

Supplementary Committee Agenda



**Epping Forest
District Council**

District Development Control Committee Tuesday, 17th January, 2006

Place: Civic Offices, High Street, Epping

Room: Council Chamber

Time: 7.30 pm

Committee Secretary: Simon Hill, Research and Democratic Services
Tel: 01992 564249 Email: shill@eppingforestdc.gov.uk

14. BLUNTS FARM, COOPERSALE LANE, THEYDON BOIS - ENFORCEMENT ACTION (Pages 3 - 20)

To consider the attached report.

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Epping Forest District Council			
Committee		Date	Classification
District Development Control Committee			For General Release
Subject of Report		Report of	
Blunts Farm, Coopersale Lane, Theydon Bois		Principal Planning Officer (Enforcement) Principal Planning Officer (Trees & Landscaping)	
Complaint number		Parish / Town Council	Theydon Bois & Theydon Garnon
Recommendation	<p>That having regard to the evidence gathered, provisions of the development plan and to all other material considerations the Committee considers the expediency of:</p> <ol style="list-style-type: none"> 1) Issuing an enforcement notice under s.172 of the Town and Country Planning Act 1990 (as amended) requiring the cessation of the importation of fill material including waste and demolition waste; and EITHER the completion of the golf course on the land in accordance with drawing number BLUN.209A approved pursuant to condition 12 of the planning permission dated 23 April 2002, Ref. EPF/765/99 OR the restoration of land levels at Blunts Farm to their original levels prior to the commencement of works on the land in 2002. 2) Issuing a further enforcement notice under s.172 of the Town and Country Planning Act 1990 (as amended) requiring the cessation of the importation of fill material including waste and demolition waste; and compliance with the requirements of condition 12 of the planning permission dated 23 April 2002, Ref. EPF/765/99. 3) Issuing a stop notice under s. 183 of the Town and Country Planning Act 1990 (as amended) requiring the cessation of the importation of fill material including waste and demolition waste. 4) In the event the Stop Notice is not complied, applying for an Injunction to prohibit the import of fill material including waste and demolition waste. 		

1 BACKGROUND INFORMATION

1.1 Description of Property to which the Enforcement Notice and Stop Notice Will Apply

1.1.1 The premises which are the subject of this report comprise land at Blunts Farm bounded by the M11 and M25 motorways to the east and north. Access is off Abridge Road to the south-west. Coopersale Lane lies to the south of the site and fields forming part of Blunts Farm lie to the west. The land falls from the edges of the site to two watercourses, the larger known as Garnish Hall Stream. Footpath No 5 crosses the site adjacent to Garnish Hall Stream. Footpaths 10, 14, 22 and 27 cross the

northern part of the site. Footpath No. 4 follows much of the north western site boundary.

1.1.2 The site is now a construction site for a golf course. The construction works are taking place following the grant of planning permission on 23 April 2002, Ref. EPF/765/99 for the development of an 18 hole golf course and associated landscaping /contouring.

1.2 Conservation Area

1.2.1 Not in a Conservation Area.

1.3 Green Belt

1.3.1 Within the Metropolitan Green Belt.

1.4 Preserved Trees

1.4.1 There are 60 preserved trees on or adjacent to the land.

1.5 Relevant Planning and Enforcement History

23.04.02. Planning permission given for *“18 hole golf course, practice ground, academy and associated landscaping/contouring including water features and creation of planted buffer zone to eastern boundaries, and access to Abridge Road.”* Ref. EPF/765/99.

This permission was given subject to a number of conditions. Condition No. 12 is relevant to this matter. It states *“No development shall take place until details of earthworks have been submitted to and approved in writing by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas including the contours to be formed, showing the relationship of the proposed mounding to existing vegetation and surrounding landform. Development shall be carried out in accordance with the approved details.”*

06.10.03. Details submitted pursuant to condition 12 by Swan Golf Design (SGD) on behalf of Parsonage Golf. Indicated on drawing nos. BLUN.205, 206, 207, 208 and 501. The drawings of greatest relevance to this report are BLUN.205 and 206. BLUN.205 is a coloured contour schematic that includes details of the area of works proposed on the site and the proposed volumes of material to be imported and excavated. BLUN.206 shows indicative earthworks grading. In their covering letter SGD states *“The quantities stated on drawing BLUN205 are as per our planning submission statement and as per our presentation made to the Ad Hoc Committee.”*

27.10.03. Council letter to SGD advising that the proposed height of mounding was excessive.

05.12.03 Revised details submitted pursuant to condition 12 indicated on drawing no. BLUN.209.

16.02.04. Conditional approval of details submitted pursuant to condition 12. The approved drawings are Nos. BLUN.208A and 209A. Drawing No. 209A indicates levels by means of contours and identifies areas of moundwork (208A related to sections only). The condition on which approval was given was that the following information be submitted to the Local Planning Authority:

- (1) A method statement giving proposed methodology for stripping topsoil and subsoil for capping (area/depth), storage and replacement.
- (2) A plan showing the limitations of the areas of work for construction of inter-fairway mound work, marking that on the ground and controlling it.
- (3) Specify in items 1 and 2 that topsoil from out of play areas will be used for covering the works

01 & 03.
04.04 Details of methodology submitted by SGD. The methodology comprised a written statement and made reference to previously submitted drawing no. BLUN.205, an extract of which was attached. It was clarified that, as indicated on drawing BLUN.205, the total proposed area of interfairway moundwork would be 96,000 m² and that the total proposed area of additional buffer moundwork would be 24,000m².

Drawing No. BLUN.205 also indicates that the volume of construction material required for the interfairway moundwork would be 140,000m³, the volume of construction material required for the buffer zone would be 29,000m³, lake excavations would generate 20,000m³ to be used for greens and tees and areas of cut and fill would give approximately 16,000m³ to also be used for greens and tees.

SGD therefore provided information pursuant to condition 12 indicating the total area of mounding would be 120,000m² and the total volume of ground-raising would be 169,000m³.

Note: It was understood the amount of material to be imported would exceed this volume to allow for necessary compaction. This accounts for a potential difference between the volume of compacted material required for the approved works and the volume of loose material brought to the site to achieve them, which is likely to be larger.

No Council letter was sent confirming whether or not the methodology is acceptable but a note to the planning officer dealing with the application from the Principal Planning Officer (Trees and Landscaping) following the receipt of additional information from SGD on 31st March 2004 indicates that the submitted methodology (including BLUN.205) is acceptable.

In order to verify compliance with the approved plans all parties have relied both on the approved levels drawing, BLUN.209A and the methodology including BLUN.205.

30.03.04 A programme of regular site meetings with SGD on a 4-6 weekly basis was begun with additional intermediate enforcement visits. All discussions were on the basis of the methodology including BLUN.205.

14.04.04. Mr P Newman of Parsonage Golf notified the Council by letter that work on the site commenced that day.

22.04.04. The Ongar Park and Blunts Farm Golf Courses- Ad Hoc Special Committee met. In respect of Blunts Farm golf course the minutes of the meeting state: *“The Head of Planning and Economic Development advised that revised plans showing increases in levels on the site had been agreed since the last meeting of the Committee (19/11/03) and as a result all of the outstanding conditions attached to the planning permission had been met. The plans were in sufficient detail to enable a calculation to be made of the volume of imported material required to achieve the approved levels. The meeting noted that the amount of imported material would be far less than that which had been taken to the Ongar Park site.”*

The Committee discussed steps, which would be taken to monitor the volume of imported material, and resolved, inter alia:

- (1) That the tightest possible control be exercised over the deposit of imported material onto the site.
- (2) That officers write to the developer expressing concerns about the volume of imported material required and advising that surveillance will be kept to ensure that the amount imported does not exceed the volume required to achieve the approved levels.

From 29/04/04, 3-weekly site visits were carried out by an enforcement officer, in addition to visits by the Principal Planning Officer (Trees and Landscaping). The report to the meeting of Overview and Scrutiny 2 Committee on 20/07/04 advised that the Council's concerns had been expressed to the developer.

05.05.04 The Environment Agency issues an exemption certificate in respect of activities described in paragraph 19(1) of Schedule 3 of the Waste Management Licensing Regulations 1994. That is the storage of “waste which arises from demolition or construction work or tunnelling or other excavations or which consists of ash, slag, rock, wood or gypsum.”

18.02 05 Letter to SGD pointing out that the works do not appear to be in accordance with the approved plans or method statement and that verbal requests to rectify the situation have not been complied with. Compliance was requested and a Breach of Condition Notice to remedy the situation was threatened.

23.02.05 SGD respond stating their client would take steps to resolve the situation.

09.03.05 Area Plans Sub Committee ‘B’ authorised the issue of an enforcement notice in respect of unauthorised works at Blunts Farm related to localised raising of land in excess of that approved.

Given the prior commitment to resolve the situation the notice was not immediately issued, and those issues of concern were then resolved.

- 30.06.05 Letter to SGD confirming a request for spot levels for parts of the site and calculations of the remaining volume of material to be imported, following further concerns expressed on site.
- 14.08.05 SGD submit drawings following a survey at Blunt Farm that indicate some areas were too high, others too low and some broadly in accordance with agreed levels.
- 18.08.05 Letter to SGD disputing those broad findings.
- 26.09.05 SGD assert that the golf course continues to be undertaken in accordance with the planning permission, referring to their methodology as shown on BLUN.205 involved excavations, infilling the excavations with imported material and then the spreading of the excavated material over the imported material to achieve raised levels. Consequently the appearance of the site was transitory. It was also asserted that any deviation from the approved contours had been agreed.
- No agreement had however been given to any revised plan other than verbal agreement to minor deviations of no consequence and leading to no variation in overall quantities of material imported to the site.
- 09.05 Council instructs Stace Quantity Surveying (Stace) to calculate the quantity of imported fill to Blunts Farm and demonstrate any differential between the proposed contours of the site as approved and the contours as built to mid September 2005.
- 13.10.05 Stace issue draft report on excavations and filling concluding that there has been a substantial underestimation of both the quantities of excavation and fill notified to the Council by SGD. Supporting existing contour drawings demonstrated that land levels were higher than agreed across most of the site and in places considerably higher.
- 25.10.05 Letter sent to all known to have an interest in the land and SGD requesting the cessation of any further works in connection with the construction of a golf course under threat of the issue of a temporary stop notice.
- 04.11.05 Meeting with SGD and solicitor for Blunts Farm Estate Ltd. Evidence for the breach of planning control was explained. The Council advised that in view of the impact on amenity of the number of lorry movements that would be generated by operations to remove excess fill material from the land the Council may consider a compromise solution as follows:
- Cease bringing any further material onto the land until the landform is agreed.
 - Use existing material on the land to fill in excavations and achieve an acceptable landform.
 - Only import topsoil and other material to complete the golf course, such as sand, once the Council agrees the landform constructed is acceptable.

- The developer to suggest ways the local community could be compensated for the harm to amenity caused by excessive lorry movements generated by building the existing landform. The Council advised these could include repairing local roads damaged by the lorries, repair the bridge at Abridge in accordance with details agreed as part of a listed building consent and subject to the views of traffic engineers and the historic buildings officer, introduce an alternate one-way traffic flow across the bridge controlled by traffic lights.

SGD disputed the validity of the Council's evidence and requested further information including the digital base for the survey carried out for Stace. This was provided. Blunts Farm Estate agreed to voluntarily cease construction activity for 14 days from close of business on 04.11.05.

- 18.11.05. Meeting with SGD attended by the Leader of the Council. Council explained its position remained as previously stated. SGD continued to dispute the validity of the Council's evidence of the breach of planning control.

SGD said the estimation of original ground levels by Stace is not the same as the original levels indicated on approved drawings and that Stace drawings assume the original levels are lower in part. SGD presented a drawing showing a comparison of Stace surveyed existing levels and SGD proposed final levels. SGD said the existing levels showed a golf course in construction with a lot of topsoil stored at various parts of the site. SGD explained the holes/voids were excavated to extract clay for surcharging and capping and that at a later date the landform would be shaped. SGD said it was always intended that the levels between the mounding would be changed. Officers did not agree with SGD's explanation for the condition of the land and did not accept that any difference in surveys of original levels used by Stace or SGD could account for the difference from the proposed levels indicated on drawing BLUN.209A and the existing levels.

The Leader asked when the lorries would stop delivering material to the site. SGD offered to accelerate construction works so that the golf course is complete by autumn 2006. SGD agreed to submit details of final levels of the site to be agreed and a methodology to achieve that. Council requested a further 14 day period where no fill material is imported to the site which SGD said they would pass on to their client.

- 21.11.05. Letter from Blunts Farm Estate forwarded to the Council saying that previous 14 day break should have proved sufficient; that their offer to accelerate construction could only be successful if they recommenced immediately; and if the matter was not resolved at the meeting due on 25/11/05 they would close the site and delay completion until mid-2007.
- 21.11.05. Importation of fill material resumed.
- 24.11.05. Statement for the methodology for the completion of the construction of the golf course with final levels received.

25.11.05. Meeting with SGD attended by representatives of Stace. SGD continued to dispute the validity of the Council's evidence of the breach of planning control. SGD were advised the methodology was unacceptable to the Council since it relied on the importation of more fill material that would, in its opinion, exacerbate the breach of planning control. SGD were requested to provide details of the survey of original ground level on which they based their drawings of proposed levels but beyond stating the drawings were based on an Ordnance Survey, survey no details were provided.

Importation of fill material did not cease but appeared from observations by officers on the site to accelerate from this date.

30.11.05 Management Board ask for an oral update on the situation as recent developments suggest negotiated solution less likely. MB considered the Members role in this development to date and in the future and requested a full report be prepared for its next meeting.

07.12.05 Management Board decide any decision to take enforcement action to remedy the situation should be taken by District Development Control Committee because of the complexities around any enforcement action and the potential financial consequences for the Council. Agreed that, if any action were to be taken, the level of evidence must be very robust and if any risks exist these would need to be placed before members. MB also considered the possibility of an extraordinary DDC meeting on the grounds of urgency but in view the time needed to prepare such a complex report taking account of the Christmas/new year holidays and the requirements of the Access to Information Act this was not possible. Draft report for DDC Committee to be submitted to MB on 4.1.06

04.01.06 Report cleared by MB subject to amendments.

22.12.05 Stace issue final report on excavations and filling

1.6 Lawful Use

1.6.1 Agriculture with planning permission for use as a golf course. The use as a golf course has not started.

1.7 Description of Unauthorised Development and Breach of Condition

1.7.1 The unauthorised development that has taken place is, without planning permission, the carrying out of an engineering operation consisting of raising land resulting in a landform that is materially different to that approved for the golf course given planning permission on 23rd April 2002, Ref. EPF/765/99.

The breach of condition that has taken place is the failure to carry out the development given planning permission on 23rd April 2002, Ref. EPF/765/99 in accordance with the details approved pursuant to condition 12 of that planning permission. The approved details are those indicated in approved plan BLUN.209A.

The approved plan, BLUN.209A, shows that the only land raising was to have taken place at mounds adjacent to proposed fairways and that there was to have been no

raising of land between the fairways. Adjacent to Garnish Hall Stream there was to have been excavations for lakes. The mounding was generally to have been no more than 2m high, in places rising to 4m maximum.

1.7.2 Contrary to the approved details, levels of land across much of the area of the proposed golf course have been raised. Levels of fill above the original levels of the site are generally between 1 and 2m above original levels with large areas to the southwest, east and north of the site between 2 and 3m higher and, within those areas there are significant areas where land has been raised between 4 and 5m. As of the time of writing three extensive and deep excavation/voids for clay extraction are situated around the central part of the site and peaks of stored material are situated at a number of points towards the edge of the site.

1.8 Evidence of the Breach of Condition 12 and of Planning Control

1.8.1 Evidence of a development being carried out without planning permission and of the failure to construct the golf course in accordance with details approved pursuant to condition 12 of the planning permission dated 23rd April 2002, Ref. EPF/765/99 is the same. The evidence is in the form of the Report on Excavations and Filling at Blunts Farm Golf Course by Stace Quantity Surveying together with accompanying plans. The report and plans forms part of the background papers to this report and makes reference to:

- (1) Information gathered at site inspections
- (2) The results of a survey of the site levels that was carried out throughout September 2005 by CSL Surveys (a specialist surveying company) on behalf of Stace.
- (3) A comparison of the survey results with the approved drawings (BLUN 205 and 209A) and drawing No. BLUN.206 (Indicative earthworks grading) submitted by Swan Golf designs.
- (4) A comparison of the survey results with a survey of the original ground levels. An empirical check of the survey of original levels by Stace shows there is a maximum error in that survey of +/- 0.5m.
- (5) Calculations of the quantities of excavated material and fill material laid on the land, based on the above surveys and comparisons. Two calculations using different computer models were carried out as a check.

1.8.2 **In relation to the levels** the evidence shows that across much of the area of the proposed golf course they have been raised. It shows levels of fill above the original levels of the site are generally between 1 and 2m above the surveyed original levels with large areas to the southwest, east and north of the site between 2 and 3m higher and, within those areas, there are significant areas where land has been raised between 4 and 5m. This is shown graphically on the plans accompanying the report. At of the time of the survey of levels in September 2005 three extensive and deep excavation/voids for clay extraction were situated around the central part of the site and peaks of stored material are situated at a number of points towards the edge of the site. They still exist but have been partly filled by imported fill material since.

1.8.3 The differences in proposed levels and contours and surveyed levels and contours cannot be accounted for by any difference in the assessment of original land levels by SGD and CSL Surveys or by the alleged excavation in excess of 1m below the areas of proposed mounds prior to construction work, for which the Council has not been given any evidence.

1.8.4 **In relation to the volume of material imported to the site**, the evidence shows the following:

- Excavated material is 315,000m³ and fill material laid on the land is 826,000m³. On the basis that no material was exported from the site, the net quantity of fill material imported to the site is 511,000m³. Observations of vehicles leaving the site by Council officers did not note any material being exported from the site.

A further calculation has also been carried out in relation to the excavations that were on the land in mid September 2005. Their volume, based on the CSL survey, is 315,000m³. Since the site area is 557,000m², if all the material from the excavations was spread uniformly over site it would have a depth of approximately 570mm. The stated intention of the developer is to fill these voids completely with imported material therefore the intention was to import an additional 315,000m³ from September 2005.

- The method statement submitted pursuant to Condition 12 of the planning permission dated on 23rd April 2002, Ref. EPF/765/99, indicated 169,000m³ of material would be imported to the site for the construction of the approved golf course. The construction activity on the site up to mid September 2005 therefore resulted in 342,000m³ of material above the quantities approved being imported to the site and it was intended to import an additional 315,000m³ of fill material from that time.
- The differences in proposed volumes to be imported and calculated actual volumes cannot be accounted for by any difference in the assessment of original land levels by SGD and CSL Surveys or by the alleged excavation in excess of 1m below the areas of proposed mounds prior to construction work, for which the Council has not been given any evidence.

1.8.5 Officers therefore consider the Council has sufficient evidence to demonstrate a breach of planning control being the raising of the land other than in accordance with the details approved under the planning permission dated on 23rd April 2002, Ref. EPF/765/99. The evidence demonstrates the development is an engineering operation that requires planning permission and that no planning permission has been granted for it. Further and in the alternative, officers consider the Council has sufficient evidence to demonstrate the failure to construct the golf course in accordance with details approved pursuant to condition 12 of the planning permission.

1.8.6 Moreover, the evidence also demonstrates that the extent and height of raised land is in excess of that approved to such an extent that it is not possible to complete the approved golf course in accordance with the approved plans or comply with the details approved pursuant to condition 12 without removing the excess of material from the site. Since material has continued to be imported to the site since the CSL survey was carried out the extent of the breach of planning control and breach of condition must now be greater than the Council's evidence demonstrates.

1.9 **Date Breach Occurred**

1.9.1 The development began on 14th April 2004. This was confirmed by Mr P Newman, of Parsonage Golf (now Blunts Farm Estate Limited) in his letter to the Council of that date. Any unauthorised development is therefore less than 4 years old and any

breach of condition is less than 10 years old consequently the breaches are not time immune from enforcement action.

2. REASONS FOR ISSUING THE ENFORCEMENT AND STOP NOTICES

2.1 Relevant Planning Policy

2.1.1 Central Government Guidance

PPS1	Delivering Sustainable Development
PPG2	Green Belts
PPS7	Sustainable Development in Rural Areas
PPG17	Planning for Open Space, Sport and Recreation

2.1.2 Essex and Southend-on-Sea Structure Plan, April 2001

CS2	Protecting the Natural and Built environment
CS4	Sustainable New Development
C2	Development Within the Metropolitan Green Belt
NR1	Landscape Conservation

2.1.3 Epping Forest District Local Plan, January 1998

GB2	Green Belt
RST19	Golf Courses
LL2	Protection of the Rural Landscape

2.2 Assessment of the Unauthorised Development

2.2.1 The main issues raised by the development are its appropriateness in the Green Belt, and its impact on the rural landscape. Also of relevance are the sustainability of the development and the impact on amenity of lorry movements generated by the construction process.

2.2.2 In order for the development to be appropriate it must maintain the openness of the Green Belt and must not conflict with the purposes for including the land in the Green Belt. It is considered the scale of the development is so great that it constitutes a major construction project in the countryside. Accordingly the development conflicts with the purposes of including the land in the Green Belt and is inappropriate. Although the proposed use of land as a golf course accords with the Green Belt land use objective of providing opportunities for outdoor sport and recreation near urban areas, that is not a material factor in the continued protection of the Green Belt. It does not, therefore, amount to very special circumstances sufficient to overcome the harm caused by inappropriateness. The development is therefore contrary to planning policy as set out in PPG2, Structure Plan policy C2 and Local Plan policy GB2.

2.2.3 In terms of the impact of the development on the rural landscape, because of its height in relation to neighbouring land and pre existing natural features including watercourses crossing the site and trees on it, it has resulted in an unnatural appearance. That appearance is harmful to the character of the rural landscape and has not been designed or executed with care or sensitivity to its setting. It has a material adverse impact on the character and appearance of the landscape and

certainly fails to enhance the appearance of the landscape. The development is therefore contrary to planning policy as set out in PPS7, PPG17, Structure Plan policies CS2 and NR1 and Local Plan policies RST 19 and LL2.

- 2.2.4 Sustainable development is the core principle underpinning planning and one of the Governments objectives for the planning system is the protection of the quality and character of the countryside. Given the harm to the landscape and Green Belt detailed at paragraphs 3.2.2 and 3.2.3 the development fails to meet the objectives for sustainability set out in PPS1 and Structure Plan CS4.
- 2.2.5 Guidance set out in Circular 10/97 states a Planning Authority should ensure that a stop notice's requirements prohibit only what is essential in order to safeguard amenity or public safety in a neighbourhood or prevent serious or irreversible harm to the environment in the surrounding area. In this case the continuation of the importation of fill material to the site would both exacerbate a breach of planning control that is unacceptable for the reasons given in paragraphs 3.2.2 to 3.2.4 and would also perpetuate the harm caused to amenities of residents within the vicinity of the route to the site from junction 5 of the M11.
- 2.2.6 The excessive number of HGV movements generated by the delivery of fill material to the site has been very high. The net quantity of fill material imported to the site is stated by Stace to equate to an average of 10 lorries per hour if deliveries are made six days per week for one year, eight hours per day. Anecdotal evidence suggests that since November 2005 the rate of importation of fill material to the site has accelerated with up to 30 lorries delivering to the site per hour. Such movements cause harm to the amenities of residents of properties within the vicinity of the route to the site from junction 5 of the M11 and particularly to residents of Abridge. This is reflected by complaints received by environmental services in relation noise and vibration from lorries delivering fill material to the site.

3. HUMAN RIGHTS CONSIDERATIONS

- 3.1 The issue of an enforcement and stop notice in this case would amount to interference with the rights of the owner/occupier of the land given under the First Article of the First Protocol of the European Convention of Human Rights. The First Article of the First Protocol states persons are entitled to the peaceful enjoyment of their possessions. That right is a qualified right and interference with it by a public authority is permitted in accordance with the law as necessary for the protection of the rights and freedoms of others and the general interest. Accordingly, there is a fair balance to be struck between individual's rights, the public interests protected by the planning system and those of other persons.
- 3.2 In this case it is considered that since the development and the importation of fill material to the site causes clear harm to the amenities of the locality the balance falls against the rights of the owner/occupier of the land. The Council has attempted on a number of occasions to gain the cooperation of the owner/occupier to remedy the harm caused but no cooperation was given. It is therefore necessary to issue the enforcement notice. The requirement of the enforcement notice to restore land to its original level or complete the golf course as approved and the requirement of the stop notice to cease the importation of fill material to the land is considered to be the minimum necessary step to remedy the harm caused by it as identified in this report and therefore it is considered to be proportionate.

4 THE COUNCIL'S LIABILITY FOR COMPENSATION IN CONSEQUENCE OF A STOP NOTICE

- 4.1 Section 186 of the Town and Country Planning Act 1990 sets out four grounds upon which compensation may be payable in respect of a prohibition contained in a stop notice.
- 4.2 The first ground is that the related enforcement notice is quashed at appeal on grounds other than that planning permission is granted. In other words it is quashed on one or more of the following grounds of appeal set out in section 174(2) of the Act:
- Ground b: the matters alleged in the notice have not occurred;
 - Ground c: that those matters (if they occurred) do not constitute a breach of planning control;
 - Ground d: that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
 - Ground e: that copies of the enforcement notice were not served on every owner or occupier of the land and on any other person having an interest in the land being an interest which, in the opinion of the authority, is materially affected by the notice.
 - Ground f: that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
 - Ground g: that any compliance period specified in the notice falls short of what should reasonably be allowed.
- 4.3 In relation to this ground, appeals on grounds b, c and d are dealt with under section 2.8 of this report "Evidence of the Breach and When it Occurred". Notwithstanding that Swan Golf Design disputes the Council's evidence, there is evidence that a breach has occurred, that they require planning permission and that they are not time immune from enforcement action.
- 4.4 In relation to an appeal on ground e, this relates to an administrative matter dealt with by the Head of Legal, Administration and Estates services having regard to information obtained independently as well as that provided by the Head of Planning Services. Both services will take all necessary steps to ensure the correct persons are served with the notices.
- 4.5 In relation to an appeal on ground f, that matter is dealt with under section 3 of this report, "Reasons for Issuing the Enforcement and Stop Notices".
- 4.6 In relation to an appeal on ground g, that matter is in part dealt with under section 3 of this report, "Reasons for Issuing the Enforcement and Stop Notices". Not all the material imported to the site would need to be removed in order to comply with the requirements of the enforcement notice. Since the material has been imported onto the land in just under two years, a compliance period of two years in respect of the requirement to EITHER complete the golf course on the land in accordance with drawing number BLUN.209A approved pursuant to condition 12 of the planning permission dated 23 April 2002, Ref. EPF/765/99 OR restore land levels at Blunts Farm to their original levels prior to the commencement of works on the land in 2002

is unlikely to be considered unreasonable. In respect of the requirement to cease the importation of fill material including waste and demolition waste to the land, since this is a negative requirement i.e. it prohibits something, a compliance period of 7 days is unlikely to be considered onerous, particularly when the stop notice would already have taken effect. That requirement is proposed to be included as part of the enforcement notice because once it takes effect the stop notice will cease to have effect after the compliance period for the enforcement notice has expired. At that point, instead of being an offence to contravene the prohibition in the stop notice, it will become an offence not to comply with the requirements of the enforcement notice.

- 4.7 It should be noted that under section 176 of the Act the Secretary of State has the power to vary the requirements of an enforcement notice where the variation will not cause injustice to the appellant or the Local Planning Authority.
- 4.8 The second ground upon which compensation may be payable in respect of a prohibition contained in a stop notice is that the enforcement notice is varied so that any activity the carrying out of which is prohibited ceases to be a relevant activity. The only activity proposed to be prohibited in this case is the importation of fill material and it is clear that if the activity continued it would exacerbate a breach for which there is good evidence and which causes demonstrable harm.
- 4.9 The third ground is that the enforcement notice is withdrawn other than in the event of planning permission being granted for the development to which it relates. The Council has full control over this matter.
- 4.10 The fourth ground is that the stop notice is withdrawn. Again, the Council has full control over this matter.
- 4.11 In law therefore, the Council is at risk of having to pay compensation, including interest, for losses incurred by a person with an interest in the land or who occupies the land if a stop notice was issued. However, section 186(5) of the Town and Country Planning Act 1990 states, inter alia, no compensation is payable in respect of the prohibition in a stop notice of any activity which at any time when the notice is in force, constitutes or contributes to a breach of planning control. In this particular case the losses likely to be incurred by the owner of the land in consequence of complying with the proposed stop notice are likely to be considerable. Stace estimated the owner was importing fill material at about 10 lorries an hour for 8 hours a day, six days a week. If the owner is paid £100 per lorry, that would amount to a loss of income of £48,000 per week. In the event of an appeal against the enforcement notice, such an appeal could take up to approximately 30 weeks to be decided and such an appeal would need to be made within 4 weeks of the enforcement notice being issued. The loss of income to the owner during that period could therefore amount to 34 weeks or £1,632,000. Having regard to the sections 5.1 to 5.10 of this report and section 186(5) of the Act, however, it is considered that the risk is manageable. To that end the key matters for the Council to demonstrate are that a breach of planning control has taken place and that the continuation of the importation of fill material would contribute to the breach. Those matters have been demonstrated and therefore sufficient steps have been taken to manage that risk.

5 OTHER CONSEQUENCES OF ISSUING THE NOTICES

- 5.1 It is most likely that an appeal would be made against the enforcement notice and that the appeal would be dealt with by way of a public inquiry. In that event representatives of Stace and CSL would be required to appear as expert witnesses for the Council. The Council would of course have to pay their fees as it would for any consultant it employed to support its case. Notwithstanding any appeal against the enforcement notice, the stop notice would have effect and non-compliance with its requirements is an offence under Section 187 of the Town and Country Planning Act 1990. The maximum fine on summary conviction is £20,000 whilst on conviction on indictment there is no limit to the fine the court may impose. Given the amount of income generated for the owner by continuing the breach any prosecution for non-compliance is therefore likely to eventually be heard in the Crown Court.
- 5.2 In seeking to enforce the requirements of the stop notice the Council may apply to the High Court for an injunction under Section 187B of the Act. This is an entirely discretionary remedy of the court, which may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach. Failure to comply with an Injunction amounts to a contempt of court for which the Court may make an order for committal to prison or impose a fine on application by the Council.
- 5.3 How the enforcement process would proceed would vary according to whether the owner made an appeal against the enforcement notice and whether he did not comply with the stop notice. Neither of those courses of action are certain but they are considered likely. In that case, by the time a prosecution is dealt with for non-compliance with the requirements of a stop notice or proceedings for breach of an injunction determined it is estimated that six months or more could have passed. The owner has indicated that the importation of fill material would have ceased by that time regardless of such action but there is no guarantee of that. It is therefore considered that the only way the Council could seek to control the situation and avoid being in the same position in the future is to take enforcement action at this stage.
- 5.4 Regardless of when the importation of fill material ceases the breach of planning control alleged in the enforcement notice would remain. If the enforcement notice became effective it would place the Council in a position to either seek compliance with its requirements or, if it considers expedient, to negotiate some other solution to the breach. Members need to be aware that removal of excess material from the site will in itself have adverse consequences for local residents, requiring a large number of lorry movements over a prolonged period of time. The least harm in terms of road movements alone would be to accept the material on the site, subject to it being given detailed consideration in terms of the disposition on the site, and whatever mitigation the developer might propose. Officers have attempted to negotiate such a solution that would avoid adverse consequences as is detailed in section 2.5 of this report – Relevant Planning and Enforcement History, but no response was given to their suggestions. The fact of an enforcement notice being effective should place the Council in a much stronger position to negotiate a solution.
- 5.5 In the event of successful negotiations to resolve the situation any solution that left the land with a materially different landform to that previously approved, such as one based on the retention of material imported to the site so far, would require planning permission in itself. Furthermore, it would require a mechanism for enforcing the implementation of that solution. That could be through the completion of a section 106 agreement specifying the steps to be taken.

5.6 Ultimately, the Council has the power under section 178 of the Act to enter the land, take the steps required by the enforcement notice and recover its costs from the owner of the land. If it were considered expedient to do so this would be the subject of a separate report seeking authority at the time.

6. CONSEQUENCES OF NOT TAKING ENFORCEMENT ACTION

6.1 Given the evidence of a breach of planning control that has been gathered and that the unauthorised development together with the process of carrying it out causes harm to interests of acknowledged importance, should the Council fail to take enforcement action it could be at risk of censure by the local government Ombudsman for failing to take prompt enforcement action. That would be on the basis that such a failure amounts to maladministration. In that event an award of costs could be made against the Council.

7. EXPEDIENCY AND BALANCE OF ISSUES

7.1 In balancing the factors in order to reach a decision on the issues, the objectives of the action must always be borne in mind. The intention of this enforcement action is to secure the cessation of excessive lorry movements generated by the construction of the unauthorised development/breach of condition and to secure a finished landform, which was appropriate to the location - in effect, this would be either the landform approved under the planning permission or restoring the original site contours. The cessation of lorry movements is considered necessary to address the serious impact upon amenity caused by so large a number of lorries in order to bring to an end the importation of material that serves to exacerbate the breach and to reduce the opportunity for remedying the breaches without generating excessive lorry movements. The opportunity lies in using the voids on the site so to deposit the excess material spread over the land.

7.2 The issues are primarily:

- (a) Has a breach of control occurred and is there sufficient evidence to prove this to the satisfaction of a Planning Inspector or a Court (particularly bearing in mind that compensation would be payable if a Stop Notice were served it was held that a breach of condition or other breach of control had not in fact occurred)?
- (b) Is the work carried out and the means of carrying it out so unacceptable that enforcement action needs to be taken?
- (c) If so, would the Council be acting reasonably in serving a Stop Notice, taking into account the additional costs to the developer in complying with the requirements of the notices?

7.3 This report makes it clear that officers are convinced that there is significant evidence of a breach of planning control by way of breaching the condition and further or in the alternative, by carrying out development for which there is no planning permission. Enforcement action would appear to be justified and to be most effective this should include the serving of a Stop Notice. The risk of compensation has been explained above as being very low and manageable.

7.4 However, the committee should also bear in mind that:

- (a) In the event that there is not immediate compliance with the requirement of the enforcement notices and stop notice to cease the importation of fill material, by the time effective further action to secure compliance is taken the importation of fill material may have ceased. However, if enforcement action is not taken there is no guarantee of the cessation of the importation of fill material to the site.
- (b) Furthermore, the process of complying with the other requirements of the enforcement notices could generate considerable heavy goods vehicle movements. However, the fact of effective enforcement notices and a stop notice would put the Council in a stronger position to negotiate a solution to the breach of planning control that could minimise the number of additional movements.

7.5 Despite requests that the importation of fill material ceases and that the existing material on the land is used to fill the excavations and achieve an acceptable landform, the breaches are continuing. The committee is therefore advised to consider the expediency of taking the necessary action taking into account the evidence gathered, the provisions of the development plan and all other material considerations.

8. CONCLUSION

8.1 That having regard to the evidence gathered, provisions of the development plan and to all other material considerations the Committee may consider it expedient to take enforcement action including the issue of an enforcement notice and a stop notice and to seek an injunction if necessary for the reasons given above.

9. RECOMMENDATION

9.1 That having regard to the evidence gathered, provisions of the development plan and to all other material considerations the Committee considers the expediency of instructing the Head of Legal Administration and Estates Services to issue an enforcement notice under section 172 of the Town and Country Planning Act 1990.

9.2 That the notice require:

- a) Within 7 days:

The cessation of the importation of fill material including waste and demolition waste; and

- b) Within 2 years of the notice taking effect:

EITHER the completion of the golf course on the land in accordance with drawing number BLUN.209A approved pursuant to condition 12 of the planning permission dated 23 April 2002, Ref. EPF/765/99 OR the restoration of land levels at Blunts Farm to their original levels prior to the commencement of works on the land in 2002

- 9.3 That having regard to the evidence gathered, provisions of the development plan and to all other material considerations the Committee considers the expediency of instructing the Head of Legal Administration and Estates Services to issue a further enforcement notice under section 172 of the Town and Country Planning Act 1990.
- 9.4 That the notice require:
- a) Within 7 days:

The cessation of the importation of fill material including waste and demolition waste; and
 - b) Within 2 years of the notice taking effect:

Compliance with the requirements of condition 12 of the planning permission dated 23 April 2002, Ref. EPF/765/99.
- 9.5 That having regard to the evidence gathered, provisions of the development plan and to all other material considerations the Committee considers the expediency of instructing the Head of Legal Administration and Estates Services to issue a stop notice under section 183 of the Town and Country Planning Act 1990.
- 9.6 That the notice take effect 7 days after it is served and require the cessation of the importation of fill material including waste and demolition waste.
- 9.7 That authority for the issue of the enforcement notice also include authority to withdraw any such notice and to issue further notices if it becomes necessary to do this in order to remedy the breach of planning control referred to in this report.
- 9.8 That in the event that either the enforcement notice or the stop notice is not complied with, the Head of Legal, Administration and Estates Services, subject to being satisfied as to the evidence, and the expediency of such action, be authorised to commence or defend criminal and/or civil proceedings in respect of such breach which for the avoidance of doubt shall include Injunction proceedings.

LIST OF BACKGROUND PAPERS USED TO COMPILE THIS REPORT

1. Planning permission on 23 April 2002, Ref. EPF/765/99 for the development of a an 18 hole golf course and associated landscaping /contouring;
2. Council letter dated 16 February 2004 giving conditional approval to details submitted to condition 12 of the planning permission;
3. SGD letters dated 6th October 2003 and 1st and 3rd April 2004 including details of methodology for constructing the golf course required by the Council's letter dated 16th February 2004;
4. SGD drawing numbers BLUN.205, BLUN.206 and BLUN.209A;
5. Location Plan;
6. Letter dated 14th April 2004 from Mr P Newman advising work on site commenced that day;
7. Minutes of the Ongar Park and Blunts Farm Golf Courses-Ad Hoc Special Committee held on 22nd April 2004;
8. Environment Agency exemption Certificate dated 5th May 2004;
9. Council letters dated 18th February, 30th June, 18th August and 25th October 2005;
10. SGD letters dated 23rd March, 14th August and 26th September 2005;
11. Minutes of the meeting of the Area Plans Sub Committee 'B' held on 9th March 2005;
12. Notes of meetings with SGD on 4th, 18th and 25th November 2005;
13. Report by Stace Quantity Surveying dated 22nd December 2005 and supporting plans.
14. Report to Management Board meeting held on 7th December 2005.