

The purpose of this report is twofold;

1. To enable the Planning Committee to consider whether the terms of a Section 106 (S106) obligation which the applicant is prepared to enter into and which involves the routing of vehicles are acceptable and grant planning permission for the retention of an agricultural building for the chopping and storage of miscanthus (application reference 13/00245/FUL) subject to the obligation being completed within an agreed period of time, or alternatively refuse that application.
2. To decide whether enforcement action should be taken with respect to a breach of planning control consisting of the unauthorised construction of a different crop storage barn, not in accordance with the details approved under planning permission reference 09/00085/FUL, and an alleged breach of the routing agreement secured through a S106 obligation in association with that permission.

The site lies within the open countryside and within an Area of Active Landscape Conservation all as indicated on the Local Development Framework Proposals Map.

RECOMMENDATION

(A) (1) Subject to the applicant entering into a S106 obligation by 7th October 2014 that secures a routing agreement for vehicles transporting miscanthus to and from the building referred to in application 13/00245/FUL,

Permit that application subject to the following conditions:-

a) Within two months of the date of the planning permission details of the re-grading and landscaping of the excavated material or its distribution elsewhere in the site is to be submitted and approved, and implemented within four months of the date of that approval; and

(b) Existing site access to be resurfaced in a bound material for a minimum distance of 10 m rear of the highway boundary and maintained as such; and

(2) That, should the matter referred to in (1) above not be secured in the specified period, the Head of Planning be authorised to refuse the application on the grounds that, in the absence of such an obligation, the development would have a detrimental impact upon highway safety and the amenity of the locality including the enjoyment of the national cycle route, and the character of the Conservation Area through which Tyrley Road passes; or, if he considers it appropriate, agree to extend the period of time within which the obligations can be secured.

B) Unless the applicant entering into a S106 obligation by 7th October 2014 that secures such a routing agreement for vehicles the Head of Business Improvement, Central Services and Partnerships be authorised to issue enforcement and all other notices and to take and institute on behalf of the Council all such action and prosecution proceedings as are authorised by and under the Town and Country Planning Act 1990 for the following;

- a. Removal of the building within 6 months.

Reason for recommendation and the taking of enforcement action

The applicant has indicated a willingness to enter into an obligation which restricts the routing of the vehicles associated with the use of the building that is the subject of application reference 13/00245/FUL. Provided that a suitably worded obligation is secured within a limited, specified period of time it is considered that planning permission can be issued and that any highway safety concerns arising from that development would be suitably addressed.

In the absence of an obligation that similarly restricts the vehicular movements associated with the building that was constructed not in accordance with the approved plans to planning permission 09/0137/FUL it is considered that the development has the potential to have an adverse impact upon highway safety and the amenity of the locality including the enjoyment of the national cycle route, and the character of the Conservation Area through which Tyrley Road passes. Enforcement action is therefore justified unless such an obligation is secured.

Policies and proposals in the approved development plan relevant to this decision:-

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (CSS)

Policy ASP6: Rural area Spatial Policy
Policy CSP1: Design Quality
Policy CSP3: Sustainability and Climate Change

Newcastle-under-Lyme Local Plan 2011 (NLP)

Policy N17: Landscape Character – General Considerations
Policy N18: Areas of Active Landscape Conservation

Other Material Considerations include:

National Planning Policy

National Planning Policy Framework (March 2012)
National Planning Practice Guidance (2014)

Supplementary Planning Guidance/Documents

Planning for Landscape Change: Supplementary Planning Guidance to the Staffordshire and Stoke-on-Trent Structure Plan 1996-2011

Relevant Planning History

Planning permission was granted in 2009 for a crop storage barn, specifically for the storage of crops that would be used at the Biomass Station at Eccleshall (reference 09/00137/FUL). A S106 obligation was entered into relating to the routing of all heavy commercial and other vehicles travelling to and from the site and the Biomass Station.

Planning permission was granted for a building similar to that within the current, undetermined, application, 13/00245/FUL, but with a different orientation in 2012 (reference 12/00146/FUL).

An application for the retention of use of part of a farm office to an office for use associated with a renewable energy business was permitted in 2013 (reference 13/00244/FUL).

Background Information

In March 2012 an allegation was received that a routing agreement secured through a S106 obligation associated with planning permission 09/00137/FUL was not being adhered to. In addition the question was posed as to whether to use of the building for the storage of miscanthus not derived from the Farm holding amounted to a material change of use requiring planning permission.

Following investigations of the alleged breaches of planning control a number of planning applications were submitted in 2013. The applications included those referenced 13/00245/FUL and 13/00244/FUL referred to above and an application which sought to retain a 3 bay extension (each measuring 24.4m deep by 6.1m wide) to the agricultural storage building permitted under reference 09/00137/FUL. The documentation submitted in support of all these applications indicated that the additional bays were not added to the building that was constructed in accordance with the approved plan. The indication was that during ground work preparation for the construction of the 2009

permission it was decided to build a larger building. It was concluded that the application was therefore for the retention of the larger building, rather than the retention of an extension to an existing building, which required a larger application fee. The applicant did not pay the additional fee required and as such that application was not registered or determined.

Application 13/00245/FUL for the retention of an agricultural building for chopping and storage of miscanthus was reported to the Planning Committee meeting of 4th June 2013. The resolution of the Committee as set out within the minutes is as following:-

(1) That, subject to the applicant entering into a Section 106 obligation by no later than 17 July 2013 to secure a routeing agreement, permission be granted subject to conditions relating to the following:-

(a) Within two months of the date of the planning permission details of the re-grading and landscaping of the excavated material or its distribution elsewhere in the site is to be submitted and approved, and implemented within four months of the date of that approval; and

(b) Existing site access to be resurfaced in a bound material for a minimum distance of 10 m rear of the highway boundary and maintained as such; and

(2) That, should the matter referred to in (1) above not be secured in the specified period, the Head of Planning and Development be authorised to refuse the application on the grounds that, in the absence of such an obligation, the development would have a detrimental impact upon the amenity of the locality including the enjoyment of the national cycle route, and the character of the Conservation Area through which Tyrley Road passes; or, if he considers it appropriate, in consultation with the chair and vice-chair of the committee, to extend the period of time within which the obligations can be secured.

This application has been reported to Committee within the quarterly reports on extensions to time periods within which obligations under Section 106 can be entered into, most recently to the meeting of 26th August. The latest report, in as far as it relates to this matter, is set out below:

The proposal for the retention of an agricultural building for chopping and storage of Miscanthus came before the Planning Committee at its meeting on the 4th June 2013 (the eight week period expiring on the 10th June 2013). The resolution of the Committee was that planning permission should be granted subject to prior securing a planning obligation (relating to the routeing of hgvs) by the 17th July 2013, and that if the obligation was not secured by that date, then the Head of Planning should consult with the Chairman and Vice Chairman prior to making any decision on whether to extend the period within the obligation could be secured.

The obligation was not secured by the 17th July 2013 and was subsequently extended, in consultation with the Chair and Vice Chair, to the 6th September 2013. and again later on to the 16th May 2014.

The agreement remains unsecured and the application undetermined.

There have been extensive delays on both sides at different times in bringing this matter to a conclusion. The current position is that the applicant has signalled their unwillingness to complete an agreement along the lines which your officers consider reflect the resolution of the Committee; your officers have given them a final opportunity to reconsider that, and a response is currently awaited. The related planning application is a retrospective one and there is interest by another party and indeed concern by them about the delay. It is your officers' intention to bring the application back to the Committee in September for reconsideration if agreement cannot be reached. In terms of the period within which the Section 106 can be completed, the Chair and Vice Chair have not been consulted on a new date since the agreed date ran out in May (and no new date has been agreed since).

At the time of writing some 69 weeks have passed since the application was received (before the introduction of the Planning Guarantee).

An update on the position will be provided to the Committee."

The update was as follows:

*“With respect to case_ **Application 13/00245/FUL – Old Springs Farm, Stoneyford (HLW Farms)** officers have again written to the agent pressing for a decision by their client, and indicating a fairly close deadline for a response.”*

A response has been received on behalf of the applicant indicating that the obligation should only relate to the site area of application 13/00245/FUL and that to require it to include the site area of application 09/00137/FUL would not meet the tests of the CIL Regulations. In addition as the site area of application 08/0137/FUL is already the subject to a Unilateral Undertaking they do not see how the Council can seek to include that land within this obligation as to do so is both duplication and unnecessary in the circumstances when that land is already bound by a routeing agreement.

Discussion

As indicated above the purpose of this report is twofold and these will be addressed below.

Acceptability of the terms of a S106 obligation which the applicant is prepared to enter into and which involves the routeing of vehicles.

In seeking to agree the wording of the S106 obligation your Officer has sought to ensure that the requirements of the obligation applies to the building that was constructed not in accordance with planning permission 09/00137/FUL which was itself subject to an obligation. The Solicitor acting on behalf of the applicant has indicated that the resolution does not specify that the obligation should apply to the whole agricultural unit and maintain that the applicant is only prepared to enter into an obligation that restricts the routeing of vehicles associated with the building which is the subject of application 13/00245/FUL.

It has been accepted that it would be unreasonable to insist that the whole agricultural unit should be bound by the obligation, although this is the position that has been advanced by a third party. However being mindful that that decision of Planning Committee was made in the knowledge that there was an alleged breach of the existing obligation and an unauthorised building, your Officer has interpreted the resolution of Committee to include the need to bind the building that, had it been constructed in accordance with the approved plan, would have been bound by a similar routeing agreement secured through a Section 106.

The negotiations have reached an impasse at this time and without compromise by the Council it is apparent that the obligation will not be secured. To progress matters it is considered that providing that the obligation is carefully worded and appropriately restricts the routeing of all vehicles transporting miscanthus to and from the building which is the subject to application 13/00245/FUL, that the planning permission should be issued subject to the conditions that Committee resolved should be imposed when the application was initially determined at the meeting of 4th June 2013.

Expediency of any enforcement action with respect to a breach of planning control consisting of the unauthorised construction of a different crop storage barn, not in accordance with the details approved under planning permission reference 09/00085/FUL, and an alleged breach of the routeing agreement secured through a S106 obligation in association with that permission.

As indicated above a larger building than that permitted under planning permission 09/00137/FUL was constructed without the benefit of the required planning permission. The planning permission was therefore never implemented and in your Officer's opinion the terms of the S106 obligation entered into, which sought to restrict the routeing of vehicles associated with the development permitted under the reference 09/00137/FUL, have not been triggered. In any event the routeing agreement secured through the S106 obligation only applied to vehicle movements from the building permitted and the Eccleshall Biomass Station. The applicant has indicated that the Eccleshall Biomass Station no longer uses miscanthus and as such there are no vehicle movements to that facility. As the obligation does not apply to vehicle movements from the building to other facilities it is not being breached even if it had taken effect.

Consideration is given, below, to the expediency of taking action in respect of the unauthorised building.

Paragraph 207 of the National Planning Policy Framework details that *“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control..”*

As with planning applications if a LPA addresses immaterial considerations that opens the LPA to the complaint that its decision to take enforcement action is not well-founded. A decision to take enforcement action must not be based on irrational factors; or taken without consideration of the relevant facts and planning issues; or based on non-planning grounds.

The decisive issue is always whether the alleged breach of planning control is unacceptably affecting public amenity or the existing use of land or buildings meriting protection in the public interest. It could never be that a planning application has not been submitted, The Committee should not take into account the decision of the owner not to apply for planning permission, but rather they should concentrate on coming to a view as to whether the development is unacceptable or not in planning terms. In effect the Committee should consider the matter as if it had before it an application for planning permission – a so called “deemed planning application”.

This means that if the Committee were to come to the view that the development is acceptable then it should not authorise the issue of an Enforcement Notice, even though no planning application has been made to the Authority.

Alternatively if the Committee were to come to the view that the development can be made acceptable by the imposition of conditions the Committee should authorise the issue of an Enforcement Notice but only one which, by reason of the steps that it requires the offender to take, in effect grants a conditional planning permission for the development.

Finally if the Committee were to come to the view that the development is unacceptable on planning grounds and cannot be made acceptable by the attachment of conditions only then should it authorise the issue of an Enforcement Notice requiring the removal of the unauthorised building.

In granting planning permission under reference 09/00137/FUL it was concluded that there was the potential for delivery vehicles to adversely affect highway safety. In accordance with the advice of the Highway Authority, to protect highway safety and to minimise the effect of the development on the users of National Cycle Route no. 75 it was deemed necessary to secure a routeing agreement so that the vehicles would travel along the most preferential route. There has been no material change in circumstances that would lead to the conclusion that such restrictions are no longer necessary or reasonable particularly when it is noted that the building is larger and as such is likely to result in more vehicle movements than were anticipated in association with the permitted building.

The appropriate method for securing such a routeing agreement is through a S106 obligation. The applicant has not, at this point in time, indicated a preparedness to enter into such an obligation other than in respect of the building which is the subject of planning application 13/00245/FUL and in the absence of such a routeing agreement the building is considered to be unacceptable and the taking of enforcement action is the only option available to the Council to address the highway safety implications that arise from the development.

As this is not a matter that could be addressed through the imposition of conditions the recommended steps to remedy the harm caused by the unauthorised development is its demolition. The alternative step of requiring the cessation of the use of the building for the chopping and storage of miscanthus is not recommended. This would result in the retention of a building with no clear use and any agricultural use that the building may be put to may result in similar highway safety concerns.

Background Papers

Planning File referred to
Planning Documents referred to

Date report prepared

3rd September 2014