

Report to District Development Control Committee

Report reference: ENF/0195/2006

Date of meeting: 16 November 2006



**Epping Forest
District Council**

Subject: Blunts Farm/Parsonage Golf

Officer contact for further information: S. Solon

Committee Secretary: Simon Hill Ext 4249

Recommendations/Decisions Required:

That authority be given to the Head of Planning Services, in consultation with the Head of Legal, Administration and Estates Services, to withdraw the enforcement notices issued on 25 January 2006 and varied on 4th August 2006 in respect of Land at Blunts farm, Coopersale Lane, Theydon Bois, Essex.

Background:

On 17 January 2006 the Council resolved to issue enforcement notices and stop notices in respect of operational development and a breach of condition 12 of the planning permission for the golf course granted on 23 April 2002, Ref. EPF/765/99.

On 25 January 2006 the Council issued two enforcement notices under s172 of the Town & Country Planning Act. No stop notices were issued since the matters the Council wished to stop, i.e. the importation of fill material, had already ceased following the withdrawal of an Exemption Certificate to import waste to the land by the Environment Agency.

By letter dated 31st May 2006 the Planning Inspectorate confirmed that appeals are proceeding against the Enforcement notices on the following Grounds:

- Ground (a) – That planning permission should be granted for what is alleged in the notice,
- Ground (b) – That the breach of control alleged in the enforcement notice has not occurred as a matter of fact,
- Ground (c) – That there has not been a breach of planning control,
- Ground (f) – That the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections and
- Ground (g) – That the time given to comply with the notice is too short.

On 13 June 2006 the Council resolved to give authority to the Head of Planning Services and the Head of Legal, Administration and Estates Services to vary the 2 enforcement notices issued 25 January 2006 so as to require the site to be remodelled and landscaped in accordance with a draft methodology agreed by the Council. The methodology essentially seeks to achieve a “best fit” landscape solution based on infilling voids on the site using material sourced from the site in order to minimise HGV movements to and from it.

The Council also resolved to authorise the issuing of two new enforcement notices as duplicates of the varied notices. The purpose of issuing the duplicate notices was to deal with the possibility that the Secretary of State finds the variation to the original notices is too great to be treated as a variation and therefore quashes them on the basis that the variation causes injustice to the appellants.

On 4th August 2006 the varied and duplicate enforcement notices were issued.

By letter dated 2nd December 2006 the Planning Inspectorate confirmed they were aware of the duplicate notices because they had received appeals against them. The inspectorate also confirmed the duplicate notices appear to cover the alleged breaches in the original notices or perhaps even more so and requested confirmation of whether the Council is considering withdrawing the varied original notices. Prior to receipt of the letter telephone discussions with the case officer at the Planning Inspectorate revealed the Inspectorate takes the view that the issue of the duplicate notices is resulting in the appellant incurring unnecessary costs because the appeals against them are duplicates of the appeals against the original notices.

On 30th October the Council received a planning application from the appellants proposing the completion of a golf course on the site with varied landscaping and contouring. The detail of the proposal includes the filling of existing voids on the site primarily from material already on the land. The proposed balance between on-site and off-site sourced material is 74% on-site material to 26% off-site. In addition it is proposed to import topsoil and other construction materials. The proposals will be properly scrutinised by Officers and negotiations about the detail of the proposal will take place. The submission of the application is reported only as background to this report and no views on it are sought at this time. A report on the final form of the proposal will be presented to this Committee for a decision on the application. In any event, the planning application is not valid at the time of writing this report although that is expected to be rectified shortly and an update will be given verbally at the meeting of this Committee. In addition, Members are advised the applicant has been requested to submit an Environmental Impact Assessment and Environmental Statement for consideration as part of the application. The applicants have previously said they will do this therefore no consultation exercise on the application will be carried out until this is received regardless of its validity.

Report:

The issues raised by the circumstances leading up to this report are as follows:

Issue 1:

The need to protect the Council's position against the possibility that the Secretary of State finds the variation to the original notices is too great to be treated as a variation and therefore quashes them on the basis that the variation causes injustice to the appellants.

Issue 2:

The potential for the Council to incur the appellant's additional costs in pursuing the appeals against the duplicate enforcement notices.

Issue 3:

The potential for the Council to incur the appellant's additional costs in pursuing the appeals against the original enforcement notices as a consequence of withdrawing them.

Issue 4:

The potential for a resolution of the harm caused by the site in its existing condition to be excessively delayed by changes to the appeal timetable as a consequence of withdrawing any of the enforcement notices.

Issue 1:

This can only be completely secured through the duplicate enforcement notices issued on 4th August 2006.

Issue 2:

This is no more than a possibility although in the circumstances officers consider an award of costs is probable. This could be dealt with through the withdrawal of the duplicate enforcement notices but Officers strongly advise against that in view of the need to deal with Issue 1. It is however likely that this could be dealt with by withdrawing the original enforcement notices and this is discussed under Issue 3.

Issue 3:

The withdrawal of the original enforcement notices at this stage in the appeal process would normally result in an award of costs against the Council. However, the appellant's solicitor has advised the Council in writing *"that they would not make any application for costs purely on the grounds of such withdrawal, because in fact the appeals which have been lodged in respect of all four Notices are virtually identical"*. Nevertheless, they go on to say *"This confirmation is however based on the understanding that, in the event of such withdrawal, my clients will automatically and without having to make a claim for costs obtain a refund of the fees which they have paid to PINS (the Planning Inspectorate) in respect of the appeals against the first two Notices and is also without prejudice to my clients right to make an application for costs in relation to any of the Notices or appeals in respect of any other matters which may arise, other than the fact of the withdrawal itself."*

At the time of writing this report the Planning Inspectorate have not given any undertaking in writing that fees for the first appeals would be transferred from them to the appeals against the duplicate enforcement notices. Verbal advice from the Inspectorate is that if an appeal is withdrawn 22 days before an inquiry a refund of the appeal fee is normally given. Confirmation is being sought and will be reported verbally at the meeting but it is understood that the appeals fees would be transferred.

Issue 4:

It is not considered that the withdrawal of the original enforcement notices would result in any excessive delay. It is most likely that the appeals against the duplicate enforcement notices would continue in accordance the timetable of the original appeals. The worst-case scenario for the appeal timetable is a delay in the inquiry date of some months. However, changes to the appeal timetable may be academic in view of the recently received planning application. That is because it represents a serious attempt by the owners of the land to seek a compromise solution with the Council. Clearly, the Council might not give planning permission for any solution negotiated but Officer's views are that if a planning permission for a solution acceptable to the Council is given, that is likely to result in the fastest possible resolution of the harm caused. In the circumstances, once the application is valid, Officers will, together with the appellants, request the Planning Inspectorate hold the appeal in abeyance to allow for the Council to give consideration to the planning application. Should planning permission be refused, it would allow the Council to demonstrate at appeal that it has done everything it can to seek an agreed solution.

Conclusion:

The balance of the issues raised is such that it would be in the Councils interest to withdraw the original enforcement notices issued on 25 January and varied on 4 August 2006. The risk of costs being awarded against the Council exists but it is small given the views of the appellant and having regard to discussions with the appeals case officer at the Planning Inspectorate.