordance with British Standard BS5837: 1991, a Guide for Trees in relation to construction. Nothing shall be stored or placed in those areas fenced in accordance with this condition and nor shall the grounds levels be altered or any excavation take place without the prior consent in writing of the Local Planning Authority. The approved scheme shall be kept in place until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed.

REASON

To protect ancient woodland, hedgerow and other ecologically important features on site during construction.

Authorised Officer _____



Date 6 March 2008

Page 4 of 10

17. Prior to the commencement of development a water vole survey shall be carried out in order to establish the presence or absence of water voles. The survey shall be undertaken by a suitably qualified person within the appropriate water vole surveying season (March-October). The results of the survey shall be submitted to the Local Planning Authority in writing and the findings shall be used to inform the Landscape Management Plan required in condition 18 of this permission.

REASON

To ensure that appropriate protection is afforded to this species.

18. A habitat management plan for the application site and adjoining ancient woodland, including all woodland, hedgerows, proposed newly planted wooded area, proposed lake and wetland area and enhancing whole site for wildlife shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The plan shall include:
- i) Description and evaluation of the features to be managed;
 - ii) Ecological trends and / or constraints on site that may influence management;
 - iii) Aims and objectives of management;
 - iv) Appropriate management options for achieving aims and objectives;
 - v) Prescriptions for management actions;
 - vi) Preparation of a work schedule (including a 5 year project register, an annual work plan and the means by which the plan will be rolled forward annually);
 - vii) Personnel responsible for the implementation of the plan;
 - viii) Monitoring and remedial/contingencies measures triggered by monitoring;
 - ix) The long-term management of the wetland wading area adjacent to the ancient woodland to ensure that it does not encroach on the ancient woodland habitat;
 - x) Appropriate mitigation for the loss of ancient woodland ground flora, including bluebells;
 - xi) Details of measures taken to ensure that the works to the woodland stream banks are carried out in an ecologically sensitive way (this will depend in part on the results of the water vole survey);
 - xii) A section that details water vole mitigation (this will be partly informed by the results of the water vole survey but should include mitigation for loss of suitable water vole habitat even if the survey yields negative results for a current population).

The plans shall be carried out as approved, unless otherwise approved in writing by the Local Planning Authority.

REASON

To ensure ancient woodland is not negatively affected by the works in accordance with Policy ENV3 of the North Warwickshire Local Plan 2006 and to ensure a net biodiversity gain in accordance with PPS9.

Authorised Officer

Date 6 March 2008

Page 5 of 10

19. No works shall commence on site, including site clearance, until a detailed planting scheme has been submitted and agreed in writing by the local planning authority, in consultation with Warwickshire Museum Ecology Unit. The scheme shall include details of all new planting including location and species used for aquatic and subaquatic vegetation within and around the proposed lake and wetland area, tree planting and supplementary hedgerow planting. The agreed scheme then be fully implemented. In the event of any tree or plant failing to become established within five years thereafter, each individual tree or plant shall be replaced within the next available planting season, to the satisfaction of the Local Planning Authority.

REASON

In the interests of the amenities of the area, to accord with Policies ENV3 and ENV4 of the North Warwickshire Local Plan 2006 and to ensure a net biodiversity gain in accordance with PPS9.

20. Prior to the commencement of any works the developer shall install, operate and maintain a mechanical wheel wash or shaker adjacent to the site access for the purpose of ensuring that mud and debris will not be deposited on the highway as a result of construction traffic leaving the site. Prior to installation details of the proposed wheel wash /shaker must be submitted to and approved in writing by the Local Planning Authority, only the approved equipment shall then be installed.

REASON

In the interests of highway safety.

21. Access to the site for construction purposes shall only be via the existing main access to Old Hall Farm, Meriden Road, Fillongley. For the avoidance of doubt existing field access shall not be utilised.

REASON

In the interests of highway safety.

22. The development shall be carried out in accordance with the layout and section details indicated on the approved plan number 180/27/1; no more material shall be imported to the site than is stated to be required in the written statement submitted by the applicant. A survey of the final ground levels on the site shall be undertaken and the results submitted in writing to the Local Planning Authority.

REASON

To ensure that the development is undertaken in accordance with the approved plans.

23. No materials shall be delivered to or tipped on the site; other than between 0730 and 1730 hours Mondays to Fridays; 0730 and 1300 hours on Saturdays and not at all on Sundays and Bank Holidays.

REASON

In the interests of amenity.

24. Prior to the commencement of development a routing agreement for the construction traffic shall be submitted to and agreed in writing by the Local Planning Authority. The approved details shall then be implemented at all times.

Authorised Officer _____

Date 6 March 2008

Page 6 of 10

REASON

In the interests of amenity and highway safety.

INFORMATIVES

1. For the avoidance of doubt, no vehicles used in association with the formation of the approved lake shall enter or travel through any part of the adjacent ancient woodland known as Birchley Hayes Wood.
2. During construction a temporary diversion or closure of Footpath M292 is required for reasons of public safety. This can be arranged by contacting Simon Emson (01926 476942) a minimum of six weeks prior to any construction work. The costs of which are paid by the applicant. Public Footpaths M292 & M293 should be kept clear and unobstructed at all times after completion.
3. No works shall commence on Public Footpaths M292 or M293 until two weeks notice has been provided and a specification for the works agreed with Warwickshire County Councils Countryside Recreation Section,
4. The maintenance and liability of the permissive path created will be the responsibility of the landowner.
5. The use of lead weights for fishing is prohibited unless they are within certain sizes. Advice can be obtained from the Environment Agency website at: http://www.environment-agency.gov.uk/subjects/fish/246986/255175/257210/?version=1&lang=_e
6. The proposal involves impounding 23,000 cubic meters of water and the applicant will need to apply for an Impoundment License from the Water Resources section of the Environment Agency and an application form can be obtained from Rachel Pallett, (01543) 404888. They will look at whether there are sufficient flows to feed and sustain the proposed pond without significantly affecting downstream flow in the watercourse.
7. Approval of the structures of the retaining wall, discharge arrangement and emergency overflow structures may also require a Land Drainage Consent application through Environment Agency Development Control. This will be advised during the Impoundment Licence application. A Consent application form can be obtained from the contact given below.
If you have any enquiries/concerns about the above comments on flooding issues, please contact Dave Hughes on (01543) 404899.
8. The wetland area should be planted with appropriate native species, avoiding Typha (Reedmace) due to its invasive nature; Phragmites (Common Reed) should form the bulk of the planting that could also include the following:

Native water plants suitable for stocking in pools:

White water-lily, *Nymphaea alba*

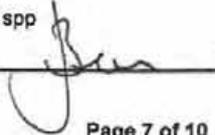
Yellow water-lily, *Nuphar lutea*

Branched bur-reed, *Sparganium erectum*

Sedges, *Carex* spp

Soft/hard rush, *Juncus* spp

Authorised Officer _____



Date 6 March 2008

Page 7 of 10

Flowering rush, *Butomus umbellatus*
Reed-sweet grass, *Glyceria maxima*
Reed-canary grass, *Phalaris arundinacea*
Bog bean, *Menyanthes*
Arrowhead, *Sagittaria saggitifolia*
Water Plantain, *Alisma plantago-aquatica*
Spiked water milfoil, *Myriophyllum spicatum*
Hornwort, *Ceratophyllum* spp
Starwort, *Callitriche* spp
Watercress, *Roripa nasturtium aquaticum*
Great yellow cress, *Roripa amphibium*
Fools watercress, *Apium nodiflorum*
Brooklime, *Veronica beccabunga*
Water mint, *Mentha aquatica*
Water forget-me-not, *Mycosotis scorpioides*

The following plant species should not be stocked, as they frequently cause weed control problems or are alien species:

Red water fern, *Azolla filiculoides*
Duckweeds, *Lemna* spp
New Zealand swamp stonecrop, *Crassula helmsii*
Canadian pondweed, *Elodea canadensis*
Fringed water-lily, *Nymphoides peltata*
Parrots feather, *Myriophyllum aquaticum*
Reedmace, *Typha latifolia*
Floating pennywort, *Hydrocotyle ranunculoides*

There may be other suitable species, but it is recommended that you seek the advice of the Environment Agency before stocking other species not listed above. The most common causes of weed problems is the deliberate or accidental stocking of unsuitable plants. Be aware that supplies of plants from garden centres may contain invasive exotic species - use a reputable supplier of native plants to avoid future weed control issues.

9. For biodiversity enhancement marginal areas that are as large and shallow/gently sloping as is possible should be in the design. The greatest diversity is likely to be found in these areas, ranging from the vegetation and invertebrates to birds and small mammals. Greater benefit will be gained if the water levels are allowed to seasonally fluctuate, creating marshy and muddy areas. Suitable fencing should restrict access from livestock, people and dogs. Where fishing is envisaged any fish introductions will need separate EA consent under the Salmon and Freshwater Act (1975).

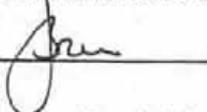
Authorised Officer _____

Date 6 March 2008

Page 8 of 10

10. There is recorded evidence of badgers in the surrounding area and some within the adjacent ancient woodland area. There is a pond on site and many more ponds within 500m and there is recorded evidence of great crested newts in the surrounding area. Therefore, although no signs of badgers or great crested newts were found during the ecological survey, their presence can not be ruled out especially as, in the case of badgers, they are mobile creatures that can literally dig new setts overnight. Please be aware that badgers and great crested newts are protected species. Badgers and their setts (communal place of rest) are protected under the 1992 Badgers Act, making it illegal to carry out work that may disturb badgers without a Natural England licence. Great Crested Newts and their habitat (aquatic and terrestrial areas) are protected under the 1981 Wildlife and Countryside Act and the Countryside and Rights of Way Act 2000 and are also deemed European Protected Species. Where newts are present a licence might be necessary to carry out the works. Particular care should be taken when clearing ground prior to development. Should badgers or great crested newts be found during the carrying out of the approved works, you should stop work immediately and seek further advice from the Ecology Section of Museum Field Services, The Butts, Warwick, CV34 4SS or from Natural England on 01453 764450. Further information about species licensing and legislation can be obtained from the Species Licensing Service of Natural England on 01733 455136.
11. It should be ensured that work (including site clearance work) does not disturb nesting birds. Birds can nest in many places including buildings, hedgerows, trees, and open grassland. Nesting birds are protected under the 1981 Wildlife and Countryside Act. The main nesting season lasts approximately from March to September, so any work to the site should take place outside these dates if at all possible. N.B birds can nest at any time, and the site should ideally be checked for their presence immediately before work starts.
12. The applicant is advised that, as additional planting is proposed for the site, indigenous tree and shrub species should be used, preferably of local provenance, in line with the Arden Landscape Character Guidelines. Such plants are visually attractive, and have a far higher value for local wildlife than non-native plants.
13. The Development Plan policies which are relevant to this Decision are as follows:
North Warwickshire Local Plan 2006:
Core Policy 1 - Social and Economic Regeneration
Core Policy 2 - Development Distribution
Core Policy 3 - Natural and Historic Environment
Core Policy 4 - Green Belt
ENV1 - Protection and Enhancement of Natural Landscape
ENV2 - Green Belt
ENV3 - Nature Conservation
ENV4 - Trees and Hedgerows
ENV8 - Water Resources
ENV11 - Neighbour Amenities
ENV14 - Access Design
TPT1 - Transport Considerations in New Development

REASONED JUSTIFICATION
Authorised Officer



Date 6 March 2008

PAP/2007/0503

The proposal complies with Development Plan Policies; and conditions can be attached to mitigate against adverse impacts on ecology, visual impact and harm to residential amenity. The permission is subject to a requirement for a Travel Plan to be agreed to address the sustainability of the development.

APPEAL INFORMATION

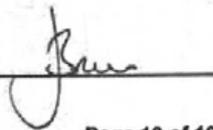
You are reminded that, in accordance with Section 78 of the Town and Country Planning Act 1990, you can appeal against conditions attached to an approval, or against a refusal, by contacting the Planning Inspectorate, Room 3/04 Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN, Telephone Number 0117 3728823, Fax Number 0117 3728443. Appeal forms may also be downloaded from the Planning Inspectorates website www.planning-inspectorate.gov.uk. You have 6 months to appeal from the date of this notice.

NOTE

1. This decision is for the purposes of the Town and Country Planning Act only. It is not a decision under Building Regulations or any other statutory provision. Separate applications may be required.

2. A report has been prepared that details more fully the matters that have been taken into account when reaching this decision. You can view a copy on the Council's web site via the Planning Application Search pages <http://planning.northwarks.gov.uk/portal>. It will be described as either 'Application File', 'Board Report' or 'Officer's Observations'. Alternatively, you can view it by calling into the Council's Reception during normal opening hours (up to date details of the Council's opening hours can be found on our web site <http://www.northwarks.gov.uk/site/scripts/contact.php>).

Authorised Officer _____



Date 6 March 2008

Page 10 of 10

View from public footpath M293 (looking towards the north west)



View from M293 looking towards the north west, approaching junction with M292



Junction of footpaths M293 and M292



View from public footpath M293 (looking towards the north west)



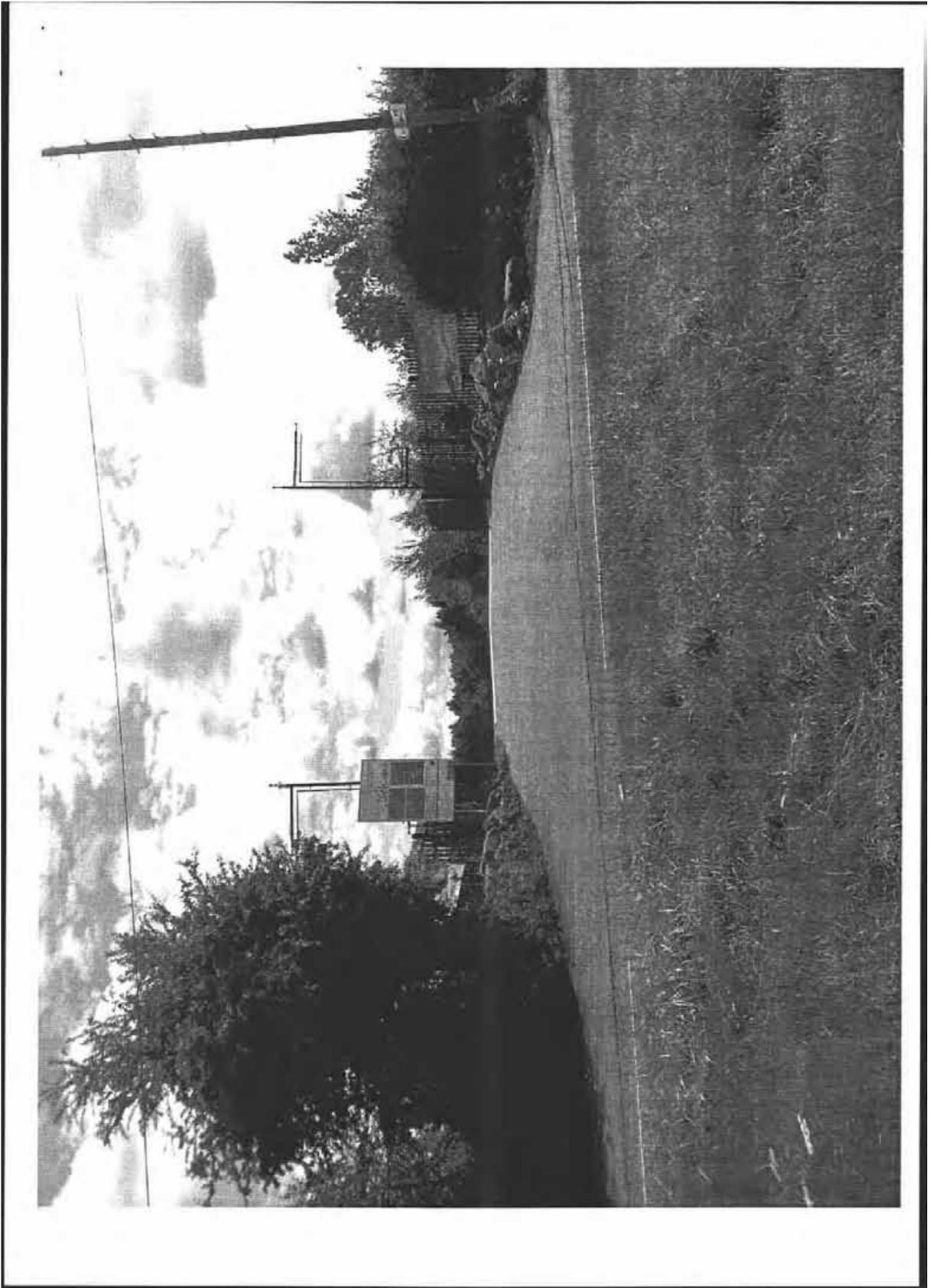
View from public footpath M293 (looking towards the north west)



View from M292









Appeal Decisions

Hearing held on 13th June 2006

by **Clive Whitehouse** BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State for
Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-
inspectorate.gsi.gov.uk

Date:
21 Jun 2006

Appeal A: APP/R3705/A/05/1189445

Heart of England Conference and Events Centre, Old Hall Farm, Fillongley, CV7 8DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Heart of England Promotions Ltd. against the decision of North Warwickshire Borough Council.
- The application Ref PFILXX/0690/2005/FAP, dated 2nd June 2005, was refused by notice dated 1st August 2005.
- The application sought planning permission to continue the recreational use of land and buildings without complying with a condition attached to planning permission Ref PFILXX/1381/2002/FAP, dated 6th September 2004.
- The conditions in dispute is No 3, which states that: "No activity whatsoever in connection with the approved use shall take place on the site other than between the hours of 0800 and 1800 hours on Mondays to Saturdays. No activity shall take place on any Sunday".
- The reason given for the condition is: "In the interests of the residential amenity of neighbouring residents".

Summary of Decision: The appeal is allowed and planning permission is granted subject to a variation to the disputed condition, in the terms set out below in the Formal Decision.

Appeal B: APP/R3705/C/05/2005291

Heart of England Conference and Events Centre, Old Hall Farm, Fillongley, CV7 8DX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Heart of England Promotions Ltd. against an enforcement notice issued by North Warwickshire Borough Council.
- The Council's reference is ENF/00149/2005/P.
- The notice was issued on 4th November 2005.
- The breach of planning control as alleged in the notice is: without planning permission the change of use of the land and buildings from recreational use to a mixed use, comprising of the recreational use of the land and buildings together with the addition of a public restaurant within Use Class A3.
- The requirements of the notice are to cease the use of the land and buildings for a public restaurant within Use Class A3.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction.

Appeal C: APP/R3705/C/05/2004845

Heart of England Conference and Events Centre, Old Hall Farm, Fillongley, CV7 8DX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Heart of England Promotions Ltd. against an enforcement notice issued by North Warwickshire Borough Council.
- The Council's reference is ENF/00149/2005/P.
- The notice was issued on 4th November 2005.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the site from recreational use/agricultural use to a mixed use comprising the recreational/agricultural use with the addition of the permanent display/storage of trailers/eventing equipment for sale from the land within Use Class A1.
- The requirements of the notice are (i) to cease the permanent use of the land and buildings for the display/storage of trailers and eventing equipment for sale and, (ii) remove the trailers/eventing equipment associated with the unauthorised use from the site.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.

Background

1. Planning permission for the "recreational use" of some of the land and buildings on the farm was first granted for a trial period in 2001, and this was converted into a permanent permission in 2004. The 2004 permission also discharged some of the trial period conditions and others were added, including the disputed hours of operation condition.
2. The main business of the company is to organise corporate hospitality days, involving outdoor activities such as archery, team games and laser clay pigeon shooting, followed by a presentation or conference in a large converted agricultural-type building. Some of the events are extended into the evening with a meal and disco. Showers and changing facilities are provided for delegates to make the transition from the field events to the indoor activities. The appellant requests under appeal A that condition 3 be varied to permit corporate events to continue within the main building until 23:30 hours on Mondays to Saturdays.
3. Between two to five corporate events take place each week, with a seasonal peak in the summer months, so there have been periods when staff and buildings have been under-utilised. The appellant considers that he needs to develop additional business opportunities at the site in order to better utilise the 25 full time employees and the availability of the buildings and catering facilities.
4. Planning permission for the erection of a new building to accommodate an "extension to kitchen and seating area" was granted in 2004, subject to a condition that it be used for purposes in connection with the use of the rest of the site by Heart of England Promotions. The extension is in the form of a lean-to addition to the main building, and is laid out as a separate room with tables and chairs for 64 diners. It is used to provide catering for some of the corporate events, but since early 2005 it has also been open to the general public and is widely advertised as a restaurant, open at both lunchtimes and evenings.

5. A number of themed party nights have been organised in the event building, with tickets for sale to the general public, and the appellant has obtained a licence for alcohol sales and live music until 0200 hours. The Council is concerned that the business might evolve into a nightclub, but the number of such events has been few to date. The Council continues to monitor that aspect of activities at the site, but has not yet considered it expedient to take enforcement action.

Appeal A – Evening Opening

6. I consider the main issue to be the effect of extended opening hours on the living conditions of nearby residents, with particular regard to noise and disturbance.
7. The potential for noise nuisance arises from disco music on the occasions when corporate hospitality events extend into the evening, and from the coming and going of cars. Not all events continue into the evening, and the appellant estimates that there have been about 30 such events during the last year. The appellant emphasised at the hearing that there is no intention to continue outdoor events after 18:00 hours.
8. The most noise-sensitive property is a bungalow located close to the original site access, although that was unoccupied at the time of the hearing. The appellant points out that the former occupiers of that property never complained about noise and disturbance. Otherwise, there are a few houses at Chapel Green, about 170-200m from the main building on the opposite side of Meriden Road, and a house at a similar distance on Wall Hill Road. The Council has received two noise complaints in the past, both related to daytime outdoor events. The main building is sound insulated, and there is no history of complaints relating to noise from evening activities, although one objection in response to the appeal referred to noise from an indoor function.
9. The appellant has commissioned a noise assessment report from a noise consultant. Measurements were taken at two points near houses when the disco equipment was being operated at full power. The houses at Chapel Green are located closer to an elevated section of the M6 motorway than they are to the conference and event centre, and there is a continuous background roar of traffic. The noise consultant's evidence is that the high level of traffic noise on the M6, particularly from HGVs, continues into the late evening. Against that background, the findings of the report are that the beat of music is imperceptible at Chapel Green. The music was found to be just perceptible at the rear of the bungalow on the original site access. The Council does not dispute the findings of the noise survey, but remains concerned about the potential for future noise nuisance in the evenings.
10. A new site access direct onto Meriden Road (completed in 2005) takes traffic away from the nearest bungalow. The houses at Chapel Green are in a hollow set back from Meriden Road, and are not directly exposed to the noise of vehicles entering and leaving the appeal site.
11. I am satisfied on the evidence before me that the use of the main building for corporate events between the hours of 18:00 hours and 23:30 hours has no unacceptable effects on the living conditions of nearby residents in terms of noise and disturbance. My conclusion relates to the authorised uses of the site, and I draw no conclusion about the effects of the themed party nights that have from time to time continued until 0200 hours.

12. I intend to allow the appeal and to vary the disputed condition. The Council considers that a compromise relaxation until 20:00 hours might be acceptable. Since there is no evidence of significant noise nuisance, there is no reason in my view to require the use of the main building to cease before 23:30 hours. I will make it clear that the variation applies to the use of the main building only, and not to the recreational use of the open land.
13. I have had regard to the likely effect of the extended hours in helping to secure existing jobs at the site and in enhancing the business and tourism benefits of the conference and events centre.

Conclusion – Appeal A

14. For the reasons given above and having regard to all other matters raised, I conclude the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting others and retaining the relevant non-disputed conditions from the previous permission.

Appeal B – The Restaurant

Ground (c)

15. The appeal on ground (c) is on the basis that there has been no breach of planning control because the appellant considers that the use of the restaurant by the general public falls within the wide terms of the planning permission for the “recreational use” of the site. In the appellant’s view, if the Council had wished to restrict public access to the catering facilities, a condition to that effect should have been attached.
16. The restaurant operates under the control of Heart of England Promotions Ltd. and it serves both delegates at corporate events and the general public. For instance, when there are large corporate events, the whole of the restaurant is reserved for the event, but on other occasions it is available for public bookings. Sometimes, a block of tables is reserved for delegates and the rest are available to the public.
17. The Council was aware when permission for the extension was granted in 2004 that it was intended to be used for catering purposes in connection with events taking place on the site, although it was not then described as a “restaurant”. The enforcement notice does not require the cessation of the use of the dining facilities by delegates at events.
18. The Council accepts that the term “recreational use” for which planning permission was granted leaves a margin for interpretation, but contends that use of the catering facilities by people who are not attending events amounts to a material change of use.
19. In ordinary usage, the term “recreational use” embraces a very wide spectrum of activities, and I consider that some interpretation of the meaning of the permission is necessary for planning purposes. The Courts have held that the meaning of a planning permission should be apparent on its face, but that extrinsic evidence might be admitted to resolve any ambiguity. It has also been held that “the factual matrix” could be taken into account in construing a permission, and that this could include the circumstances in which the application was made and approval was given.
20. A letter on behalf of the appellant dated September 2000 (before the trial period was first permitted), described the proposal as a farm diversification scheme and emphasised the use

of the fields for archery, football, volley ball and team-buildings events using temporary structures. A committee report before the trial period was extended for a further period describes the outdoor activities taking place, the inclusion of more formal training sessions in the building and the provision of ancillary toilet and kitchen facilities. The purpose of the trial period was to enable the local planning authority to assess the impacts of the change of use, and I consider that the permanent permission granted in 2004 can therefore be interpreted in the light of the use of the site during that period. In my opinion a key element of the permitted use is the open-air recreational use of the fields, which provides the underlying justification for the rural location of the events.

21. The appellant contends that The Council could have attached a condition to expressly limit use of the catering facilities by the general public, and makes reference to the case of *I'm Your Man v Secretary of State for the Environment [1999]*. However, in this case a material change of use is alleged and not the breach of a time limitation, which was the issue in the above case. I consider that the description of development for which permission is granted is relevant in determining whether a material change of use has occurred.
22. The 2004 permission limits the meaning of "recreational use" in several ways, for instance by the inclusion of a condition preventing recreational use involving motorised vehicles and another prohibiting fireworks except on particular dates. However, I consider that the Council can not be expected to anticipate every possible unintended aspect of the permission and to preclude them all by way of an exhaustive list of conditions.
23. In my view, members of the general public dining at the restaurant are likely to be there for that sole purpose. The appellant refers to woodland walks available on the land, but I think it most unlikely that many of those attending the restaurant for the "fine dining experience" that the appellant says it offers, would be attracted by the walks or recreational activities on the farm.
24. In my view the use of the on-site dining facilities by delegates at events is ancillary to the primary planning purpose of the site – the provision of corporate or group events that include outdoor recreational activities. The additional use as a restaurant open to the general public in my opinion amounts to a use of a different character that is materially different from the "recreational use" for which planning permission was granted.
25. I regard the site as a being a mixed use for recreational and restaurant purposes and not within any use class. As such the restaurant element of the use does not fall within Use Class A3.
26. I conclude that the use of the restaurant by members of the public not attending events at the site amounts to a material change of use for which planning permission is required. There has therefore been a breach of planning control, and the appeal on ground (c) fails.

Ground (a)

27. I consider the main issues to be:
 - (i) Whether the location of the restaurant is consistent with sustainable development principles, particularly in terms of private car use.
 - (ii) Whether the change of use is inappropriate development in the Green Belt.

- (iii) The effect of the change of use on noise and nuisance.

Sustainable Development

28. National planning policies in Planning Policy Statement 1 (PPS1) set out key principles for the delivery of sustainable development. The reduction of energy use and emissions by reducing the need to travel by private car are key objectives. This is also expressed in Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7). Paragraph 17 supports the re-use of existing buildings in the countryside where this would meet sustainable development objectives. The North Warwickshire Local Plan was adopted in 1995 and no equivalent sustainable development policies have been drawn to my attention. However, the local plan review is at a post-inquiry stage, and policy ECON 12 introduces sustainability criteria for considering the adaptation and re-use of rural buildings. There, it is stated that the principles of sustainability concern accessibility and the prudent use of natural resources. An order of priority for the use of rural buildings is set out, with first priority given to farm diversification schemes. Employment uses focus on local and rural uses and exclude town centre-type uses. Although policy ECON 12 does not carry the full weight of an adopted development plan policy, it is in accordance with national policy, and I accord it considerable weight.
29. The restaurant is advertised as "The Quicken Tree Restaurant" and is in a rural location about 3km from the large village of Meriden, about 5km from the outskirts of Coventry and about 10km from Nuneaton.
30. The appellant emphasises that the site is subject to a Green Travel Plan drawn up in the form of a section 106 agreement in the context of the permission for the recreational use. This has clear targets for reducing car use; is independently monitored and contains financial penalty clauses if targets are not met. The appellant further contends that restaurant customers increasingly share cars and taxis because of drink/drive legislation.
31. In the Council's view a country restaurant of this type inevitably encourages car trips from towns and villages some distance away. The Council draws a distinction between corporate events, where there is a reasonable prospect of arranging group coach transport in accordance with the Green Travel Plan, and restaurant customers, whose transport choice is effectively limited to the car or taxi.
32. It seems that Heart of England Promotions is achieving the initial Green Travel Plan targets and that coach and minibus use is having some effect in reducing car travel to events. The new access onto Meriden Road overcomes the problem of difficult coach access via the original access. However, the travel plan targets are expressed in terms of reducing single-occupancy car trips to the site. Whilst this may be a useful yardstick in relation to corporate events, I am not convinced that it is appropriate for restaurant customers. In my experience people going out for a meal to a restaurant would normally travel at least as a couple, and very few travel singly. My assessment is that the Green Travel Plan target of reducing single-occupancy car trips would in practice require no action to reduce car trips to the restaurant. I therefore attach little weight to the existence of the Green Travel Plan in considering the restaurant use.
33. I agree with the Council that the promotion of the dining facilities as a country restaurant inevitably attracts a significant number of car trips in addition to those generated by organised groups attending events. Unlike those attending land-based outdoor events at the

centre, restaurant customers have no particular need to travel to a relatively isolated rural location. Because of the location of the site, I think it likely that restaurant customers would travel between 3-10 km each way. I recognise that there will be a degree of car and taxi sharing but this does not fully overcome the effect of the distances involved. There is a limited daytime bus service along Meriden Road, but the appellant accepts that this would be of negligible use to restaurant customers. Compared to a restaurant in a town or large village centre, I consider it very probable that those dining at The Quicken Tree travel further and with a greater dependence on the private car.

34. I can understand the appellant company's desire to open the restaurant to fill the quiet spells between corporate events and to fully utilise chefs and catering staff, but that consideration does not overcome the planning policy conflict.
35. I consider that the use of the premises as a restaurant open to the public conflicts with draft local plan policy ECON12 and with thrust of national policies in PPS1 and PPS7 to locate development so as to reduce the need to travel by private car. I conclude on the first main issue that the location of the restaurant is not consistent with sustainable development principles.

Green Belt

36. The site is in the Green Belt, where strict control is exercised over the erection of new buildings. In this case planning permission has been granted for the building used as the restaurant and kitchen extension. A statement on behalf of the company in support of that application in 2004 said that existing facilities at the conference centre were "not able to provide sufficient variety of fayre to a demanding clientele". I therefore take it that, in granting the permission, the Council accepted that the extension would be used for catering purposes. The issue is therefore whether the change of use to a mixed use including public use of the restaurant conflicts with Green Belt policy.
37. Paragraphs 3.8 and 3.12 of Planning Policy Guidance 2: Green Belts advise that material changes in the use of existing Green Belt buildings are not inappropriate, provided a number of safeguards are met. Local plan policy BEM6 contains similar criteria. The additional use of the building does not conflict with any of those criteria and does not conflict with the purposes of including land in the Green Belt. In Green Belt policy terms it is of little consequence whether the approved building is used for dining purposes by delegates attending events or by members of the public.
38. I conclude on the second main issue that the change of use to a mixed use is not inappropriate development in the Green Belt.

Noise and Disturbance

39. The restaurant uses background music only, and is separated from the main event hall. For the reasons given in paragraphs 9 and 10, above, houses in the vicinity are not directly exposed to the noise of vehicles coming and going at the new site access. I am satisfied that the public use of the restaurant gives rise to no unacceptable additional noise and disturbance for residents in the area.

Conclusions – The Restaurant, Appeal B

40. Notwithstanding my conclusions that the public use of the restaurant is acceptable in Green Belt policy grounds and causes no unacceptable noise and disturbance, this does not overcome the harm I have identified under the first main issue concerning sustainable development.
41. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal C - Display of Equipment for Sale

42. This enforcement notice and appeal arises from the appellant's attempts to sell a number of trailers and vehicles adapted for outdoor entertainment events that are no longer required. The vehicles provide entertainment on the site and at events at other locations around the country. The appellant contends under ground (c) that there has been no breach of planning control because the sale of unwanted equipment is incidental to the permitted recreational use of the site and does not amount to a material change of use to retail sales.
43. In August 2005, five trailers were parked in a group in one of the agricultural fields, and these were listed for sale on the company web site. By December 2005 most of the items had been moved to a corner of a different field within the recreational use area, and they were still there in March 2006. At the time of the hearing some of the items had been removed from the site, and presumably sold, but a double-decker "fun bus", a "wacky warehouse" lorry and a mobile trampoline trailer are still for sale and parked next to the buildings.
44. The notice alleges the permanent display/storage of trailers/eventing equipment for sale within Use Class A1. To my mind a retail use implies some turnover in the goods for sale and replacement of sold items with new stock. This does not appear to have happened at the appeal site since the stock has dwindled and has not been replaced. The three pieces of equipment presently for sale can be seen from the Council's photographs to have been part of the original display. The appellant explains that he needed to dispose of a whole range of equipment as the focus of the business changed, and that the only reason some is still present is because it is so specialised that there are few potential buyers.
45. I am not convinced that what has taken place is a retail use, as alleged in the notice. Provided the items for sale are kept within the permitted recreational area, I consider that the fact that they are for sale can be regarded as incidental to the permitted use. I therefore conclude that the display of items for sale described in the notice does not amount to a material change of use to Use Class A1, for which planning permission is required. The appeal succeeds on ground (c). It is therefore not necessary for me to consider the appeal on ground (f) that was introduced at the hearing.
46. Notwithstanding my conclusion on the retail use, I understand the Council's concern about the long term storage of large vehicles in the open fields. I understand that a Breach of Condition Notice has been issued in respect of some other pieces of equipment.

Conclusion – Appeal C

47. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed on ground (c). Accordingly the enforcement notice will be quashed.

Formal Decisions

Appeal A: APP/R3705/A/05/1189445

48. I allow this appeal and grant planning permission for the continued recreational use of land and buildings without compliance with conditions 1, 5, 7, 8, & 10 of consent ref 0214/02 at Old Hall Farm, Fillongley in accordance with application Ref PFILXX/0690/2005/FAP made on the 2nd June 2005 without compliance with condition number 3 attached to that permission, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to the following two new conditions.

3a. No activity in connection with the approved use shall take place in the open air on the land other than between the hours of 08:00 and 18:00 hours on Mondays to Saturdays and no such activity shall take place on any Sunday.

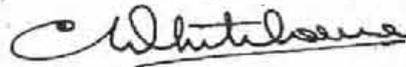
3b. No activity in connection with the approved use shall take place within the buildings on the site other than between the hours of 08:00 and 23:30 hours on Mondays to Saturdays and no such activity shall take place on any Sunday.

Appeal B: APP/R3705/C/05/2005291

49. I direct that the enforcement notice be corrected by deleting the references to Use Class A3 in paragraphs 3 and 5. Subject to these corrections, I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C: APP/R3705/C/05/2004845

50. I allow the appeal and direct that the enforcement notice be quashed.



INSPECTOR

(2) Application No PAP/2009/0440

Atherstone Station Long Street, Atherstone

Listed Building Consent for demolition of station footbridge for Network Rail Infrastructure Ltd

Introduction

This application is reported to Board at Officer's discretion because it involves the demolition of a Building within the curtilage of a Listed Building.

The Site

The station is at the eastern end of Long Street, beyond its junction with Station Street and close to the Old Watling Street junction. The main station building is on the northern side of the line, and the platform on the other side of the four tracks here is reached by the footbridge the subject of this application.

The Proposal

It is proposed to demolish the footbridge. It is currently closed to pedestrians for safety reasons. No replacement is proposed. Access to the other platform is currently by foot, via an under bridge using the Old Watling Street and new steps and ramps up to the platform.

Background

Atherstone station opened in 1847 and the present Victorian building still remains. The footbridge was in fact added later, as at this time the line was crossed by a level crossing. The original footbridge was provided in 1860 but this was only over the two lines that existed at that time. In 1901 the number of lines was doubled and the bridge expanded leading to the two span construction, as seen today. The original wrought iron span with its lattice girders is above the down lines (away from London), and the newer steel frame with steel cross bracing is over the up lines (towards London). Both spans are supported by trestles and these together with the central columns were extended further when the footbridge was raised for electrification in 1967. In 1985 there was extensive replacement of the stair balustrades.

The station building was listed as Grade 2 in 1980, and the bridge is thus included as a curtilage building.

In 2002, the bridge underwent a series of structural assessments and failed to meet current standards. Since then it has been the subject of a regular inspection regime. In 2004, structural strengthening was recommended in the medium to long term in order to enable full use of the bridge. However the bridge continued to deteriorate – in June 2007 and again in 2008, sections of cross bracing fell onto the tracks. In June 2008, a further structural report concluded that, “the structure is generally deteriorating”, and “the entire structure needs major work to extend its life or ideally replaced”. The bridge was inspected again in April 2009. That report concluded that whilst some repair work had been undertaken there was still urgent work to do as, “the treads could fail without warning”, and that inspections should be undertaken on a fortnightly basis due to the increased patronage. The bridge was consequently closed in May this year and the stairs removed to prevent access.

Network Rail estimates that repair work to retain the current bridge would be of the order of £0.95 million, but that this would only provide an additional 25 year life. They say that replacement at that time would almost certainly be necessary. This cost is arrived at as a nearby bridge in Mancetter was repaired for £0.65 million recently, but that was a different structure, with different foundation details, and not placed on platforms where there was

passenger access. Hence the station bridge would cost more. However, Network Rail points out that a repaired bridge would not enable disabled access, and that the present structure would not adapt easily to the incorporation of ramps. A new bridge it is said, fully compliant with current access standards, would be of the order of £1million, and have a life span of 100 years. Network Rail therefore argues that repair work will cost around £0.95 million now, but that the bridge will require replacement in 20 – 25 years time, and that cost may be of the order of £1.6 million. Replacement now would cost £1million. Network Rail do not see this, whichever option is taken, as being cost effective, as this amount of money could be spent on developing and improving the existing temporary arrangements.

Development Plan

Saved Policies of the North Warwickshire Local Plan 2006 – ENV15 (Listed Buildings)

Other Material Planning Considerations

Government Guidance in PPG15 (The Historic Environment)

Consultations

English Heritage – The decision can be taken by the Council with reference to local and national policy and guidance.

The Council's Heritage and Conservation Officer – Agrees that the current structure is much altered and that there is very little surviving of the original bridge of any value in architectural terms. It is accepted that the bridge is unsafe. Any replacement structure, or the incorporation of ramps to the existing repaired structure would be very likely to be out of keeping with the scale and appearance of the current station building, and thus could damage its setting.

Representations

Atherstone Civic Society – In its view, the bridge has undergone so many changes, that its integrity has almost been completely destroyed. There is nothing distinctive about the existing footbridge, and it has no useful function as it can not be made DDA compliant. Its only function is as a reminder. Whilst the Society would like to see it restored, it considers that this is an unlikely option, and thus accepts its removal.

Atherstone Town Council – objects to the removal as it has not been demonstrated that there is a risk to the structure. It should be retained as part of the station's and thus town's heritage.

One letter of no objection has been received but the author is concerned about the possible scope and impact arising from any permanent alternative measures that increase vehicular access to the southern platform.

Two objectors say that the bridge would be a loss of the town's heritage as the bridge is a substantive feature of the station.

A further objector raises a number of issues: the bridge is a longstanding and significant part of the station complex and should be retained; a similar bridge at Mancetter was repaired by Network Rail a few years ago, the 2004 report was not acted upon at the time and the lack of foresight by Network Rail should not now be used for not acting now, the bridge reflects the historical periods throughout the railway's history in the town and should thus be retained, the alternative measures now in place are poor and not attractive or conducive to increasing rail patronage, even with improvement they would not be so attractive as the bridge in enabling increased passenger numbers, good designed ramped structures can be designed, and the indication from Network Rail that there are no other groups interested in taking the bridge are incorrect.

Observations

The demolition of any Listed Building is not to be taken lightly. Guidance is provided in PPG15 and in Development Plan policy. Key factors in balancing the arguments for demolition with the objective of retaining buildings of heritage importance are identified as being the architectural and historic merit of the building; its setting and contribution to the local scene, its condition, the cost of repair and maintenance, the adequacy of efforts to retain the building in use, the merits of alternative proposals for the site, and the value to be derived from its continued use. These will be looked at in the context of the particular circumstances here.

Firstly the bridge as seen today has only a small proportion of its original structure present, and as such it is overshadowed in its appearance by the introduction of the more modern aspects of the second span and the changes made to the stairs. Moreover the whole bridge has been raised significantly. This building has been much altered and therefore its architectural merit has been much reduced. It is noticeable that both the Council's Heritage Officer and the Civic Society agree that there is very little left of the original structure and that the subsequent adaptations have left a structure of very limited architectural merit or interest.

Secondly, it is accepted that there is historic merit in the retention of the structure because of its longstanding functional association with the station, and as an illustration of how it has evolved over time, adapting to changing circumstances. That evolution however has led to a situation where there are now inherent and significant structural concerns, and where the bridge is unlikely to be capable of further adaptation to modern standards, again without further intrusive works. The weight to be given to the historic merit of retention is thus weakened. Additionally, the issue of the provision of alternative arrangements is now more significant than at any time in the history of the station.

Thirdly, it is accepted that the bridge is currently unsafe. The 2004 report is important in that it identifies the bridge as being in poor condition and subsequent reports, even with intervening works, show a fast deteriorating and potentially dangerous structure, which has had to be closed for safety reasons. Recommended structural repairs are said to have a reasonable life span of 25 years. The longevity of the structure is thus of real concern, and this will carry significant weight.

Fourthly, it is also significant that a repaired bridge would still not provide access for all customers and visitors. Alternative measures would need to be in place. Whilst the existing bridge could be adapted to meet the needs of these groups, the works involved would be likely to further compromise the architectural merit of the bridge, and in all likelihood have a significant impact on the setting of the Victorian station as a Listed Building. Whilst the historic function in retaining the bridge would have been retained, the impact would be likely to be adverse and significant. It is considered that the removal of the bridge could in fact open up the vista of the station because the bridge is so close to that building.

Fifthly, alternative measures are in place to fulfil the function of this bridge. At present, these are temporary given the need to act quickly to the closure of the bridge. However it is feasible to make these permanent, and to improve their accessibility.

Given all of these circumstances, it is considered that there is a strong case for demolition. Before endorsing such a recommendation however, the Board needs to consider the suggestions made by the representations concerning the approach here of Network Rail. Whilst there may be some justification in saying that Network Rail should have acted sooner on the conclusions of the 2002 and 2004 reports, it is considered that the structural integrity of this particular bridge would eventually always have given rise for concern. Continued intervention too would always reduce the architectural interest and merit in retaining the structure. The historic interest in retaining a bridge in order to maintain the Victorian setting of the Listed Building is understood, but is that association so essential that it should extend to retaining a much repaired but perhaps unused bridge. There has been interest shown by Historical Societies in taking the bridge if it is to be removed and this is welcome, although

this should not be given substantial weight in the determination of this application. The issue with Listed Buildings and associated structures, is the significance of their original location within the local setting.

The determination here rests on the weight to be given to the retention of this bridge for its historic association and thus “group” value within the curtilage of the listed station. It is considered that the limited architectural interest of the bridge; the enhancement to the setting of the station through its removal, the structural condition of the bridge, the comparable costs of repair giving a limited lifespan and replacement, and the fact that it would still not be wholly accessible outweigh the key issue identified above. The future aspirations of Network Rail are not material to this determination, the application needing to be determined on its merits as a building within the setting of a Listed Building.

Recommendation

That Listed Building Consent be **Granted** subject to the following condition:

- i) Prior to the demolition of the bridge a photographic record of the bridge shall be made in accordance with a brief that shall first have been agreed in writing by the Local Planning Authority. The record so obtained shall be made available for public inspection.

Reason: In order to record the structure for the public interest before it is removed.

Notes:

- i) Network Rail is advised to make every effort to ensure that the structure is removed to a Heritage Railway or Railway Society or other such Group where it can be retained. A written record of these efforts shall be forwarded to the Local Planning Authority.

Policies: As set out above

BACKGROUND PAPERS

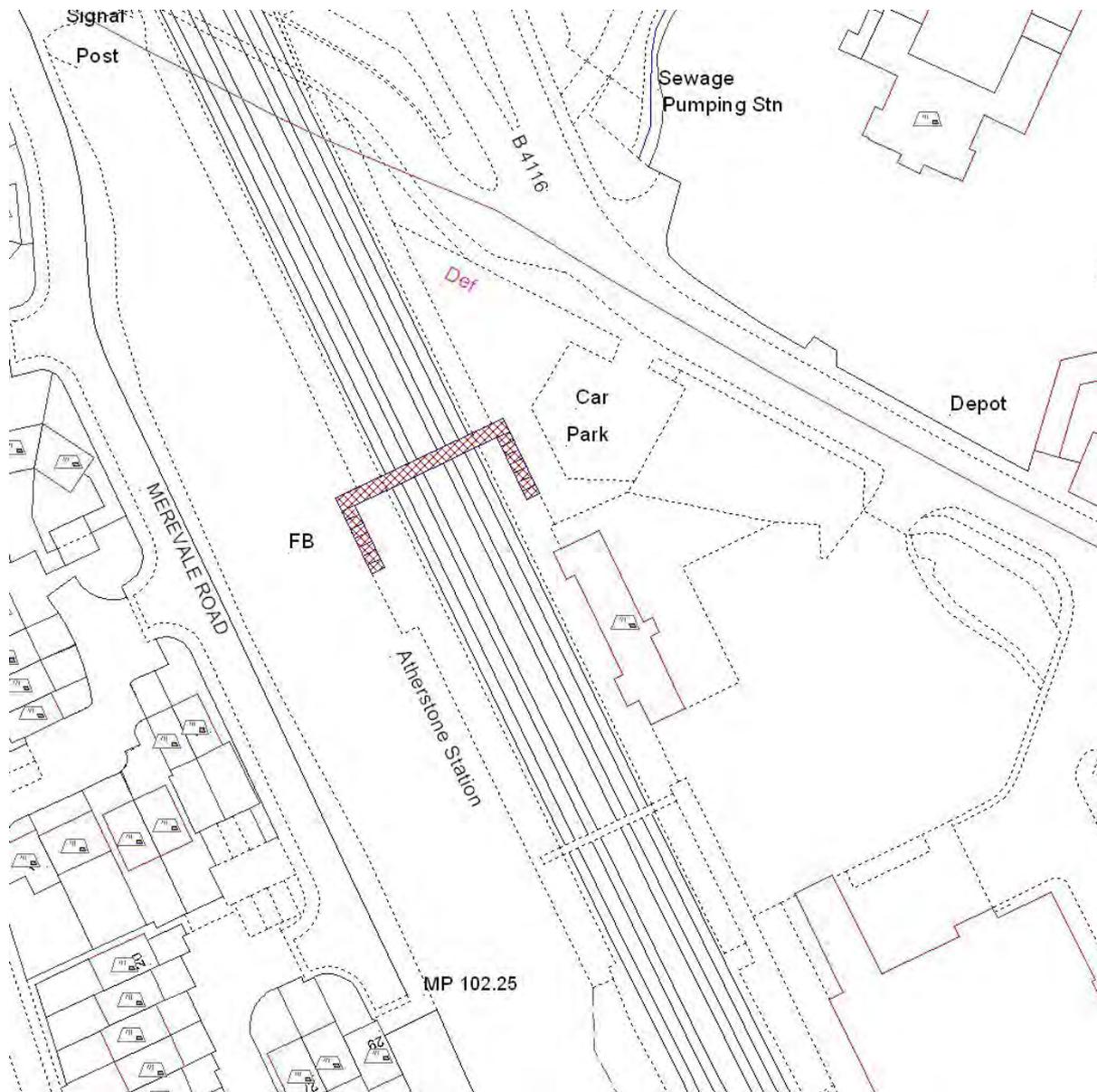
Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2009/0440

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Applicants Agent	Planning Application Forms and Plans	22/9/09
2	M Butler	Representation	8/10/09
3	M Reeves	Objection	9/10/09
4	Head of Development Control	Letter	12/10/09
5	Atherstone Civic Society	Representation	15/10/09
6	D Peel	Objection	16/10/09
7	English Heritage	Consultation	16/10/09
8	D Atkin	Objection	19/10/09
9	Atherstone Town Council	Objection	22/10/09
10	Network Rail	E-mail	21/10/09
11	Head of Development Control	Letter	26/10/09
12	Mr Atkin	E-mail	23/10/09
13	Network Rail	E-mail	27/10/09
14	Network Rail	Letter	28/10/09

Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.

A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.



Agenda Item No 5

Planning and Development Board

16 November 2009

Report of the Chief Executive and the Director of Resources

Progress Report on Achievement of Corporate Plan and Performance Indicator Targets April 2009 – September 2009

1 Summary

- 1.1 This report informs Members of the actual performance and achievement against the Corporate Plan and Performance Indicator targets relevant to the Planning and Development Board for the second quarter April 2009 to September 2009.

Recommendation to the Board

That Members consider the achievements and highlight any areas for further investigation.

2 Consultation

2.1 Portfolio Holder, Shadow Portfolio Holder and Ward Members

- 2.1.1 The Portfolio Holder and Shadow Portfolio Holder for Resources, Councillors Bowden and Butcher have been sent a copy of this report and any comments received will be reported to the Board.

3 Introduction

- 3.1 This report is the second report for the 2009/10 year and reflects the Corporate Plan, which has been agreed for 2009/10. A key change to last years reports were the introduction of new national indicators and the removal of some of the best value performance indicators. The new national indicators include some of the existing best value performance indicators. Management Team have agreed which existing performance indicators are to be monitored during this year. The indicators relevant to this board are shown in Appendices A and B. There are no new national indicators relevant to this board.

...

- 3.2 Management Team receive monthly reports from each division and are monitoring performance on an exception basis i.e. they are reviewing all the red and amber responses. This report informs Members of the progress achieved during the first quarter from April to June 2009 on all of the Corporate Plan and Performance Indicators relevant to this Board. The following definition has been applied using the traffic light warning indicator of red, amber and green.

Red – target not achieved

Amber – target currently behind schedule and requires remedial action.

Green – target achieved.

4 **Progress April 2009 to September 2009**

- 4.1 Attached at Appendices A and B are reports showing all the Performance Indicators and Corporate Plan targets relevant to this Board. The report is split into divisions as appropriate. The report includes individual comments where appropriate against each of the targets and indicators prepared by the relevant division. The report shows the following status in terms of the traffic light indicator status:

Corporate Plan

Status	Quarter 2 Number	Quarter 2 Percentage
Red	0	0%
Amber	1	33%
Green	2	67%
Total	3	100%

Performance Indicators

Status	Quarter 2 Number	Quarter 2 Percentage
Red	0	0%
Amber	1	33%
Green	2	67%
Total	3	100%

5 **Conclusion**

- 5.1 The progress report shows that 67% of the Corporate Plan targets and 67% of the performance indicator targets are currently on schedule to be achieved. Members are asked to consider the achievement overall and to identify any areas of concern which require further investigation.

6 **Report Implications**

6.1 Safer Communities Implications

- 6.1.1 Major applications are considered by the Police Architectural Liaison Officer who is looking to ensure that Secure by Design principles are applied for new developments.

6.2 Legal and Human Rights Implications

- 6.2.1 The new national indicators have been specified by the Secretary of State for Communities and Local Government as part of a new performance framework for local government as set out in the local Government White Paper Strong and Prosperous Communities.

6.3 Environment and Sustainability Implications

- 6.3.1 Improvements in the performance and quality of services will contribute to improving the quality of life within the community.

6.4 Risk Management Implications

6.4.1 Effective performance monitoring will enable the Council to minimise associated risks with the failure to achieve targets and deliver services at the required performance level.

6.5 Equalities

6.5.1 There are indicators relating to Equality reported to other Boards.

6.6 Links to Council's Priorities

6.6.1 There are a number of targets and performance indicators included relating to protecting and improving our environment, defending and improving our countryside and rural heritage and working with our partners to tackle crime.

The Contact Officer for this report is Robert Beggs (719238).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date
National Indicators for Local Authorities and Local Authority Partnerships	Department for Communities and Local Government	Statutory Guidance	February 2008

Corporate Plan

Ref	Start Date	Action	Board	Lead Officer	Reporting Officer	Theme	Sub-Theme	Update	Traffic Light	Direction
30	Apr-09	Increase Section 106 contributions for Open Space provision and off site landscaping through the adoption of the Open Space Planning Document in Summer 2009	Planning and Development	DCE/ACESC	Forward Planning Manager	Countryside & Heritage		Work on a final SPD is not being progressed at current time due to work on Core strategy.	Amber	↓
31	Apr-09	To apply the Enforcement Policy as amended	Planning and Development	DCE	Head of Development Control	Countryside & Heritage		Annual Performance reported to P and D in Aug 2009. Policy working well.	Green	↔
38	Apr-09	Using the planning system to protect our best old buildings and ensure that new build design is in keeping with the character of the area, including continue to Implement the Partnership Schemes in Conservation Areas for Atherstone	Planning and Development	DCE/ACESC	Forward Planning Manager	Countryside & Heritage		Work is continuing on the scheme. All work must be completed by end of November and claimed by the end of December 2009. Staffing issues have impact on other work but delivery of this project still on target.	Green	↔
41	Apr-09	Maintaining a three-year cycle for the Civic Award Scheme by holding an event in 2012	Planning and Development	DCE	Director of Community & Environment	Countryside & Heritage		Work will be carried out during 2011 for this.		

Performance Indicators

PI Ref	Description	Division	Section	Year End Target	2008/9 Year End	National Best Quartile	SPARSE Best Quartile	Performance	Traffic Light Red/Amber/ Green	Direction	Comments	Suggested reporting interval	Board
NI 157a	Processing of planning applications as measured against targets for major application types	Development Control	Development Control	65	86.67%			70.00%	Green	↓		Q	Planning and Development Board
NI 157b	Processing of planning applications as measured against targets for minor application types	Development Control	Development Control	85	82.91%			86.59%	Green	↑		Q	Planning and Development Board
NI 157c	Processing of planning applications as measured against targets for other application types	Development Control	Development Control	95	90.96%			92.40%	Amber	↑	Await full year results	Q	Planning and Development Board