

E/12/0125/B – Failure to comply with condition 11 of planning permission ref: 3/01/0608/FP which requires the replacement planting of landscape trees which have died at Dolphin Yard, Maidenhead Street, Hertford, SG14 1DR

Parish: HERTFORD CP

Ward: HERTFORD CASTLE

RECOMMENDATION:

That the Director of Neighbourhood Services, in consultation with the Director of Finance and Support Services, be authorised to take enforcement action under Section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the replacement of trees which have died.

Period for compliance: 3 months

Reason why it is expedient to issue an enforcement notice:

- To ensure the provision, establishment and maintenance of a reasonable standard of landscaping in accordance with the approved plans and specifications and to secure the satisfactory appearance of the site in accordance with Policies ENV1 and ENV2 of the East Herts Local Plan Second Review April 2007.

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1.0 Background:

- 1.1 The site is shown outlined in red on the Ordnance Survey extract. It is located within the town centre of Hertford and is within the Hertford Conservation Area, comprising part of one of the riverside redevelopment projects in the area, one of the aims of which is to create a walking link between Bull Plain and The Wash, with significant adopted open space and public access.
- 1.2 The planning application in question was granted permission in 2001 and comprised of flats, maisonettes, a new library and public open space. A landscaping scheme was secured through conditions 10 and 11 of the permission, with condition 11 explicitly stating that “any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved, unless the Local Planning Authority gives its written consent

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to any variation”.

- 1.3 In April 2012, it was brought to the attention of the Council that three of the trees at the Dolphin Yard development had died and required replacing. A site visit was subsequently carried out in May 2012 where it was confirmed that 3 of the 5 trees had died and would need to be replaced.
- 1.4 Correspondence was subsequently exchanged with the developer, who expressed a willingness to carry out the replacement planting through their original landscape contractor.
- 1.5 However, despite repeated chase-up emails and written assurances from the developer that the replacement planting would be carried out, a site visit in April of this year confirmed that the dead trees were still in situ. Accordingly, the matter is now referred to the Development Management Committee for authorisation to issue an enforcement notice for the breach of the relevant condition.

2.0 Planning History:

- 2.1 The relevant planning history in this case is as follows;

3/08/0608/FP	6 No. 2 bed flats, 10 No. 2 bed maisonettes Public Library and Open Space	Approved
3/08/0609/LC	Demolition of all buildings	Approved

3.0 Policy:

- 3.1 The relevant policies of the East Herts Local Plan Second Review April 2007 are:

ENV1 – Design and Environmental Quality.
ENV2 – Landscaping

- 3.2 The National Planning Policy Framework (NPPG) and the National Planning Practice Guidance (NPPG) are also material considerations in this matter.

4.0 Considerations:

- 4.1 Dolphin Yard is located in the Town Centre and forms part of a valuable public walk and open space project. The quality of the environment and the public realm is therefore of fundamental importance in this location,

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as it will encourage use, promoting sustainable living and enhance how users experience the space.

- 4.2 The trees in question form part of the official public open space, which is agreed to be adopted by the Council as part of the s106 legal agreement. They form part of an important landscape feature within the courtyard, and enhance the appearance of the site. It is therefore important to ensure their retention.
- 4.3 Whilst it is often difficult to trace the precise timeline of a development as it progresses, in this instance email evidence of exchanges between the developer, the Planning Officer and the Landscape Officer suggest that substitution of the originally approved species of trees was agreed in September 2010 (including ref X/01/0608/21 and X/01/0608/24). It is therefore logical to deduce that the planting took place around September/October 2010, which would result in the trees still benefiting from the five-year protection afforded by condition 11.
- 4.4 In this instance, Officers consider the breach of planning control to be relatively straightforward in both its nature and the remedial solution, which is simply to replace the dead trees. It was agreed in writing that the replacement of 3 trees with 'Italian Alder' trees planting size 14-16 would be a suitable way forward. However, despite repeated assurances, the matter has still not been resolved. It is therefore considered expedient to serve an Enforcement Notice for failure to comply with condition 11 of the development. Officers feel a 'Breach of Condition' Notice under s187A would not be appropriate as the current developer was not the original applicant and may wish to appeal to the Planning Inspectorate.
- 4.5 Whilst the replanting works have already been agreed and are fairly straightforward in nature, a 3 month compliance period (coupled with the statutory 28 day period before the notice 'comes into effect') is required to allow compliance to take place at the start of the next planting season.

5.0 Recommendation:

- 5.1 For the above reasons it is recommended that authorisation be given to issue and serve an Enforcement Notice requiring the replacement planting to be carried out in accordance with condition 11.