

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Development and Conservation
Control Committee

AUTHOR/S: Head of Legal Services

10 May 2006

S/0682/95/O – LONGSTANTON

B1050 Bypass for Longstanton and Related Road Works together with Housing (21ha), Business Park 6.3ha), Extension to Village Recreation Area (2.8ha), Village green Including land for local shop and surgery, Open Space, Landscaping and Related Infrastructure Report on Enforcement Action in relation to provision of Open Space and Landscaping on Phase 2 of the Development.

Purpose

1. At the April meeting of DCCC Members requested a report from officers on pursuing enforcement action, specifically by serving a Stop Notice preventing further occupation of dwellings in Phase 2 of the residential development at Home Farm, Longstanton.

Effect on Corporate Objectives

2.	<table border="1"><tr><td>Quality, Accessible Services</td><td rowspan="4" style="text-align: center; vertical-align: middle;">None specific</td></tr><tr><td>Village Life</td></tr><tr><td>Sustainability</td></tr><tr><td>Partnership</td></tr></table>	Quality, Accessible Services	None specific	Village Life	Sustainability	Partnership	
Quality, Accessible Services	None specific						
Village Life							
Sustainability							
Partnership							

Background

3. In 2000 planning permission was granted for the development of Home Farm, Longstanton. The relevant open space and landscaping conditions are:-
Condition 1: Approval of the details of the siting, design and external appearance of any building, the means of access thereto and landscaping of each phase of the development of the site shall be obtained from the LPA in writing before any development of the relevant phase as commenced.
4. Condition 4 defines the scope of the landscaping for the site as
 - a) a structural landscaping and planting scheme for
 - i) the Landscaping/Woodland Tree planting areas;
 - ii) the Central Open Space;
 - iii) the Village Green;
 - iv) Extension to the Recreation Ground
 - b) separate landscaping schemes appropriate to each phase of residential and business development or part thereof (referred to as “area landscaping schemes”).

5. Condition 5 relates to the timing of the planting to be carried out in accordance with the timing in the approved scheme except for the “area landscaping schemes” where planting shall be carried out in the first planting season following occupation of the buildings on the phase or the completion of development whichever is the sooner.
6. Conditions 6 and 7 require replacement planting of any trees or plants in the structural landscaping and planting scheme and in the “area landscaping schemes” which die within 10 or 5 years (respectively) of planting or at any time because of construction on site.
7. Condition 8 states that notwithstanding the provisions of Conditions 4 to 7 none of the dwellings shall begin to be constructed until a scheme for the phased laying out, equipping and subsequent management of the Village Green, Central Open Space, Incidental Areas of Open Space within the residential areas including children’s play areas; and the Road margins not being adopted by the local highway authority has been submitted to and approved in writing by the LPA. In respect of each phase, none of the dwellings shall be occupied until all of the approved works have been implemented in accordance with a programme to be agreed with the LPA and arrangements to secure the future management of these areas in accordance with the approved scheme have been put into effect.
8. Members will note that Condition 8 does not require such a scheme for the extension to the Recreation Ground.
9. Members will also note that the schemes requested in the reserved matters condition (Condition 4) and the phasing and future management condition (Condition 8) are dependant on the agreement of the LPA to the scheme details.

The Legislation

10. The stop notice procedures under Section 183 of the Town and Country Planning Act 1990 allow an authority where they consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, when they serve the copy of the enforcement notice or afterwards, to serve a “stop notice” prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice. This allows the LPA to impose a ban, almost immediately, on activities that are being carried on in breach of planning control. A stop notice directs that any specified activity being carried out on land in respect of which an enforcement notice has been served shall stop, notwithstanding that the enforcement notice itself has yet to come into effect. It is thus essentially a provisional procedure, and a stop notice is entirely parasitic upon the enforcement notice to which it relates. It ceases to have effect when the enforcement notice is quashed or withdrawn, or when the period allowed for compliance with the enforcement notice expires. Its use is in some circumstances subject to liability to pay compensation under Section 186 of the 1990 Act.
11. Taking action under this section is discretionary, and the potential compensation liability under this provision has caused local planning authorities to be extremely cautious in their use of the power.
12. Current advice on use of stop notices is contained in DOE Circular 10/97 which covers Enforcing Planning Control and advises LPAs to carry out a cost/benefit assessment before serving a stop notice, and to ensure that its requirements do not prohibit anything more than is essential to safeguard amenity or public safety in the neighbourhood or prevent serious or irreversible harm to the environment in the surrounding area (para. 3.20). The precise effect of prohibiting any particular activity

should always be carefully examined. Moreover, the LPA “should consider how many people are likely to benefit, and how adversely their amenities will be affected if a stop notice is not served (on the assumption that the enforcement notice will eventually take effect on expiry of the compliance period specified in it).”

13. Any person who has an interest in, or occupies land, when a stop notice is served, is entitled to compensation in respect of any loss or damage directly attributable to the prohibition contained in the notice in the following circumstances:
- where the enforcement notice does not take effect in relation to the activity prohibited by the stop notice by virtue of having been quashed, varied or withdrawn (otherwise than in accordance with the grant of planning permission authorising the activity), or
 - the stop notice is itself withdrawn.

The current position on compliance with landscaping conditions at Longstanton.

14. The Village Green scheme has been submitted and approved and a scheme for future maintenance has been agreed between Persimmon and the Parish Council. This scheme was approved as part of Phase 1 of the Development and hence this information is provided by way of background at this stage. Completion of the Village Green (which has been set out and grassed but requires landscaping and provision of a play area) is dependant on completion of a Deed of Variation to the Section 106 agreement which obliges Persimmon to construct a road across this area. That Deed of Variation is expected to be completed within the next 3 weeks.
15. The planning department has received schemes for approval from developers for the Central Open Space and at the date of writing this report the details of the scheme were very close to approval. The design of the incidental areas of open space within Phase 2 has been agreed but there is still discussion on some of the planting details. However, there is no agreement with the Parish Council on the future maintenance of these areas at this stage. Officers will update Members at Committee on the latest position with regard to compliance with relevant Conditions and the developers' positions. Officers will also advise on the extent of occupations on Phase 2 of the development. Agreement on detailed planting and landscaping is a lengthy process because of the involvement of a number of officers and departments including conservation, community services and development control.

Conclusion

16. Given that schemes have been submitted and negotiations are taking place between developers and officers a stop notice may not be considered expedient at this time. It is suggested that the situation be monitored and a further report brought to DCCC in July when it is likely that further details will have been agreed. In any event no action can be taken on the phasing, equipping and future management of the extension to the recreation ground as this is excluded from the relevant Condition 8 – it is only the landscaping scheme which is enforceable for this area of open space.

Background papers: None

Contact Officer: Catriona Dunnett – Assistant Solicitor
Telephone: (01954) 713308