

**5f 3/11/1387/FP - Extensions to brick built 1960's building and erection of new dwelling to the rear with associated access and landscaping at Great Hormead Village Hall, Great Hormead, Buntingford, SG9 0NR for Hormead Village Hall Management Committee**

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**Date of Receipt:** 08.08.2011

**Type:** Full – Minor

**Parish:** HORMEAD

**Ward:** BRAUGHING

**RECOMMENDATION:**

That subject to the applicants entering into a legal obligation pursuant to S106 of the Town and Country Planning Act 1990 to cover the following matters:

1. A requirement that the funding raised as a result of the residential development permitted as part of this development shall be used only to fund the works of extension and improvement to the Village Hall also as permitted as part of this specific development and for no other purpose;
2. The provision of a financial contribution of £8,000 to secure a Traffic Regulation Order.
3. Appropriate monitoring fee.

The Director of Neighbourhood Services be authorized to **GRANT** planning permission subject to the conditions and summary of reasons as approved by the committee at its meeting of 12 October 2011.

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**1.0 Background:**

- 1.1 Members may recall that this application was reported to the 12 October 2011 meeting of the committee. The proposals were recommended for approval, subject to the completion of a planning obligation agreement and appropriate conditions. Members supported that recommendation. The background, previous site history, responses to consultation and relevant policy considerations are set out in the report to the 12 October 2011 meeting that is attached as an appendix to this report. The relevant minute of that meeting is also attached.
- 1.2 The application considered at that committee followed an earlier one (3/10/0033FP) which was dealt with in 2010 and which was refused. The reasons for refusal were that inadequate parking provision had been

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made at the site and that the proposed overspill parking would represent inappropriate development in the rural area beyond the green belt. That proposal was also considered twice by the committee, in March and August 2010. Those reports are also attached.

- 1.3 The decision in relation to the 2010 application was the subject of an appeal. The appeal was dismissed; however the Inspector considered that the proposed development would have a strictly limited effect on the character and appearance of the area. The appeal was dismissed primarily because of the lack of a commitment, at that stage, of the applicant to provide funding to facilitate a traffic regulation order (TRO) to control parking on the road adjoining the site (B1038). The Inspectors report is attached.
- 1.4 When the current application was most recently considered, as indicated, the committee resolved to approve the proposals subject to a planning obligation agreement that requires that:
  - the village hall to be completed and occupied before the new dwelling is occupied and;
  - a financial contribution of £8,000 is made to secure a traffic regulation order (TRO).
- 1.5 Subsequent to the resolution of the committee the Solicitor acting on behalf of the applicant has contacted Officers to express concern in relation to the requirements to be set out in the legal agreement which is to be associated with the planning permission. These are set out in more detail below.

### **2.0 Consultation Responses:**

- 2.1 No further consultation has been undertaken subsequent to the consideration of the matter by the committee in October 2011. However two further communications have been received in relation to the proposals. The first is a copy of a letter from a local resident to a separate local resident who is assumed to be a member of the Village Hall committee. The letter sets out a disagreement with the design proposed and suggests an alternative design which is claimed to be achievable at a reduced cost.
- 2.2 The second is an e-mail from a parishioner who objects to any amendment to the proposed legal agreement which releases the Trustees from the obligation to provide the hall improvements prior to the completion of the residential plot. A concern is expressed that the improvement works will not take place if that amendment is permitted.

**3.0 Considerations:**

- 3.1 In his contact with the Council in relation to the planning agreement the Solicitor acting for the applicants makes two main points. These are that:
- the current position of requiring the Village Hall works to be completed and occupied before the new dwelling is occupied is quite impractical and will have the effect of completely frustrating the Trustees' wish to improve the Hall. This is because the Trustees will be unable to sell the house plot and raise the necessary funds as the purchaser of that plot is then subject to a control that prevents them occupying any property prior to the completion of the Hall works. No Bank or Building Society will lend the necessary funds on this basis;
  - there is in any event no planning justification for the restriction. The appeal Inspector did not conclude that the new dwelling would only be acceptable if the proceeds were used to fund the Hall works. The restriction is unnecessary therefore.
- 3.2 The Solicitor also objects to the requirement, set on in the draft agreement, for the payment of a monitoring fee.
- 3.3 In relation to these matters then, the second of those set out above is the more fundamental. The Solicitor sets out that the restriction does not meet the tests to be applied to planning legal agreements and therefore should not be applied.
- 3.4 When the issue was first considered by the committee in March 2010, the advice from Officers was that a new residential property, in the location proposed, would normally be considered a departure from policy OSV3. However, it could be justified in this case as the funding raised would secure the improvements to the Hall – and therefore enhanced community facilities. At that time however, Officers recommended that the proposals be refused on the basis of the inadequate parking provision.
- 3.5 The committee deferred consideration at this time and instead asked Officers to discuss two issues with the applicant – the linking of the provision of the funding raised from the sale of the housing plot with the Village Hall works and the potential for the provision of additional parking.
- 3.6 When the matter was reported again to the August 2010 meeting of the committee the matter of the new residential property was not considered again in principle. The applicant had indicated a willingness to enter into a legal agreement that restricted the use of the funds which would arise.

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As indicated, permission was still not forthcoming however because of the parking related issues.

- 3.7 When the Inspector dealt with this matter at appeal, he did not particularly comment on the principle of the new dwelling. He noted (para 11 of the appeal decision letter) that the Council acknowledge that refurbishing the hall, financed by the new house, are special circumstances that justified departing from LP policies. He did not set out whether he agreed with this position and it is set out mainly in justification of the proposed use of the adjacent farm forecourt for parking. The interpretation is that, if the new dwelling is seen as justified, then the impact that the proposed parking has should also be considered to be justified.
- 3.8 The applicants Solicitor quotes from a later section in the Inspectors decision letter (para 13) where he comments on the impact of the proposed house. However, the Inspectors comments here relate to detailed matters, outlook and amenity, rather than the principle of the matter.
- 3.9 Your Officers view then is that the appeal Inspectors decision did not challenge the policy position of the Council set out in OSV3 of the Local Plan and that the proposed residential use is one that remains contrary to that policy. It is being supported by the Council because of the particular circumstances in this case, namely that the permission and resulting development will enable funds to be raised to be used in the provision of improvements to the Hall. It remains reasonable and relevant then for proposed requirement of the legal agreement – restricting the use of the funds raised – to remain in place.
- 3.10 The second matter then is the detailed one. Given there should be a restriction, what form should it take? The applicants Solicitor sets out that the current requirement is unrealistic. The Trustees need to raise the necessary funds before the Hall works can proceed. Therefore the housing plot needs to be sold prior to the Hall works commencing. However, if occupancy of any property to be built on the plot is not permitted until after the Hall works are complete, this means the purchaser of the plot is unable to make their own decision about when to commence and complete development of that land. The plot purchaser is effectively subject to controls outside their influence.
- 3.11 The applicants Solicitor suggests that, restricting only the use of the funding rather than any control over timing, is sufficient. He suggests that this would be sufficient to ensure that there is no reasonable prospect of the dwelling being constructed but the Hall improvements not taking place.

- 3.12 Such a conclusion would not appear so straight forward to your Officers. It is acknowledged that the control of the use of the funding would be in place, but there would be no control over the timing of its use. Building and improvement projects are typically subject to many potential sources of delay and there would be a risk that the funding, whilst available, remains unused.
- 3.13 The Solicitor points out that there are safeguards in place to ensure that the Trustees could not put the funding raised to any other purpose.
- 3.14 Alternative forms of control over the use of the funding have been considered by Officers. It is understood that the Hall Trustees need to have the funds 'in-hand' or be very confident of their receipt, before letting a contract for the improvement works to the Hall.
- 3.15 Given that, and the other controls that the applicants Solicitor rightly points out are in place here with regard to the actions of the Trustees, the committee are invited to consider a way forward whereby controls are in place only in relation to the use of the funding, but not the timing. Therefore, if members are in support, the legal agreement will be formulated on the basis that the funds released from the sale of the housing plot shall only be used for Hall extension and improvement work. The timing of the use of the funds would not be specified. This would indicate that the Council is satisfied that the Village Hall committee will bring along the improvements when it sees fit. For the avoidance of doubt, it could be specified that the funding shall only be used for the development allowed by virtue of this permission. This would avoid the possibility, for example, the funding is used for more modest improvement or even maintenance works. This would reduce some flexibility, in that if a revised scheme comes forward which the Council is willing to support, a further amendment to the legal agreement would be required. However, it is considered that some degree of control should reasonably remain.
- 3.16 In relation to the monitoring fee, the Councils position is that the monitoring of legal agreements does require tasks to be undertaken that are in excess of the normal monitoring required for development. As a result, it is considered a reasonable and relevant charge, and should be applied. This position is set out in the adopted SPD relating to legal obligation agreements.

#### **4.0 Conclusion:**

- 4.1 The concerns raised by the Solicitor acting for the applicant are

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acknowledged. It is considered however that the reason for a link to be made between the permitted residential development and the improvements to the Hall remains valid in planning policy terms. The monitoring fee also remains appropriate.

- 4.2 However, given the difficulties that a timing restriction on the use of the funds raised in relation to the completion of the Hall works would raise, it is suggested that the requirement be only that the funds can be used for the approved works and for no other purpose. The TRO funding requirement would remain.