

11/1948

Representation

A 10 page representation has been received from a Planning Agent on behalf of a neighbouring resident which was sent to Members/Substitute Members of Planning Committee and officers. The representation is attached and officer's response is set out below. Where there is not a response to an issue raised it is because it has been considered in the main report.

Relevance of the Enforcement Notice Served in 2008

The representation considers the reasons for issuing the Enforcement Notice (EN) are a formal statement of the Council's assessment of the impact of the development which has taken place, and that a refusal of the application would accord with the Council's reasons for issuing the EN in 2008. Specific reference is made to reasons for issuing the EN relating to landscape impact and amenity (outlook and privacy) with the suggestion that the earthworks enforced against in 2008 were not dissimilar to what is now proposed.

The reasons for issuing the EN, (excluding those relating to the car park and access which have since been granted planning permission), are summarised as follows:

- There were no controls on the height and extent of land raising;
- It was causing a detrimental impact on the countryside;
- It had an overbearing visual impact and was harmful to the amenity of residents;
- Environmental disturbance from earthworks, vehicle movements, noise and dust;
- Lack of a technical justification for a 6m high plateau compared to the ground level lakes;
- Without any properly designed scheme of development the works were considered to be waste disposal;
- Potential highway safety issues from lorry traffic;
- Land raising within the flood zone and potential flood risks;
- Impact upon the River Beult SSSI;
- Further importation of material;
- Harm from the buildings in place to carry out works;
- Uncontrolled 24 hour use which could harm residential amenity;
- Visual harm from temporary buildings;
- Unrestricted retail use (tackle shop) contrary to policy;
- Various harmful paraphernalia (bins, signs, tables etc.);

- The fact that none of these issues were considered under planning permission 03/0836 and so these matters had not been considered.

The earthworks in 2008 as the EN sets out were uncontrolled meaning there was no properly designed final scheme of development and there were no controls over any necessary mitigation whatsoever. It is considered that the harm identified stems from the uncontrolled nature of the development.

In contrast, the proposed development under the planning application is accompanied by an Environmental Statement with substantial evidence and information and clear plans, including proposed mitigation. The planning application has been assessed by statutory consultees (with no objections), the Local Planning Authority, and local residents, and the planning issues raised under the EN are matters considered in the assessment. In recommending planning permission, the mitigation of any impacts would be secured via planning conditions and the legal agreement.

Whilst the EN is a material consideration, the applicant has submitted this planning application in an attempt to regularise the situation at the site. The proposed development including the proposed mitigation is significantly different to the earthworks and situation when the EN was served. It is therefore not accurate to compare the proposed development with the situation when the EN was served, and the EN does not preclude planning permission being granted.

Differences from the 2012 Proposal

The representation considers the development now being considered is substantially different in terms of its scale, nature, and impacts from that considered in 2012, referring specifically to the heights of the banks.

As outlined at paragraph 7.04 of the main report, the main changes from the previous decision are lower sloped banks in places around Lakes 2 and 3 by no more than 2m, and slightly higher slopes in places of no more than 1m. The height of the lake crests for Lakes 2 and 3 have not significantly changed but where they have, they would be marginally lower.

Whilst the 2012 report refers to various heights including 5m and 4m heights, the Council commissioned its own land survey in September 2019 and this compares the previously proposed levels to that now proposed and this is what the above assessment has been based on. It is therefore considered that the lakes would not be over 2m higher than the previous scheme as suggested.

As also outlined at paragraph 7.04, the western banks begin to rise closer to the western boundary in places than previously proposed and the corners of the lakes are at slightly different angles and the islands within the lakes would be different in shape and location.

Officers have fully assessed the latest proposals and consider the changes from the previous determination are minor in nature in the context of the wider development and so the previous planning judgement is still a material consideration. However, it is for Members to decide what weight to give to the

previous decision and ultimately to reach a decision on the development now proposed.

'Matters of Judgement'

The issues relating to landscape, amenity, and heritage including the fabric of Hertsfield Barn have been raised previously and are fully considered in the main report.

Other Matters

The representation considers that the proposed development is a 'waste disposal operation' because the EN considered this to be the case in 2008 and this has not been assessed. As outlined above, the EN referred to works being carried out in 2008 and in the absence of any properly designed scheme of development there was uncertainty what the works were for, and therefore the works were considered to represent 'waste disposal'. However, since that time, and as evidenced through the supporting documentation for the planning application the material brought on site (that was permitted under an Environment Agency licence) forms an integral part of the development for which planning permission is now sought. Therefore it is now apparent, furnished with the additional application documents that this does not represent 'waste disposal' but works in connection with the planning application.

As outlined in the main report, the Council's consultant (Mott MacDonald) are advising that the proposed drainage system to mitigate groundwater impacts is a suitable solution subject to the fine detail being provided via recommended conditions 3 and 4. Their expert view is that the proposed scheme will be effective in mitigating any impact, and their expert advice will be sought when the details are submitted for consideration.

The safety of the raised lakes is dealt with via separate legislation under the Reservoirs Act and so is not a planning matter. Notwithstanding this, the Environment Agency confirmed in September 2019 that an enforcement notice was served on the site in early 2018 for non-compliance with the Reservoirs Act but this has been removed and any issues have been resolved.

The grant of permission would effectively nullify the EN because the Council would have decided that the proposed development is acceptable. If there was any breach of planning permission or planning conditions should it be granted, enforcement action could be taken as would be the case for any other breach of planning control.