

PLANNING COMMITTEE – 16 JUNE 2004

Report of the Chief Solicitor

Enforcement of Condition 20 - Planning Permission 34/1998/009 - Taunton Vale Hockey Club, Gipsy Lane, Taunton

Background

In June 2000 permission was granted for the erection of a clubhouse and associated pitches and facilities for the Taunton Vale Hockey Club at a site to the north of Gipsy Lane, Taunton. Concern was expressed at the time that the proposed floodlights would cause a nuisance for local residents and to meet those concerns the following condition was imposed:-

“The proposed floodlights luminaire shall be installed in a manner which ensures that no light source is visible from the adjacent residential properties, in accordance with details to be submitted to and approved by the Local Planning Authority before the use hereby permitted is commenced. The floodlights shall not be commissioned until the expiration of 14 days following a notice given in writing to the Local Planning Authority. Within 4 weeks of commissioning, the developer shall carry out any modifications to the lights which may be found necessary following a supervised testing of the lights. During the period the lights shall remain switched off”.

The reason given was to protect the visual amenity of the nearby residents and the surrounding area.

Testing of the lighting took place as required by the condition and was approved by the Planning Officer in conjunction with the Council's Electrical Engineer. They found the system to be satisfactory.

The current position

Local residents have however never been satisfied with the floodlighting. Complaints have been received from both individuals and the Wyndham Road Residents Association. Over the recent weeks, requests have been received from the Residents Association and from twelve individuals that a Breach of Condition notice be served.

The Hockey Club for its part has sought to deal with the complaints and initially reduced the level of lighting, but this has proved more difficult recently as the use of the Club expands and more young players are attracted to play. The Club feels that for safety reasons it needs to operate the lights fully on occasions when the Club is very busy.

On the face of it, provided the residents' complaints can be substantiated by the collection of evidence that the light sources are visible within their properties, a breach of condition notice could be served. However, the Club

has pointed out that the lights were approved by the Council in accordance with the condition and that to require further alterations at this stage, even if it would reduce or solve the problem, would be unreasonable.

The legal position is therefore not clear cut and further advice in this respect is needed. It is therefore suggested that Counsel's Opinion be sought as to whether it is appropriate for the Council to serve a breach of condition notice in view of its actions.

RECOMMENDATION

It is therefore RECOMMENDED that:-

1. Counsel's Opinion be sought as to whether the Council through its approval of the lighting system is estopped from taking breach of condition action;
2. Evidence be collected from the local residents to establish the extent to which the condition is being breached; and
3. That the request from the local resident's to serve a breach of condition notice be deferred until Counsel's Opinion has been received and the evidence collected.

Chief Solicitor

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