

Planning Committee - 17 May 2006

Report of the Chief Solicitor

Proposed Enforcement Action – Foxmoor Nurseries, Haywards Lane, Chelston

Background

Members will recall that at the meeting on 30 March 2005, the Committee considered the situation that had arisen in relation to unauthorised uses that had evolved over a period of time at Foxmoor Nurseries. The current position on site was reported to Members together with the views of local people, the Economic Development Officer, the Traffic Examiner for Vehicle and Operator Services and the West Buckland Parish Council. Members were asked to consider whether it was expedient to take enforcement action and a course of action was recommended.

Based on that recommendation to Members, it was resolved to take enforcement action individually against the unauthorised B8 (storage and distribution) uses of units 2, 3, 5, 6, 7, 7a, 7b and 10 provided that at the date of service of the notice there was sufficient evidence of such B8 use. It was agreed that any notices served would allow six months for compliance in order to allow the businesses involved time to re-locate.

Members were also advised that there was disagreement between the Council and the landowner as to the extent to which B1 (light industrial) uses were permitted under the terms of the S106 Agreement relating to the site. It was therefore further resolved that negotiations should take place to try and agree amended wording to the S106 Agreement to clarify the type of B1 uses permitted and if this failed, a declaration should be sought from the Court.

However, it was subsequently identified that to take matters forward and in order to collect the evidence in a form that would substantiate the taking of enforcement action, assistance from outside the authority would be required.

A consultant dealing in enforcement investigations and the giving of evidence at inquiries was appointed, and in December 2005, the premises at Foxmoor Nurseries were visited by a team of enforcement officers who collected evidence of all the activities on site at that time.

It was found that the glasshouses had been subdivided into about 18 lock up units with a variety of B1 and B8 uses. There was also evidence of other breaches of planning permission within the curtilage of the glasshouses, including the stationing of portacabins, the parking of commercial vehicles and the use of part of the site for stationing a milk tanker.

Having collated and assessed the evidence, the consultant advised that a single enforcement notice should be served against the unauthorised change of use of the whole site to a mixed industrial use. This would ensure that all unauthorised activities wherever situated on the site would be caught by the notice, and would prevent the movement of unauthorised activities within the site. This could be done without the need to take any further action in relation to the S106 Agreement at the present time.

The present position

Members have already made a decision that it is expedient to enforce against unauthorised uses at this site and in the intervening period there has been no significant change of circumstances to warrant a re-consideration of that position. Indeed, if anything the number and extent of uses has intensified and complaints continue to be received on a regular basis.

The matter has been brought to the Committee for further consideration because of the need to authorise the action now recommended by the Council's consultant, which is significantly different.

However, when Members were considering the service of individual notices in 2005 it was agreed that a six month period for compliance would be sufficient to allow the businesses to re-locate. With the service of one notice requiring compliance across the whole site a twelve month period would be more appropriate given the large number of activities that will need to re-locate. In any event any steps to ensure compliance with the notice are likely to be delayed by an appeal against the same.

RECOMMENDATION

It is therefore **RECOMMENDED** that Members:-

1. Authorise the service of a single enforcement notice to be served against the unauthorised change of use of the Foxmoor Nurseries site at Haywards Lane, Chelston to the use of the site for mixed industrial use.
2. That the period for compliance with such a notice be twelve months.

Chief Solicitor

Contact Officer: Judith Jackson Telephone 01823 356409 or e-mail j.jackson@tauntondeane.gov.uk