

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO:	Development and Conservation Control Committee	5 th October 2005
AUTHOR/S:	Director of Development Services	

S/1800/04/F and S/2054/04/LB - Sawston

S/1800/04/F - Restoration, Refurbishment and Change of Use of Hall to Hotel; Restoration and Conversion of Coach House to Hotel Accommodation; Erection of New Restaurant, Pool and Treatment, Accommodation, Creche and Laundry Facilities, and Plant Buildings; Alterations to Internal Roads; and New Parking Area.

S/2054/04/LB – Change of Use from Former Language School and Alteration and Extension as Part of Conversion to Hotel Comprising 41 Bedrooms Suites: Demolition of Extension to Coach House and Out Buildings with New Freestanding Accommodation Blocks and Restaurant Adjacent to Kitchen Garden Wall and Swimming Pool with Associated Car Parking. Rerouting of Access Drive

Sawston Hall, Church Lane, Sawston, for Adrian Critchlow

Recommendation: Members are asked to reconsider the applications in light of the contents of this report

Dates for determination: 24th November 2004/5th January 2005

DEPARTURE APPLICATION, AFFECTS GRADE I LISTED BUILDING AND CONSERVATION AREA

Members visited the site on Monday 4th April 2005.

Update

1. At the 6th April meeting of this Committee, Members were minded to approve both applications. The relevant minute is as follows:
2. “The Committee was minded to approve the application subject to the proposal being referred to the Secretary of State and not being called in by him for determination, for the reasons set out in the report from the Director of Development Services and subject to the Conditions referred to therein other than Condition 6 under paragraph 112 (to be deleted), with Condition 11 under paragraph 112 being expanded to require also details of any alternative cleansing tank to be agreed, an additional Condition requiring the agreement of the precise position of the crèche/laundry building, service trenches and the structural grass road providing access to the pool and treatment rooms and the prior signing of a Section 106 Agreement to ensure the whole site only operates as a single planning unit. Whilst mindful of the Local Highway Authority’s latest comments, Members, having visited the site, considered that the proposal was acceptable having regard to the following matters: the proposal involved an appropriate use for, and without harm to, this important site/listed building; highway matters were carefully considered at the time of the Committee’s site visit; the use would enable a degree of public access to the site; the use would provide local employment; a modest amount of new and well-conceived build was proposed; the proposal involved a number of sustainable features;

the removal of the restaurant attached to the Coach House and the link between the Hall and the Coach House would enhance the setting of the listed building; and, by not involving alterations to the listed gate piers, frontage walls or Church Lane itself, the scheme preserved the character and appearance of the Conservation Area and the character and setting of the Hall, gate piers and St Mary's Church."

3. The applications were subsequently referred to the Secretary of State and he confirmed that he did not wish to call-in either application. The listed building consent was issued on the 26th May 2005. The resolution to approve the planning application was subject to the prior signing of a Section 106 Agreement to ensure the whole site only operates as a single planning unit. The Agreement is yet to be completed and the decision notice for the planning application has not therefore been issued.
4. A copy of the report to the 6th April meeting is attached as Appendix A.

Application for Judicial Review

5. Messrs Hewitsons Solicitors are acting for Dr. Sinan Bayraktaroglu in his proposed claim for Judicial Review of the decision of the Council's Development & Conservation Control Committee dated the 6th April 2005. The most important letter is that dated the 1st August from Hewitsons.
6. Hewitsons expect the Council to reconsider the matter afresh. The grounds upon which the Solicitors rely are threefold:-
 - a) Bias
 - b) Unreasonable rejection of highways objections
 - c) Lack of evidence of justification
7. The Council's Head of Legal Services advises that Ground (a) does present the District Council with a real problem. Whilst he was not in post at the time, he has been advised that those Members of the Conservation Advisory Group attending the 6th April Committee did not declare their pre-determination (ie. bias) and took part in the discussion and voted thereon.
8. The House of Lords in the leading case of *Porter v Magill*; *Weeks v Magill* (2001) clarified the law on bias as follows:- "The question is whether the fair minded and the informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased".
9. Consequently, the current test for bias (in local authority decision making as elsewhere) is whether:
 - a) A fair minded observer
 - b) who was suitably informed, and
 - c) who having considered the facts
 - d) would conclude (ie. not might conclude)
 - e) that there was a real possibility of bias (ie. less than a real probability of bias).
10. The recent decision of *Richards J* is particularly worth noting in this context. The case is that of *Georgiou v Enfield London Borough Council* (2004). *Georgiou* concerned a challenge to decisions of the Council through its Planning Committee to grant planning consent for the erection of a mental nursing home. The Claimant was Chairman of a local business association which objected to the applications.

The Council had under its constitution set up a Conservation Advisory Group to consider and advise on a range of conservation issues. These included considering and advising the Council's Planning Committee on proposals for development referred to the CAG which (as the Court noted) could affect the character or appearance of conservation areas, ancient monuments, listed buildings or their settings as well as advising that Committee "on the preservation or enhancement of the character or appearance of heritage features, areas and their environs". Three of the Members of the Planning Committee which made the decisions in question were at a previous meeting of the CAG. Those Members had voted in support of the applications in question. The Claimant contended that participation in the decisions by Members of the Planning Committee who were also Members of the CAG gave rise to an appearance of bias so as to vitiate the decisions of the Planning Committee.

11. In these circumstances Richards J did have concerns about what happened in this case and the objective impression that it conveyed. Although the remit of the CAG was to consider only the conservation implications of the applications, its conclusions was expressed in simple terms of support for the applications without any qualification. At the meeting of the Planning Committee there was nothing said about the limited function of the CAG or about the need for those with dual membership to put aside the support expressed in the CAG and to examine all relevant planning issues before reaching the planning decision. In the circumstances the Court took the view (albeit not without a degree of hesitation) that:
12. "A fair minded and informed observer would conclude that there was a real possibility of bias, in the sense of the decisions being approached with close minds and without impartial consideration of all planning issues, as a result of the support expressed by the CAG being carried over in support for the applications in the context of the Planning Committee's decision".
13. The Council's Head of Legal Services has therefore concluded, following consultation with his colleague solicitor in the office, that a Judicial Review of this decision is likely to succeed. To seek to defend this proposed claim would, in his opinion be an unnecessary use of public funds, use scarce staff resources and in any event any such defence would be unlikely to succeed.
14. In accordance with the Council's Constitution at Article 14.03 the rules and procedure in respect of legal proceedings brought by and against the Council are set out in Part 4 thereof. In particular, Paragraph 2.4, "Head of Legal Services shall have discretion at any time or stage of proceedings to compromise them but shall have regard to any views of the instructing Chief Officer". It is confirmed that the Head of Legal Services consulted accordingly with the Director of Development Services.

Advice from Head of Legal Services

15. The Head of Legal Services has therefore advised that this report to the Council's Development & Conservation Control Committee be prepared on both the planning application and the listed building application. Members of the Council's Conservation Advisory Group will be invited to withdraw from the meeting and take no part in the discussion or voting thereon. The remaining Members are asked to reconsider the applications based on the information contained in the original report, their assessment on site and the contents of this report and appendices.

Consultation update as reported verbally at the April meeting

16. In response to the highway objections received on behalf of the objectors at Spring Cottage, the **Local Highway Authority** (LHA) stated:
- a) The drawings supplied by the developer show that they intend to achieve a visibility splay of 40m in either direction, however it is evident that this is not achievable on the ground currently. If these splays are unable to be delivered by the developer, for whatever reason, then this proposal would not be acceptable.
 - b) The gateways distance of 4.5m from the carriage is not considered an issue as they will be open permanently. However, the distance between the existing gates themselves is not adequate to allow safe entry and exit and would result in vehicles having to wait in Church Lane to enter.
 - c) Two personal injury accidents have been recorded in Church Lane (2000 and 2003). There have been no other accidents involving vehicles or pedestrians in the past 5 years in Church Lane. This is within the context of the site operated as a Language School. During this time the data from the applicant shows that there were up to 694 daily pedestrian trips and 80 daily vehicle trips.
 - d) The developer is required to deliver a scheme to improve pedestrian access along Church Lane.
17. At the 6th April meeting, the case officer explained that the plans the LHA had originally commented upon showed unachievable 40m visibility splays. An amended plan has been received, date stamped 25th May 2005, which accurately shows the available visibility.
18. **English Nature** confirmed that it does not require any further information before the applications are determined but recommends a condition be attached to any approval requiring details of the proposed reedbed and any alternative cleansing tank to be agreed together with assurances that there will be no nutrient enrichment or pollution threat to the SSSI.

Representations by Agent as reported verbally at the April meeting

19. In response to the Trees & Landscape Officer's concerns, the agents have suggested that, notwithstanding the details shown upon the submitted plans, precise details of the position of the laundry building, roads and the service trench be controlled by condition and subsequently agreed with the Trees & Landscape Officer.

Representations by Solicitors on behalf of occupiers of Spring Cottage as reported verbally at the April meeting

20. Your officers received a copy of a letter sent to all Members of this Committee prior to the 6th April meeting asking Members to refuse the application and highlighting three particular concerns, namely, the Green Belt, highways and access matters and enabling development.

Officer Comment update as reported verbally at the April meeting

21. Whilst the required access width could be achieved by widening the currently available access width without having to affect the existing gate piers themselves, as the gate piers are listed, this would require listed building consent.

22. Perhaps more problematical is the visibility splays recommended by the Local Highway Authority which are more difficult to achieve. Whilst the originally submitted plans indicated visibility splays of 40m in both directions, the highway objections report states that only 30.4m is available to the west and 9.1m to the east. Having visited the site, it seems to me that the figures stated in the objector's highway report are likely to be accurate. Members attending the Committee site visit will have seen the available visibility themselves when exiting the site on Monday 4th April.
23. In view of the Local Highway Authority's comments, at the 6th April meeting officers recommended that the application be deferred to enable further discussions to take place with the Local Highway Authority and applicant.
24. In response to the letter sent to all Members of this Committee from the Solicitors representing the occupiers of Spring Cottage, the case officer made the following additional comments:
 - a) The new build development is not necessarily required to secure the restoration of the Hall but rather to secure the medium and long-term viability of the use and thereby the future of the building; and
 - b) English Heritage has not stated that the development would cause harm but rather, as stated in the report, the development of ancillary hotel accommodation within the grounds would be regrettable.
25. If Members are minded to approve the application, an additional condition to those set out in the report to the April meeting would need to be attached to the planning permission requiring the agreement of the precise position of the crèche/laundry building, service trenches and the structural grass road providing access to the pool and treatment rooms. With reference to English Nature's comments, a condition is already recommended requiring details of the reedbed in the report to the April meeting but this should be expanded to also require details of any alternative cleansing tank to be agreed.
26. At the April meeting, the Head of Legal Services also advised that any approval of the planning application should be subject to the prior signing of a S.106 Agreement to ensure the whole site only operates as a single planning unit.
27. In addition, at the meeting, the Conservation Manager drew members' attention to the areas of the report relating to "enabling development" noting that the report set out all the criteria for assessment of this issue and that these had been considered by officers and that their conclusions are noted in the report.

Further Update

28. Subsequent to the meeting, the solicitors acting for Dr Bayraktaroglu have also written to English Heritage challenging them over their consideration of the application in relation to their policy statement 'Enabling Development and the Conservation of Heritage Assets'.
29. In its response (which has been copied to the Local Planning Authority) English Heritage's Historic Buildings Inspector states: *'The policy document was produced for the guidance of Local Planning Authorities when approached by applicants seeking to carry out development departing from local plan policies which they seek to justify in terms of facilitating the conservation of historic buildings. In the case of Sawston Hall, during our consultation by SCDC the applicant made no substantial or sustained argument in those terms.'*

Furthermore, we considered the proposed use of the Hall a reasonable one and the development in the grounds relatively modest (and little different from that already established by previous permissions). When assessing the impact of the proposals on the Listed Building and its setting we consequently saw no need to consider the proposals in terms of that policy statement'.

30. The Head of Legal Services has received a letter from the solicitors acting for Dr Bayraktaroglu (dated 15th September 2005) and an accompanying letter from Peters Elworthy & Moore. A copy of both letters is attached as Appendix B. HLL Humberts Leisure's 17th March 2005 report, the conclusions of which were set out in the report to the April meeting, is attached as Appendix C.
31. At the April meeting, Members noted that visibility from the access to the east was only 9.1 metres and 30.4 metres to the west but considered that the proposal was acceptable having regard to the following matters: the proposal involved an appropriate use for, and without harm to, this important site/listed building; highway matters were carefully considered at the time of the Committee's site visit; the use would enable a degree of public access to the site; the use would provide local employment; a modest amount of new and well-conceived build was proposed; the proposal involved a number of sustainable features; the removal of the restaurant attached to the Coach House and the link between the Hall and the Coach House would enhance the setting of the listed building; and, by not involving alterations to the listed gate piers, frontage walls or Church Lane itself, the scheme preserved the character and appearance of the Conservation Area and the character and setting of the Hall, gate piers and St Mary's Church.

Recommendation

32. Members are asked to reconsider the applications based on the information contained in the original report, their assessment on site and the contents of this report and appendices.

Background Papers: the following background papers were used in the preparation of this report:

Cambridgeshire & Peterborough Structure Plan 2003:

- South Cambridgeshire Local Plan 2004:
- English Heritage: Policy Statement – Enabling Development and the conservation of Heritage assets.
- Planning Policy Guidance Notes Nos. 6, 13, 15, 16 and 21 and PPS9
- Planning files referenced under Relevant Planning History heading in the 6th April 2005 report

Contact Officer: Charmain Hawkins – Historic Buildings Officer
Telephone: (01954) 713178
Andrew Moffat – Area Planning Officer
Telephone: (01954) 713169
Colin Tucker – Head of Legal Services
Telephone: (01954) 713060