

REPORT TO THE PLANNING COMMITTEE –28 JANUARY 2004

Joint Report of the Chief Solicitor and the Chief Planning Officer

Miscellaneous Item

Enforcement Action in respect of Foxmoor Nurseries, Haywards Lane, Wellington

Background

In 1996 planning permission was granted for the relocation of Foxmoor Nurseries from its existing site at Rockwell Green to a site in the open countryside at Haywards Lane, to the east of Wellington. The permission was for the erection of two large glasshouses, but there were concerns that the site was accessed by a narrow lane off the A38.

The permission was therefore subject to a S106 agreement requiring highway works. These were the widening of Haywards Lane itself prior to commencement of use of the glasshouses and the construction of a right hand turning lane from the A38, to be constructed prior to the commencement of the use of the second glasshouse, or within a year of commencement of use of the first glasshouse.

Whilst the first glasshouse was under construction in 2000, an application was received to change the use of 50% of this glasshouse to B1 use (light industrial) for the design, production, assembly and distribution of small garden products (Application No 46/2000/022). This was refused on the 18 September 2000 on the grounds of industrial intrusion into the open countryside and the possibility of precedent.

Subsequently, a further application was made (Application No 46/2000/0340) for the same use, but on that occasion it was explained by the applicant that the permission was being sought to permit the production of "Flower Towers" by Foxmoor Nurseries themselves. A written statement to this effect was submitted. Accordingly, permission was granted but subject to a S106 agreement which sought to limit the B1 use to such uses carried out by Foxmoor Nurseries itself or associated companies. The intention was to ensure that only horticultural type B1 uses were carried out.

Following the conclusion of the S106 agreement, an application was made to vary the earlier S106 agreement such that the right hand turning lane would not be required. Evidence was submitted on behalf of the nurseries stating that the second glasshouse was unlikely to be built and that traffic generation was significantly lower than had been predicted. The application, supported by the County Highway Authority, was granted. This variation was completed in October 2001.

The Current Position

Since that time there have been ongoing complaints that the terms of the planning permission and the S106 agreement have been breached. This has caused particular concern because of the amount and nature of traffic generated along Haywards Lane by the unauthorised uses.

As a consequence of these complaints a site meeting was held in May 2002 with the nursery owners and their solicitor at which it appeared that a level of agreement had been reached. The Council's understanding of that position was set out in a letter of the 11 July 2002. The basis of the Council's position was that only B1 uses carried out by Foxmoor Nurseries or an associated company were authorised. The Council also accepted that by virtue of permitted development rights Foxmoor Nurseries were entitled to use up to 235 sq m for B8 use (storage and distribution).

However, complaints continued to be received and a visit by the Enforcement Officer in November found that over 4000 sq m of the area was being used for B8 use. There was also evidence that the premises were being used by several individual companies and further enquiries were made during the early part of 2003, including the service of Planning Contravention Notices on the various occupants.

This led to a further meeting with the owner at which it was acknowledged that the property was occupied by different companies. However, it was claimed that all such companies were "associated" companies within the terms of the S106 agreement and therefore their activities were lawful within the terms of the existing planning permission and S106 agreement. Details of these arrangements were subsequently provided.

The Council has taken Counsel's Opinion in respect of the "association" of the companies and Counsel's advice is very firmly that the arrangements in place are not sufficient to meet the definition of an associated company within the terms of the S106 agreement. Additionally, it appears that the level of B8 use at the property far exceeds the level allowed under permitted development rights. It would therefore appear that all the companies trading at Foxmoor Nurseries other than the nurseries themselves, are unauthorised.

The Economic Development Position

However, it is acknowledged by the Economic Development Manager that the property at present is providing flexible and low cost workspace. He believes that there is clearly a demand for the type of space at Foxmoor Nurseries and that such demand will increase particularly as Taunton Trading Estate is gradually redeveloped.

He believes that currently some of these types of businesses are being lost to neighbouring authorities and that that problem needs to be addressed. Furthermore, his view is that Taunton Deane needs to maintain a diverse/balanced economy and the types of businesses located at Foxmoor should

have a place in the Taunton economy. Whilst there may be a supply of good quality workspace in the medium term, he does not believe this is the case for low cost space.

The Owners Position

The owners were advised of the outcome of the Counsel's Opinion and the fact that the situation at Foxmoor was to be reported to the Planning Committee to consider enforcement action. As a result, a meeting was held with the owners and their solicitor to try and establish any common ground.

The meeting concentrated on the interpretation of the S106 agreement and the meaning of "associated company" within that document. Since there is no definition of associated company within the document, it was agreed that the parties would need to look to extraneous material to ascertain the intentions of the parties. There was a suggestion by the owners that at the time the Council entered into the S106 agreement it was aware of "non conforming" uses at the property and that the S106 agreement was entered into in full knowledge of these.

The Council's position was that it had entered into the agreement on the basis that B1 uses by associated companies would be those related to the production of Flower Towers and similar products. Each side was to submit to the other evidence in support of their viewpoint, and if the position was still unclear it was agreed that mediation as to the interpretation of the agreement could be sought.

Since that meeting the Council has supplied evidence to the owners' solicitor indicating that the proposed B1 use was to be the production of Flower Towers by Foxmoor Nurseries, or one of its associated companies, or similar garden products.

The owners have not been able to supply any evidence to the contrary as they have not yet obtained files held by former solicitors. They have been advised that the matter was going to be reported to the Planning Committee at its meeting on the 28 January and asked for the submission of any evidence prior to the drafting of this report.

Assessment

Most, if not all, of the B1 activities at Foxmoor Nurseries would appear to be in contravention of the S106 agreement relating to the site, and the bulk of the B8 uses also in contravention of the planning permission. Whilst the views of the Economic Development Manager are acknowledged, the Local Plan Inspector, who reported in September 2003, has not identified any shortfall in the allocation of B1 or B8 land.

In addition, the Chief Planning Officer considers there are other factors which make this site unsuitable for a general B1 or B8 use and that it is unlikely that planning permission would be granted for such use, even with the imposition

of conditions. It is therefore considered expedient to take enforcement action in respect of the unauthorised uses at Foxmoor Nurseries.

However, any enforcement action must be reasonable and measured and take account of the fact that businesses located at Foxmoor will need time to re-locate. The Council would normally also allow a planning application to be made in respect of an unauthorised use prior to the commencement of enforcement action.

In this case, the recommendation to Members allows both a reasonable period of time for companies to re-locate prior to expiry of the enforcement notices, and also time for the owner of the nurseries to make a planning application to seek to regularise the position within the time for compliance, albeit that the indication is that such application is unlikely to be successful.

In this respect Members should note that although the site currently provides low cost units, in the event that permission were to be granted it is likely that rents would rise given the site's close proximity to the motorway junction.

Recommendation

It is therefore RECOMMENDED that:-

- (1) the Solicitor to the Council be authorised to serve enforcement notices on the occupiers of each of the unauthorised uses currently trading at Foxmoor Nurseries requiring the uses to cease within a period of 12 months from service of the notices;
- (2) the owner of Foxmoor Nurseries be advised that any application seeking to regularise the position should be submitted expeditiously; and
- (3) the owner of Foxmoor Nurseries be advised against any further lettings at the Nurseries without prior confirmation that the Council considers such proposed letting to be for an authorised use.

Chief Solicitor

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