

Development Management Committee
29th March 2017

Directorate of Community
and Environment
Planning Report No. PLN1707

Appeals Progress Report

1. Appeal Decisions

- 1.1 Appeal against refusal to grant planning permission for refusal of planning permission for the change of use of rear ground floor from Use Class A2 (financial and professional services) to a one bedroom flat, with minor external alterations at: **Ground floor rear 41 Victoria Road Farnborough (16/00356/FULPP)**.
 - 1.1.1 Planning permission was refused on the grounds that no car parking provision had been made to serve the development, and the impact of an additional dwelling on the Thames Basin Heaths Special Protection Area (TBHSPA) had not been mitigated.
 - 1.1.2 The Inspector determined that the site is located in convenient proximity to both a range of shops, services and facilities along with public transport provision. It is therefore a location, in his view, where a future occupier of the flat would not necessarily need to rely on owning a private vehicle for his or her day to day requirements. The Inspector concluded that although Principle 5 of the Council's Car and Parking Standards Supplementary Planning Document (spd) (2012) requires the provision of at least one car parking space per dwelling it also recognises in the accompanying text that in some circumstances where there has been a change of use it would still be necessary to take into account the balance of parking provision from the previous use of the building (in accordance with Principle 2). He therefore considered it relevant to take into account the existing authorised office use in this respect. Whilst the Council argued that a resident might wish to own a car and keep it close to the residence, it appeared to the Inspector that given the limitations for parking in the vicinity of the site, a future occupier of the site is likely to be dissuaded from owning a car in this case.
 - 1.1.3 The Inspector found that no material harm from the absence of parking provision would arise in relation to the overall transport and parking aims of development plan policy and the Car and Cycle Parking Standards SPD.
 - 1.1.4 With regard to the impact of the development on the TBHSPA, the appellant submitted an unilateral undertaking to pay a "Special Protection Area Contribution" of £4039 towards the improvement of open space and towards Strategic Access Management as mitigation. As the proposal did not meet the Council's criteria for allocation of mitigation no offer was made and the

undertaking was submitted without Council input. Given this, and in the absence of details of how the sum would be split between the improvement of open space contribution and the SAMM contribution, details of the improvement works, how the mitigation would be secured and information to demonstrate that the contribution would not amount to the funding or provision of infrastructure (as restricted by Regulation 123 of the CIL Regulations), the Inspector could not be certain that the appeal scheme in combination with other development, would not adversely affect the integrity of the TBHSPA. He therefore found the appeal scheme unacceptable in relation to this issue and contrary to policy CP13 and dismissed the appeal on this ground.

1.1.5 A costs application was made by the appellant against the Council. The Inspector found that, although he had come to a different view in relation to the provision of on-site car parking provision, the Council's refusal of permission, based on the development plan and other material considerations including the National Planning Policy Framework did not amount to unreasonable behaviour and an award of costs was not justified.

1.1.6 Decision – Appeal **DISMISSED**. Costs Application – **REFUSED**

1.2 Appeal against refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order at: **2 The Birches, Farnborough (16/00284/TPO)**.

1.2.1 The protected Oak tree is one of a group and located some 6m from the rear of the property within its rear garden. The Inspector found the tree to contribute to the amenity of its surroundings and that its removal would harm the character and appearance of the area.

1.2.2 The Inspector found the appellant's concerns regarding loss of light; falling debris and sap; the risk of the tree falling and damaging the property to be insufficient grounds to justify felling it.

1.2.3 Decision – Appeal **DISMISSED**.

2. Update Following Appeal Decision

2.1 Appeal against an Enforcement Notice dated and served on 28 September 2015 requiring the material change of use of the land from use for agriculture to a mixed use comprising: 1. sale of motor vehicles; 2. the storage of motor vehicles; 3. storage of de-polluted motor vehicles bodies and vehicle parts; 4. general storage; 5. siting of a mobile home; 6. siting of portable buildings; 7. the creation of earth bunds; 8. the creation of a hard-core standing area; 9. the creation of a tarmac car park; and 10. the erection of watchtower/camera gantry cease on: **Land at former Lafarge Site, Hollybush Lane, Aldershot**

- 2.2 In a decision dated 30 November 2016 the appointed Inspector upheld the Council's Enforcement Notice in respect of this site, with minor corrections and variations.

(A) Cease using any part of the land for:-

- motor vehicle sales;*
- storage of motor vehicles;*
- storage of de-polluted motor vehicle bodies;*
- general storage of motor vehicle parts;*
- the siting of the Mobile Home used for residential purposes [already removed];*
- the siting of the Portable Buildings marked "B" on the Notice Plan;*
- car parking;*
- the siting of the watchtower/camera gantry.*

(B) Remove from the land:-

- all motor vehicles;*
- all motor vehicle parts;*
- the Mobile Home * [already removed];*
- the Portable Buildings marked "B" on the Notice Plan *;*
- the earth bunds in the position shown marked "Y-Y" on the Notice Plan;*
- the hard core standing in the area marked "H" and shown hatched black on the Notice Plan;*
- the tarmac car park marked "C" and shown in black stippling on the Notice Plan;*
- all lighting columns; metal freight containers; skips; storage tanks; fork-lift; truck; fork-lift pallets and boxes; temporary metal mesh fence panels; refuse bins; advertising and other signage; scaffolding; assorted scrap machinery; metal; sanitary ware, furniture, tools, plant equipment and other materials;*
- the watchtower/camera gantry marked in the approximate position by a red circle on the Notice Plan.*

(C) Following the removal of the earth bunds, replant (and replace and replant any species which die or fail within five years of being replaced) the land shown marked "Y-Y" on the Notice Plan with a native mix of trees comprising oak, hawthorn, blackthorn, rowan, hazel and beech planted in a random order as young ("whip") saplings about 40 – 60cm in height at 1 metre separations into appropriately prepared soil.

- 2.3 The amended Enforcement Notice took effect from the date of the appeal decision and required the land owner to comply with the requirements of the Notice as follows:-

- Within 3 Months (i.e. by 28 February 2017) to remove from the land all of the portable buildings;*
- Within 6 Months (i.e. by 31 May 2017) to comply with the remainder of the the requirements in (A) and (B) above; and*
- Within 12 Months (i.e. by 30 November 2017) to undertake the planting of the cleared area Y-Y on the Notice Plan.*

- 2.4 The land owner took issue with one specific aspect of the requirements of the Notice. Solicitors acting for the appellant served notice on the Council by letter on 5 January 2017 of an application to the High Court for leave to appeal the Inspector's decision on the ground that the appellant believes the Inspector should have amended the requirements of the Notice to allow the material resulting from the demolition of the bunds Y-Y to be retained spread out over the land rather than being removed from the land; this was the entirety of the appellants Ground (f) appeal. The landowner asserted that the Inspector either failed to make the appropriate corrections to the Notice having concluded that they should be made; or, alternatively, did not provide any reasons for concluding that the bund material should be removed from the land having appeared to conclude to the contrary in his decision that this requirement exceeded what was necessary.
- 2.5 The appeal was lodged against the Secretary of State for Communities & Local Government (the 'First Respondent'), of which the Planning Inspectorate is an Executive Agency. The Council, being the authority whom served the enforcement notice, is the 'Second Respondent' also having the right to make representations and be heard in the High Court. Counsel was engaged by the Council to prepare a response to the appeal. It transpired that the Secretary of State did not wish to contest the appeal, leaving the clear likelihood that a Judicial Review would be allowed to proceed, with the Council alone facing the prospect and costs of contesting the case in the High Court. Although the appellant's appeal was technically lodged out of time, this point was considered unlikely to succeed in preventing a Judicial Review.
- 2.6 The Secretary of State and the Council both agreed to a Consent Order on 6 February 2017, confirming that the Ground (f) appeal should be re-considered. This was confirmed by the High Court on 13 February 2017. The effect of the Order is that the enforcement appeal has been remitted to the Planning Inspectorate for re-determination solely in respect of the Ground (f) appeal. As a result, the existing appeal decision upholding the Enforcement Notice and refusing planning permission for the unauthorised development will still stand. The response of the Planning Inspectorate, setting out how they propose to deal with the remitted Ground (f) appeal is awaited. It is possible that this could be undertaken by the Written Representations or Informal Hearing procedures, however it is considered most likely that a further Public Inquiry will be convened to re-hear and examine the Ground (f) evidence before a different Inspector at a date to be determined.
- 2.7 The immediate consequence of the High Court appeal is that the landowner no longer needs to comply with the timescale for compliance with the Notice set out earlier in this report. This is because the legal effect of the Enforcement Notice has now been suspended in its entirety pending the re-determination of the Ground (f) appeal. The new Inspector will, in due course, issue a completely new appeal decision confirming the first

Inspector's conclusions in respect of all but the Ground (f) appeal; and his or her own conclusions concerning the Ground (f) appeal. Once the new appeal decision has been issued, the Enforcement Notice would take effect again. As a result compliance with the Enforcement Notice now awaits the completion of the new Ground (f) appeal process.

3. Recommendation

3.1 It is recommended that the report be **NOTED**.

Keith Holland
Head of Planning

