

5m E/10/0126/B – a) Breach of condition 11 of planning permission 3/09/0939/FP in respect of flood risk assessment and b) Unauthorised erection of a marquee at Riverside Garden Centre, Lower Hatfield Road, Hertford, SG13 8XX.

Parish: BAYFORD.

Ward: HERTFORD – CASTLE, HERTFORD – RURAL SOUTH

RECOMMENDATION

- a) That no further action is taken in respect of the breach of condition 11 of the planning permission ref: 3/09/0939/FP, and
- b) That the Director of Neighbourhood Services, in consultation with the Director of Internal 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 removal of the unauthorised marquee from the land.

Period for compliance: 28 days.

Reasons why it is expedient to issue an enforcement notice:

- 1. The site lies within the Metropolitan Green Belt as defined in the East Hertfordshire Local Plan wherein permission will not be given except in very special circumstances for development for purposes other than those required for mineral extraction, agriculture, small scale facilities for participatory sport and recreation or other uses appropriate to a rural area. No such special circumstances are apparent in this case, and the development is therefore be contrary to saved policy GBC1 of the East Herts Local Plan Second Review April 2007 and to national policy contained in paragraph 3.4 of PPG2.
- 2. The marquee, by reason of its size, siting and detailed appearance is detrimental to the openness and character of the surrounding area and is therefore contrary to saved policies GBC1 and ENV1 of the East Herts Local Plan Second Review April 2007 and national planning guidance in PPS1 'Delivering Sustainable Development' para 34.

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1.0 Background

- 1.1 The site is shown on the attached OS extract. It lies on the northern side of Lower Hatfield Road about a third of a mile from the outskirts of Hertford.

The site is within the Metropolitan Green Belt.

- 1.2 Members may recall that the garden centre building was recently replaced following a flood at the site. At the committee meeting of 23rd September 2009 members resolved to grant planning permission for the new retail/restaurant building subject to confirmation that the Environment Agency (EA) remained satisfied with the scheme in respect of flood risk

- 1.3 However, the EA subsequently objected to the proposal on 30th September 2009 on the grounds that the Flood Risk Assessment (FRA) was unacceptable. Unfortunately, members will recall that, due to an administrative error, the planning decision notice was issued in error prior to the EA objection being received. Planning permission was therefore granted with the EA objection in place and a condition (No.11) which required that:-

“The development hereby permitted shall only be carried out in accordance with the Flood Risk assessment 1028/09 by Michael Thomas consultancy, and mitigation measures including flood proofing measures and finished floor levels to be set no lower than 42.14m above ordnance datum (AOD)”.

- 1.4 As the EA had in fact found this FRA to be unacceptable, and doubts therefore were raised regarding the acceptability of the new building in terms of flood risk, the applicant agreed to revise the FRA in order to show that the new garden centre building had not increased the risk of flooding in the surrounding area.

- 1.5 Following further river modelling, therefore, a revised FRA was submitted to the Council and the Environment Agency in May 2010 and on 29th July 2010 the Environment Agency confirmed that they were satisfied with the new FRA and that the redevelopment of the garden centre had not had a negative impact on flood risk in the vicinity.

- 1.6 Whilst therefore, there remains a technical breach of condition 11 of permission 3/09/0939/FP (in that it refers to the previous FRA rather than the amended version), it has clearly been demonstrated that the building, as constructed, has not resulted in any flood risk in the surrounding area. It has been built in accordance with the revised FRA and this is acceptable

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from a flood risk perspective. Condition 11 is therefore no longer of any relevance and, if the owner of the site were to apply for the condition to be removed or varied, then Officers consider that this would be acceptable. As such, no further action is appropriate or necessary in respect of the technical breach of that condition and this is the formal recommendation to Members in this respect, as set out in a) at the head of this report.

- 1.7 However, during the course of this time, a concern was also expressed to the Council that the owner had erected a marquee in the plant sales area to the rear of the garden centre building and this is the subject of recommendation b) above.
- 1.8 In May 2010 the enforcement officer made a pre-arranged visit to the site and noted that a substantial marquee had been erected. The metal frame of the marquee was bolted into the concrete hardstanding and it had a raised, carpeted floor. The marquee was connected to an electricity supply and was being used to store and display the garden centre's range of garden furniture, much of it upholstered.
- 1.9 The owner told the enforcement officer that the marquee might be removed at the end of the season for garden furniture. He added, however, that it may be re-erected for 'Christmas goods'.
- 1.10 On 19th May 2010 the officer wrote to the owner informing him that officers considered the marquee to be operational development, given case law that established that a marquee erected for 8 months of the year was a "building". The letter informed the owner that if he wished to retain the marquee he would require planning permission. He was asked to submit any such application within 28 days.
- 1.11 There being no response to this letter, the enforcement officer wrote again on 17th June 2010 requesting that the owner contact him with regard to his intentions. Again there was no reply to this letter so a further letter was sent on 13th July 2010 pointing out that officers would need to consider the expediency of taking formal enforcement action if the marquee remained on site.
- 1.12 On 3rd August 2010 the owner wrote to the enforcement officer informing him that The Riverside Garden Centre was now an outlet for Garden City Marquees of Letchworth. He stated that he hoped that would resolve the matter. He seemed to be suggesting that the marquee was only a display item and, as such, did not require planning permission.

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1.13 However, Officers consider that the marquee remains unauthorised development irrespective of the expansion and diversification of the garden centre's business. A further letter was sent on 6th August 2010 informing Mr Jeffery of this and requiring the removal of the marquee or a planning application by 27th August 2010.

1.14 Whilst there has been further correspondence with the owner, who claims that he did not receive that letter, officers' now consider that not only is the development in breach of planning control but that it is also sufficiently harmful to require the service of a planning enforcement notice requiring its removal.

1.15 Photographs and plans of the site will be available at the meeting.

2.0 Planning History

2.1 The most recent planning history for the site can be summarised as follows:

3/05/2129/FP	Part change of use of land to bistro and refurbish existing public seating area. Approved.
3/06/1735/FP	Retrospective application for retention of caravan on site for intermittent accommodation. Refused.
3/09/0939/FP	Replacement garden centre, retail & restaurant building & new sewage treatment plant. Approved.
3/10/0704/FO	Variation of planning condition restricting restaurant opening hours. Refused.
3/10/1226/FO	Variation of planning condition restricting restaurant opening hours. Not yet determined.
3/10/1227/FO	Variation of planning condition restricting restaurant opening hours. Not yet determined.

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3.0 Policy

3.1 The relevant national policy in this matter is contained within PPG2 - Green Belts and PPS1 Delivering Sustainable Development.

3.2 The relevant saved policies of the adopted Local Plan in this matter are:-

GBC1 Appropriate Development in the Green Belt.

ENV1 Design and Environmental Quality.

4.0 Considerations

4.1 The considerations in respect of the FRA are as set out in paragraphs 1.4 to 1.6 above.

4.2 As previously mentioned, the site is within the Green Belt wherein National and Local Plan policies are aimed at the protection of the countryside and the prevention of urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness. It is considered that the unauthorised marquee represents encroachment of the countryside and adversely impacts upon the openness of the Green Belt. It is therefore contrary to saved policy GBC1 of the East Herts Local Plan Second Review April 2007 and to National policy contained in paragraph 3.4 of PPG2.

4.3 The marquee is a large structure, made more prominent and less sympathetic to the openness and character of the Green Belt countryside, by reason of its angular design and white plastic finish. The building not of a traditional rural character, is unsympathetic to the context of the site and fails to take the opportunities available for improving the character of the area. It is therefore contrary to saved policies GBC1 and ENV1 of the East Herts Local Plan Second Review April 2007 and national planning guidance in PPS1 'Delivering Sustainable Development' para 34.

5.0 Recommendation

5.1 It is therefore recommended that a) no action is taken in respect of the breach of condition 11 of permission 3/09/0939/FP and b) that authorisation be given to issue and serve a Planning Enforcement Notice requiring the removal of the unauthorised marquee.