

3/09/0939/FP - Replacement garden centre, retail and restaurant building and new sewage treatment plant at The Riverside Garden Centre, Lower Hatfield Road, Bayford, Hertford, SG13 8XX for Mr Jeffery.

Date of Receipt: 19.06.2009

Type: Full

Parish: BAYFORD AND HERTFORD

Ward: HERTFORD – RURAL SOUTH AND HERTFORD-CASTLE

Reason for report: Major application previously deferred

RECOMMENDATION

That planning permission be **GRANTED** subject to the following conditions:-

1. Three Year Time Limit (1T12)
2. Materials of construction (2E11)
3. Refuse disposal facilities (2E24)
4. No external lighting (2E26)
5. External details of extraction equipment (2E37)
6. Construction parking and storage (3V22)
7. Wheel washing facilities (3V25)
8. Landscape design proposals (4P12 - i, j, k)
9. Landscape works implementation (4P13)
10. The permission hereby granted relates to the provision of 428sq.m. floorspace for the restaurant use. The creation of any additional restaurant floorspace within the building shall not be undertaken without the prior written consent of the Local Planning Authority.

Reason: In order to control any intensification of the restaurant use and subsequent impact on the Green Belt.

11. The use of the premises shall be restricted to the hours 08.00 to 23.00 Monday to Saturday and 10.00 to 22.00 on Sundays and Bank Holidays.

Reason: In the interests of the amenities of the occupants of nearby

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properties.

12. Construction hours of working - plant & machinery (6N07)
13. The development hereby permitted shall only be carried out in accordance with the Flood Risk Assessment 1028/09 by Michael Thomas Consultancy, and mitigation measure including flood proofing measures and finished floor levels to be set no lower than 42.14m above Ordnance Datum (AOD).

Reason: To reduce the risks and impact of flooding on the proposed development and future occupants in accordance with PPS25 and policy ENV19 of the East Herts Local Plan Second Review April 2007.

14. The construction of the site drainage system, including sewage and surface water, shall be carried out in accordance with details to be submitted and approved in writing by the Local Planning Authority prior to the commencement of development, and the building hereby permitted shall not be occupied until such infrastructure is in place.

Reason: To prevent pollution of the water environment in accordance with policy ENV20 of the East Herts Local Plan Second Review April 2007.

Directives:

1. Other Legislation (01OL)
2. Food, hygiene and sanitary provisions (06FH)
3. The applicant is advised that water voles are a legally protected species under the Wildlife and Countryside Act 1981 (as amended), and it is an offence to intentionally kill or injure, or damage, destroy or obstruct access to any place that is used for their shelter. Should the works impact on water voles or their burrows, a licence will need to be obtained from Natural England.
4. This application does not grant permission for any storage containers indicated on the site plan. The applicant is advised to apply for a Lawful Development Certificate if he believes the containers to be lawful.

Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and East Herts Local Plan Second Review April 2007), and in particular policies SD1, SD2, GBC1, TR2, TR7, TR20, STC10, ENV1, ENV2, ENV17, ENV18, ENV19, ENV20 and ENV23. The balance of the

considerations having regard to those policies, and the very special circumstances relevant in this case, is that permission should be granted.

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1.0 Background

- 1.1 Members may recall the report to Development Control Committee on 26th August 2009 this year, attached as Appendix A on pages 152.1 - 152.20, when it was resolved to defer the application to enable further information to be provided in relation to the sewage treatment tank, the storage containers, restaurant use, and flood risk. This updated report will therefore focus specifically on these matters.
- 1.2 The applicant has since provided further justification for the proposal, and a site meeting has been held with Environment Agency officers to clarify questions raised by the Flood Risk Assessment.

2.0 Consultation Responses

- 2.1 These are contained within the previous report attached as Appendix A on pages 152.1 - 152.20. Later responses that were verbally updated to Members at Committee are listed below for Members' convenience. Further information has been received from the Environment Agency since the deferral.
- 2.2 Hertford Civic Society has no objection in principle, but concerns over the size of the restaurant area and additional parking needs. They suggest a condition to require all car parking to be accommodated on site, not on the verge.
- 2.3 The Landscape Officer recommends consent. He confirms there has been no excavation work within the root protection area and has not requested a Tree Survey.
- 2.4 County Archaeology advise that the proposal is unlikely to have an impact upon significant archaeological deposits, structures or features.
- 2.5 The Environment Agency have confirmed that there is no need to apply the Sequential Test in this case. They have also confirmed that a discharge consent has not yet been granted for the tank. The EA have also provided a response to the questions raised in a letter from Jane Orsborn on behalf of Mrs. Cook dated 25th August 2009. This is discussed in more detail below.

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2.6 Environmental Health have spoken directly to Kee Systems who installed the sewage tank to query potential noise levels. There is limited data on noise emissions from the pump, although this is considered to be minimal. Environmental Health have advised that should the tank result in a statutory noise nuisance, sufficient space would exist for a noise screen to mitigate any disturbance.

3.0 Town/Parish Council Representations

3.1 Hertford Town Council's comments are contained within the previous report attached as Appendix A on pages 152.1 - 152.20.

3.2 Bayford Parish Council comments were verbally updated to Members at August Committee. They made the following observations:

- Does the tank have to be sited so close to adjacent property?
- They take a very negative view of retrospective planning applications;
- EHDC should ascertain the level of noise and smell which the tank is likely to produce prior to granting this application.

4.0 Other Representations

4.1 These are contained within the previous report attached as Appendix A on pages 152.1 - 152.20. Three further letters of objection, and a letter of support were received as late representations and were verbally reported to Members at Committee. The comments raised in the letters of objection are listed below for Members' convenience.

- The applicant has a licence that permits live music and dance from 12.00 to 00.00, and sale of alcohol from 08.30 to 00.00;
- There were never any problems on the original premises because of limited space for the restaurant. The new application effectively doubles the restaurant floorspace;
- In 1997 it was stated by solicitors that no building should be any higher than existing;
- Large metal storage containers are sited close to the boundary with Burrowfield and may restrict the growth of adjacent trees – storage should be addressed in the scheme;
- The Angling Club do not appear to have been consulted;

- Query why the applicant has not submitted a Tree Survey;
- The sewage tank is designed to be installed below ground; there is no reason why it cannot be installed below ground and this should be required by condition;
- The tank is visible from the garden of Burrowfield and the river, and will be more visible during winter months;
- The tank has been sited hard against the boundary with no space for planting on the applicant's property;
- Mrs. Cook of Burrowfield has experienced a burning smell and continuous drumming noise, and has been unwell. She believes this derives from chemicals in the sewage tank and noise from the pumping gear;
- Sewage tank and containers would look out of place – an issue raised by an Inspector in looking at an appeal for a caravan.
- Permeable materials should be used throughout the site to reduce the risk of further flooding;
- The river wall has increased in height and extent – this may have prevented flood water escaping;
- The restaurant has operated as ancillary use in the past, with opening times restricted to opening hours of the garden centre;
- There is now a clear intention to operate the A3 use independently; this is inappropriate in the Green Belt with no very special circumstances, and impacts on neighbour amenity;
- The A3 use should be reduced in size and required to be ancillary, only open at the time of the garden centre;
- Inaccuracies in the FRA – this appears to be based on repair of previous greenhouses, not this new development.

4.2 A further letter has been received from The Granary stating that the application form is inaccurate, the FRA does not apply to the proposed redevelopment and the flood alleviation measures will increase flooding to neighbouring property, the sewage plant has already been installed, no exceptional circumstances are presented to justify the increase in floorspace, and the proposals to marginally limit the restaurant opening

hours are inadequate.

5.0 Considerations

Sewage Tank

- 5.1 Members were concerned over the siting of the sewage tank and potential impact on visual and neighbouring amenity. The tank is designed for use both above and below ground, but in this case has been situated above ground in order to mitigate the potential release of untreated sewage in the event of a flood. The top of the unit is not sealed and would therefore not prevent the ingress of water should flooding occur. The Environment Agency are satisfied with this approach.
- 5.2 In terms of noise and odour, the manufacturer's product information states that the plant is virtually silent and odour free. There is a single motor to drive the pump; this is situated inside the tank and operates at only 1rpm. The Council's Environmental Health team have already spoken directly to the manufacturer (Kee Systems) and have advised that the tank is unlikely to cause noise disturbance. In the event that a noise nuisance does arise, this could be dealt with under the Environmental Protection Act 1990, and sufficient space would exist for the installation of noise mitigation measures.
- 5.3 In terms of the health issues recently experienced by the neighbour at Burrowfield, this is unlikely to be related to the sewage tank because it is not yet connected or operational. This has been confirmed on site by Officers from Environmental Health, the Environment Agency and Planning. A discharge consent licence is currently awaited from the EA.
- 5.4 The applicant has recently placed a number of potted evergreen shrubs between the tank and the neighbouring boundary, and intends to plant these as a permanent evergreen buffer. This will serve to screen the tank from the neighbour at Burrowfield, and also mitigate against any potential noise. Full details of this planting will be required, and this is now suggested as a condition. Further planting is also proposed between the tank and river to soften the visual impact of the tank from the north. Officers consider that given this planting, and the distance of the tank from the neighbouring property, no harm would result to the amenities of the occupier of Burrowfield.
- 5.5 The exact distance between the tank and Burrowfield has been queried, and the letter dated 25th August 2009 sent on behalf of Mrs. Cook showed an amended siting of this dwelling. The position of Burrowfield has been double checked with satellite images, and this appears to accord with the

Council's records. The distance between the tank and Burrowfield is therefore approximately 50m, as set out in the previous report attached as Appendix A on pages 152.1 - 152.20.

Storage Containers

- 5.6 Members raised concerns over the lawfulness of the storage containers on site, and it is agreed that the cumulative effect of these containers has a harmful effect on the visual amenities of the Green Belt. The applicant states that the containers have existed in this location since 28th January 2002; however, Officers would require further evidence to be satisfied that this is the case. It is claimed that 1 no. 20ft container has been removed in order to accommodate the sewage tank, and a further 4 removed following the flood; however this has not been confirmed. Satellite imagery of the site shows an earlier polytunnel, but no storage containers, but this imagery is undated. An enforcement file is currently open on this issue, and Officers would invite the applicant to submit a Lawful Development Certificate with sufficient evidence to satisfy the Council that the containers are lawful.
- 5.7 A condition requiring removal of the containers has been considered; however this is not considered to be reasonable in meeting the tests of Circular 11/95. Officers consider that the most appropriate route for dealing with the containers is by way of the submission of a Lawful Development Certificate, and enforcement action if necessary. A directive is therefore recommended to advise that this application will not purport to grant consent for any storage containers.

Restaurant

- 5.8 The floorspace of the restaurant is proposed to increase from 291m² to 428m², which represents an increase of 47%. However, the proportion of restaurant floorspace within the new building will only amount to 30% of the total floorspace and could therefore be considered ancillary. However, given that the restaurant is proposed to be open outside of garden centre opening times, the restaurant will not operate as an ancillary use, and the application is being considered as a mixed use.
- 5.9 The provision of an independent restaurant in the Green Belt would constitute inappropriate development. However, regard must be had in this case to the previous use of the site. A restaurant existed in the previous building, although accounting for 8% less of the floorspace, and this was open outside of garden centre opening times. The restaurant was therefore already operating as an independent use, and permission was granted for this as a bistro use in 2005. The site has been licensed for the sale of alcohol and background music since July 2005, with a variation

granted for live music and dancing in May 2007. The principle of a non-ancillary restaurant use has therefore already been established in this location.

- 5.10 Officers acknowledge that there may be potential for increased disturbance as a result of the increase in restaurant floor area. A condition has therefore been recommended to restrict the opening hours of the restaurant to 23.00 Monday to Saturday and to 22.00 on Sundays and Bank Holidays, rather than midnight as proposed in the application form. This is considered to be reasonable and necessary given the increase in floorspace and increased traffic movements.

Flood Risk

- 5.11 Following the deferral, Officers have met the Environment Agency on site and a written response has been received in relation to the points raised by Jane Orsborn on behalf of Mrs. Cook. These points are discussed below, numbered in response to Jane Orsborn's points:

5.11.1 The EA agree that the FRA refers to the reinforcement of the previous greenhouse floors and not to a replacement building, but they do not consider that this materially affects flood risk. The proposed floor levels are appropriate, and the EA do not believe that the new building will increase flood risk given that it replaces existing structures.

5.11.2 The EA understand that the site flooded from the northern end in February 2009; however the site may also flood from the west. There would be significant flooding in the area in an extreme event, but the EA do not consider the works will affect how the site floods.

5.11.3 Questions over land ownership are not relevant to the consideration of flood risk.

5.11.4 The wall adjacent to the river has been reinforced and the constructed levels accord with those set out in the FRA and the planning application drawings. The applicant has confirmed that the datum at the top of the completed wall is on average 42.25 to 42.30. The EA have seen photographs that show the wall was previously in place, and does not appear to have been raised.

5.11.5 The EA advise that although the FRA relates to a restoration of existing buildings, rather than a redevelopment, this issue is not material to flood risk. The purpose of the FRA is to assess flood risk, and given that the EA are satisfied on flood risk, there are no outstanding issues in this respect.

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- 5.11.6 The EA understand that the reinforcement of a raised planted area along the road boundary is designed to prevent surface water runoff from the road entering the garden centre. This is not related to flood water from the river and is not believed to pose a risk to neighbouring property. This wall is believed to be less than 1m high and therefore permitted development.
- 5.11.7 The EA are overall satisfied that flood risk will not be increased as a result of this development, in accordance with PPS25.
- 5.11.8 Concern was raised over any further increase in impermeable areas and a condition suggested to agree surfacing materials. The application does not propose any change to the existing surfacing arrangements, and the Design and Access Statement states that there will be no increase in hard-standing.
- 5.11.9 Finally, although there are no proposed drawings in the FRA, the submitted drawings are sufficient to determine the application.
- 5.12 Overall, Officers consider that although the FRA does not relate specifically to this development, this has no material impact on the assessment of flood risk. The FRA sets out the recommended floor levels and flood proofing measure to be incorporated within the previous buildings, and the same applies to the new building. Environment Agency Officers have visited the site several times, and are satisfied that the development will not increase the risk of flooding on site, or for neighbouring properties.

6.0 Conclusion

- 6.1 Overall, Officers consider that sufficient information has been provided to enable a determination of this application. Further justification has been provided on the siting of the sewage tank, along with additional planting, and Officers do not consider that this will materially impact on the visual or residential amenities of the locality. The Environment Agency have provided further advice on flood risk, and consider the submitted Flood Risk Assessment to be acceptable.
- 6.2 The lawfulness of the containers remains unclear; Officers consider that the most appropriate option is to invite the submission of a Lawful Development Certificate. This application does not grant permission for any containers.
- 6.3 Finally, it is considered that given the previous A3 use of the site, the incorporation of a restaurant use is considered to be acceptable, subject to conditions to restrict the opening hours to protect neighbouring amenity.

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6.4 It is therefore recommended that permission be granted subject to the conditions set out above.