



Late Observations Sheet
DEVELOPMENT CONTROL COMMITTEE
17 January 2013 at 7.00 pm

Late Observations

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DEVELOPMENT CONTROL COMMITTEE

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LATE OBSERVATION SHEET

Item 4.1 SE/12/03106/FUL Land West of 5 Mill Lane, Shoreham

Amendments

Paragraphs 4 and 9

Paragraphs 4 and 9 of the Committee Report state that the site is in the Metropolitan Green Belt. This is an error. The Green Belt boundary runs along the southern edge of Mill Lane adjacent to the site, but the site itself is not in the Green Belt. The remainder of the report is drafted correctly on this basis.

In Planning History Section

09/02977 should read 09/02997

10/034858 should read '1 detached house', not 2

Condition 12 amended

The development shall achieve a Code for Sustainable homes minimum rating of level 3. Evidence shall be provided to the Local Authority:

- i) Prior to the commencement of development, of how it is intended the development will achieve a Code for Sustainable Homes Design Certificate minimum level 3 or alternative as agreed in writing by the Local Planning Authority; and
- ii) Within 6 months of occupation of the development, the Code for Sustainable Homes post construction certificate minimum level 3 or alternative as agreed in writing by the Local Planning Authority

Condition 13 amended

Amend Condition 13 as follows:

Prior to commencement of development, a construction method statement shall be submitted to the Council and approved in writing. This shall cover the phasing of construction works and the management of contractors vehicles, parking, deliveries *and storage* of building materials. *The scheme shall be implemented in accordance with the approved statement.*

Added Conditions

Add Condition 15) No development shall take place until full details of the proposed surface water drainage systems have been submitted to and approved in writing by the Council. Any approved scheme shall be completed to the written satisfaction of the Council prior to the commencement of the development.

Supplementary Information

Reason: To ensure the development site and other land does not suffer an unacceptable or increased risk of flooding and/or pollution.

Add Condition 16) Prior to the commencement of development, details shall be submitted to and approved in writing by the Local Planning Authority of the existing and proposed ground levels, including details of the proposed finished ground floor slab levels. The scheme shall be carried out in accordance with the approved plans.

Reason: To ensure a satisfactory appearance upon completion in accordance with the provisions of policy EN1 of the Sevenoaks District Local Plan.

Item 4.2 SE/11/02722/CONVAR Sevenoaks Boxing Club, Unit 19, Gaza Trading Estate, Scabharbour Road, Hildenborough

Update to report

Members will note that a late representation has been received from local residents Mrs Trask and via email from Mr West (see attached appendices. With regards to the letter received from Mrs Trask, the response to the main issues raised is as follows:

Firstly, with regards to the Sustainable Development issue raised, The NPPF states that at its heart is the presumption in favour of sustainable development, and explains that there are three dimensions to sustainable development (para 7), an economic role, a social role and an environmental role. It states that the policies of the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice for the planning system.

As stated with the previous approval (05/00072/FUL) the unit (and entire site) is in a poor location in terms of transport provision, in terms of its economic and social role, the Boxing Club is use is considered to be appropriate and complimentary to the other uses on the site.

Secondly with regards to the consultation, both Environmental Health and KCC Highways were asked for their response on the basis that this was an application where all matters were considered afresh, and neither altered their position to not object. The comments received have not been altered (or removed) and it is considered that the consultation complies with the requirements of the development management procedure order.

The paragraphs from the previous report that Mrs Trask highlights in this respect were the officer comments and assessment of the consultation responses.

With regards to the history of the site, to clarify, an enforcement notice was served on a number of units on the site (including No 19) in 1963, requiring the discontinuation of the units 'for the business of dealing in second-hand building materials, wood flooring, asbestos sheets and the like, and the garaging of vehicles and the use of office accommodation in connection therewith'.

This was appealed and the enforcement notice was quashed as the minister found that the uses were not a material change of use from the previous use of the site.

No other planning permission was submitted or approved for this unit until the 2005 application. There was no restriction on the hours of use for the former use of the premises.

With regards to the letter of complaint that Mrs Trask quotes from, there are no formal complaints on the Enforcement files from when permission was granted in 2005 until August 2011. The expediency of enforcement action has been subject to the LGO investigations, who did not raise concerns over this. The LGO had access to all the enforcement records. Since August 2011 when a planning application was made a series of complaints have been made.

Given the nature of the text quoted in page 2 of the letter this would have been redacted and not displayed on the website or on file.

The fence that has been erected does not require planning permission under the development order and is therefore not being considered under this application.

To clarify, para 60 of the Officer report should read that the gates shut at 7pm (as stated in para 56). Any alteration to this is a private matter between the occupiers and the estate management.

Turning to the email from Mr West, the sustainability issue has been addressed above. Sustainable development does not only mean ensuring that development is near to a bus stop etc. The fact that the unit is only accessible by car is not considered to limit the use to adults, as youngsters could be dropped off and picked up etc.

With regards to the light pollution issue, the use previous to the 2005 application (which granted the boxing club/office use until 9:30pm) had no restriction on opening hours. The premise has been operating during the evenings since 2005 then planning permission allowed opening up the 9:30pm.

Officer's Recommendation

The Officer's Recommendation remains unchanged, other than stated above.

Item 4.3 SE/12/02540/FUL Land Rear of the Rising Sun, Fawkham Green, Fawkham, Longfield

Amendments

Description of Proposal -

Paragraph 2 - The dwarf wall will measure 700mm (and not 700m).

Letter of representation received

An additional letter of objection was received on the 17th January 2013 from existing objectors. Reasons for objecting are:

- That by lowering the land levels the impact upon the wider landscape will be increased;
- The site is clearly visible from within the village and the wider landscape;
- The proposal represent inappropriate development which would impact upon the openness of the Green Belt;
- Through another business run from the pub using the pub parking space additional pressure is placed upon parking.

Supplementary Information

SDC Archaeological comments received

SDC's Archaeological consultee has responded in respect to the potential impact of the development upon the Area of Archaeological Potential. This states:

'The proposed work is in an area of archaeological potential, close to the site of a possible deserted settlement. As the works involve some excavation of the ground the following condition is felt to be appropriate.

No works shall take place until the applicant, agent or successors in title , has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to safeguard any remaining archaeological interest on the site in accordance with policies EN25 of the Sevenoaks District Local Plan.'

Dear Cllr Dawson,

14 January 2013 by email

Ref Se/11/02722/CONVAR

You will be aware that the debate on this application was deferred from the November 2012 meeting as some irregularities were identified in the officer report. The report has been rewritten and some of the irregularities have been addressed but some others have arisen. I am concerned as a Council Tax payer that the Council may be put at undue risk if the report is not corrected I therefore would be grateful if the points I make below could be looked at before the meeting on Thursday and if this note could be put in front of members.

You will appreciate that we (local residents) have had to raise a number of issues in relation to the processing of this application, on most occasions our concerns have been dismissed initially only to be accepted later once investigated further. I would draw your attention to the recent complaint to the Local Government Ombudsman, which uncovered the belated legal advice and supported local residents' interpretation of the necessary procedures, and to the fact that a further complaint is being progressed. I would therefore be happy to discuss these matters and any response should you wish.

Consultation

The report now acknowledges that this is an application for planning permission, not a variation of conditions, since the original (2005) permission has lapsed through lack of compliance with conditions precedent. Accordingly, the application is for the change of use from storage/artist studio to a facility for an unrestricted number of people to use the structure from 8.30 in the morning to 9.30 in the evening every day except Sundays when it would be 10 until 12. This is clearly very different to a small variation in the hours of use which is the basis of the consultation exercise. The Parish Council, KCC (the highway authority), Environmental Health and local residents did not make representations on the basis that this was an application for planning permission that should address the principle of whether permission should be granted at all. Thus the consultation exercise was flawed and this puts the Council at risk.

Another aspect of this flawed consultation is that the rewritten report to committee has had all references (including paras 36 and 47 which referred to the Highway Authority and Environmental Health comments) to a variation in conditions removed. As this was the basis of the responses removing the summary, and indeed the reports themselves from the website, constitutes an inaccurate representation of responses. As well as being inaccurate, this puts the Council at risk.

Of course one way to address this would be for consultation to take place again but please consider that the application was originally put in August the year before last and local residents have had to put up with the unlawful activities for years now with no help/enforcement action by the Council.

Reflection of Representations

I have referred to the inadequate representation of comments from KCC and Environmental Health above. In addition, the summaries of local residents letters in Para 23 is grossly oversimplified and ignores many of our concerns – I urge members to read neighbours letters of objection to gain the full picture.

I would also urge members to read the letters I have had to write (not something I enjoy or really have time for – its partly what I pay my Council Tax for after all) to attempt to ensure local residents interests are respected.

Supplementary Information

These to me are the main points but there are other concerns with the report and while I appreciate this is not the place for comments on substantive matters, for the sake of completeness I list other procedural issues that have come to my attention.

- Para 3 - fails to note that the boxing club is (and has been for years) operating unlawfully. Thus the use of the word “retaining” in the last line is misleading.
- Para 21 – advises KCC highways have no objection, this is incorrect – see KCC response (reported in para 47 of previous report and response itself which has now been removed from website). Ask to see? Fol request? Not transparent (LGO).
- Para 22(8) – hours of use refers to restrictions on public holidays –these are ambiguous in the conditions and therefore unlawful
- Para 22 (10) – includes an assumption – inappropriate from a professional officer and unlikely to be correct in any event
- Para 26 – sustainability has been omitted from the main considerations, contrary to the requirements of the NPPF
- Para 28 – Green Belt – fails to address NPPF requirements
- Para 33 – is incorrect – omits the word sustainable and so misrepresents NPPF
- Para 40 – Conditions have been shown to be ineffective and unenforceable and therefore imposition is unlawful. (Comment re amplified music also imprecise)
- Para 46 – Not a close boarded fence, it is an insubstantial uncharacteristic fence that encloses an area of otherwise open land, detracting from the openness of the Green Belt.
- Para 48 is untrue. There have been complaints as the Council is well aware. Members should take into account the lack of any action on the part of Council officials in respect of complaints and the response when complaints are made directly and ask themselves whether they would complain. A local resident has written to the Council about the abuse he received when complaining. This letter is not on the file so not sure members will have seen it. Here is an extract.

The noise from the north windows and the door can not be controlled by discussions with Mr Lynch. One Saturday morning in May (two months ago) I went to the club and pointed out to Mr Lynch that the windows and door on the north side were open and that his shouting was disturbing us. In response Mr Lynch was extremely rude. He swore at me and told me to “p*** off”. I left the Club and tried to get away from him. He followed me across the Gaza estate into the wood shop, approached me in a threatening and aggressive manner and repeatedly called me a very rude four letter word in front of a number of other people.

That was his response at a time when he was not even meant to be using the gym as it was a Saturday morning. It shows that conditions are needed to control the opening of windows and the door on the North side.

- Para 48 - This proposal is for a 3 times greater use in terms of time than that previously permitted and who knows how many times greater in terms of numbers, the noise mitigation measures have been shown to be ineffective for reasons given in representations - so how can it be that on the basis of a past complaints record, that future use will be acceptable – the past and proposed use are completely different and the comment illogical and unprofessional.
- Para 49 – talks about a comparison with previously approved – as confirmed by officers themselves, there is no extant permission so this is not the test, the comparison should be with the lawful use, which is storage.

- Para 50 - advises Environmental Health have no objection, this is incorrect – see Environmental Health response (reported in para 36 of previous report and response itself which has now been removed from website). Ask to see? FOI request? Not transparent (LGO).
- Para 51 - Conditions have been shown to be ineffective and unenforceable and therefore imposition is unlawful. (Comment re amplified music also imprecise)
- Para 56 - Contradiction here as earlier on the report says there is no planning permission for the estate.
- Para 57 - is very important factor and agrees the site is not in a sustainable location – there was an overriding mitigating factor in 2005 that no longer applies, this is omitted and insufficient weight is given to sustainability.
- Para 58 – The premise of comparison with existing estate may apply in some terms but not sustainability. The existing estate is in an unsustainable location but this does not justify further unacceptable development. Two wrongs do not make a right, they simply make a bigger wrong.
- Para 60 contradicts para 56 and is incorrect – see neighbours representations, parking in the road (in access to field) evenings and weekends.
- Para 62 see 21, error repeated in 64 and 65
- Para 67 – clearly all the material considerations, particularly sustainability and NPPF requirements for Green Belt, have not been addressed. There may be a difference of opinions but to ignore important issues is unacceptable.
- Para 70 is now I believe reasonably correct (last report replaced as it was incorrect) but the consultations, and part of the analysis and report, were on the basis that the 2005 permission was extant. Urge members to read the legal advice for themselves while bearing in mind it was retrospective.
- The report fails to have due regard to the provisions of the NPPF, the first words of the foreword of which state that the purpose of planning is to help achieve sustainable development.

I would be grateful if this note could be put in front of members of the committee and I urge members to read the background information rather than rely on the report.

I would be happy to discuss/explain any points if you wish.

Yours sincerely

Jan Trask

Jan Trask

From: nigel west
Sent: 16 January 2013 22:56
To: Claire Pamberi
Cc: Ben Phillips
Subject: The Boxing Club Gaza Trading Estate - SE/11/02722/Convar

Dear Ms Pamberi

Thank you for your letter of 8th January.

I do not accept your claim that my complaint and the application for permission are “two separate processes”. The complaint relates to the application and the two are inextricably linked. It is unreasonable to proceed with the application before deciding the complaint.

Leaving that point aside (and entirely without prejudice to my objection to the procedure the Council has followed) I am writing this email to provide you with a summary of my main objections to the grant of a fresh permission.

I am doing so because you have stated in your letter that I have the right to make further comments and that they will be taken into account when determining the application.

I summarise the main objections I would have raised if the Council had carried out a consultation procedure on an application for a fresh permission as follows:

- 1 The gym causes light pollution in the evenings when it is dark. The light pollution arises from (1) lights inside the gym as there are no curtains or blinds and (2) a floodlight attached to the outside of unit 19 which is used to light the area between the gym and the road.
- 2 Permission was given in 2005 despite the fact that a gym in a rural area offends the principle of sustainability because it was believed that the use of the unit as an office for a construction company during the day would generate local employment. That has not happened as the unit is not used as an office for a construction company. The gym does not generate local employment or support a local enterprise and there is now no reason to depart from the general principle that the development should be disallowed.
- 3 There are no public transport facilities along Scabharbour Road and the closest bus stop is about one mile away. There are no pavements on Scabharbour Road. In consequence the gym is only used by car users. That offends the principle that development should be promoted which reduces the need to travel and reduces reliance on cars.
- 4 The fact that the gym can only be used by car users means that the gym users are adults who own cars rather than youths. The gym does not therefore benefit the youths within the Sevenoaks area and does not provide them with an opportunity to learn boxing skills.
- 5 As the gym is used by adults rather than young aspiring boxers, the gym concentrates on “boxercise”, which is a general fitness programme with a boxing related theme. That is similar to many fitness programmes offered in leisure centres in town centres and there is no need for a gym offering a similar facility in a rural area

Supplementary Information

- 6 The use of the gym during the evenings and at weekends next to a quiet hamlet in the countryside offends the principle that the rural amenities and the character of the countryside should be preserved. The noise from the gym has been appalling because the "boxercise" classes involve repetitive shouting in an army style designed to push gym users to their limits and the gym destroys the peaceful rural setting of the weekends.

I stress that the objections set out above have been prepared at short notice (as your invitation to make the objections was only made on 8th January). I have not had an opportunity to study the Local Plan in detail since then and I may well have raised other objections if I had been given more time since receipt of your letter. Further, there are a number of other Counsultees who have not been given an opportunity to raise objections on an application for a fresh permission and they may well have additional objections

As you stated in your letter that my objection swill be taken into account, and as the objections set out above are not considered in the Officers Report prepared for the Development Committee meeting, please confirm that a copy of this email will be passed to the Chairman of the meeting in order that the objections can be taken into account.

Yours sincerely

Nigel West