

**ISLE OF WIGHT COUNCIL DEVELOPMENT CONTROL COMMITTEE -
TUESDAY 13 JULY 2004
REPORT OF THE HEAD OF PLANNING SERVICES**

WARNING

1. THE RECOMMENDATIONS CONTAINED IN THIS REPORT OTHER THAN PART 1 SCHEDULE AND DECISIONS ARE DISCLOSED FOR INFORMATION PURPOSES ONLY.
2. THE RECOMMENDATIONS WILL BE CONSIDERED ON THE DATE INDICATED ABOVE IN THE FIRST INSTANCE. (In some circumstances, consideration of an item may be deferred to a later meeting).
3. THE RECOMMENDATIONS MAY OR MAY NOT BE ACCEPTED BY THE DEVELOPMENT CONTROL COMMITTEE AND MAY BE SUBJECT TO ALTERATION IN THE LIGHT OF FURTHER INFORMATION RECEIVED BY THE OFFICERS AND PRESENTED TO MEMBERS AT MEETINGS.
4. YOU ARE ADVISED TO CHECK WITH THE DIRECTORATE OF ENVIRONMENT SERVICES (TEL: 821000) AS TO WHETHER OR NOT A DECISION HAS BEEN TAKEN ON ANY ITEM BEFORE YOU TAKE ANY ACTION ON ANY OF THE RECOMMENDATIONS CONTAINED IN THIS REPORT.
5. THE COUNCIL CANNOT ACCEPT ANY RESPONSIBILITY FOR THE CONSEQUENCES OF ANY ACTION TAKEN BY ANY PERSON ON ANY OF THE RECOMMENDATIONS.

Background Papers

The various documents, letters and other correspondence referred to in the Report in respect of each planning application or other item of business.

Members are advised that every application on this report has been considered against a background of the implications of the Crime and Disorder Act 1998 and, where necessary, consultations have taken place with the Crime and Disorder Facilitator and Architectural Liaison Officer. Any responses received prior to publication are featured in the report under the heading Representations.

Members are advised that every application on this report has been considered against a background of the implications of the Human Rights Act 1998 and, following advice from the Head of Legal and Democratic Services, in recognition of a duty to give reasons for a decision, each report will include a section explaining and giving a justification for the recommendation.

**LIST OF PLANNING APPLICATIONS ON REPORT TO COMMITTEE –
13 JULY 2004**

1	TCP/01272/E P/00994/04	Bembridge	Refusal
	Clematis Cottage and Berrylands, Heathfield Road, Bembridge		
2	TCP/01290/R P/00879/04	East Cowes	Conditional Approval
	Holy Cross RC Primary School, Millfield Avenue, East Cowes, Isle Of Wight, PO326AS		
3	TCP/11796/K P/00578/04	Newchurch	Conditional Approval
	Bartletts Service Station, High Street, Newchurch, Sandown, Isle Of Wight, PO360NF		
4	TCP/12736/B P/01551/03	East Cowes	Refusal
	land between 2b and R S Motors, Well Road, East Cowes, PO32		
5	TCP/14948/G P/02436/03	Gurnard	Refusal
	1-6 Beach Chalets, Marsh Road, Cowes, PO31		
6	TCP/26277 P/00832/04	Ventnor	Conditional Approval
	18 Foxhills, Whitwell Road, Ventnor, PO38		

**LIST OF OTHER MATTERS NOT RELATING TO CURRENT PLANNING APPLICATIONS ON
REPORT TO COMMITTEE – 13 JULY 2004**

- (a) TCP/24467/B Land adjacent 1 Pelham Road, Ventnor, Ventnor
Isle of Wight
- (b) P/26102 & E/20443H Sheep Lane Farm, Blythe Shute, Chale, and Chale
Hawthorn Manor Farm, Chale Green

1. [TCP/01272/E](#) P/00994/04 Parish/Name: Bembridge Ward: Bembridge North
Registration Date: 06/05/2004 - Full Planning Permission
Officer: Mr. J. Mackenzie Tel: (01983) 823567
Applicant: B B Developments

**Removal of condition no.7 on TCP/1272/D relating to the provision of
affordable housing
Clematis Cottage and Berrylands, Heathfield Road, Bembridge, PO35**

REASON FOR COMMITTEE CONSIDERATION

Report is requested by the local Member, Mrs B Clough, as she is not prepared to agree to the application being dealt with under the delegated procedure due to conflicting policy considerations.

PERFORMANCE INFORMATION

This application, if dealt with at the 13 July meeting, will have taken 10 weeks to process, the delay due to the need to report the matter to the Development Control Committee.

LOCATION AND SITE CHARACTERISTICS

The site is made up of two residential properties, located on the south-east side of Heathfield Road a few metres from the right angle bend in Heathfield Road which, in turn, is a few metres south-east of Pelham Close.

Heathfield Road is a rough, unmade carriageway serving many residential properties, linking with Preston Road and Mitten Road, another two unmade roads, and part of the route from this site to the metalled highway. The two sites together form an area of approximately 0.2-0.25 hectares; it forms the garden areas of both existing residences and forms the western limit of a large tract of land in separate ownerships, parts of the gardens of those properties which front Steyne Road, Preston Road and Heathfield Road. The garden of Clematis Cottage is deeper than that of Berrylands and adjoins the north-eastern side of a comparatively large garden of a property which has a narrow access leading to a deeper and wider plot off Steyne Road. The land is relatively flat although there is a gentle fall to the south-east, and the gardens are comparatively well grown in, mostly with hedgerows and trees marking the boundaries.

RELEVANT HISTORY

In April 2003 planning permission was refused for the demolition of these dwellings and an outline for 10 houses on grounds of over-development, inadequate access and development being premature which would be prejudicial to the overall development of the area. A subsequent application in September of last year for the demolition of the dwellings and an outline for 9 houses, for the formation of vehicular access and parking, was approved subject to conditions amongst which was one requiring two of the nine dwellings approved to be built and handed to a registered social landlord as discounted premium (50% market value) for the purpose of providing housing accommodation for rent.

In addition a planning application for development of the land immediately adjoining the site, to the north-east, forming the rear garden of that property, was the subject of an application for the erection of a pair of semi-detached houses. That was refused in January 2003 and a subsequent appeal dismissed in August 2003. The proposed development comprised the formation of a vehicular access adjoining the dwelling at the front of the site leading to the rear garden where a pair of semi-detached houses were proposed. In reaching his decision the Inspector considered that the determining issues were the effect of the development on the character and appearance of the area and, secondly, the living conditions of adjoining properties. He concluded that this two storey development would have been out of keeping, forming a poor development in tandem form, especially of two storey development, and that the development would compromise the further, future development of the area. He also considered that the development would adversely affect the living conditions of adjoining properties through unacceptable outlook and impacts of noise, mostly from vehicles accessing the dwellings situated at the rear.

Whilst not forming a planning application, a further proposal was the subject of a written inquiry regarding the site immediately adjoining the south-west side of the application site, and the proposal was to demolish the existing dwelling and replace it with dwellings in some depth.

DETAILS OF APPLICATION

Following the grant of consent in September last year, this application seeks consent to remove condition 9:

“Two of the nine dwellings hereby approved shall be built and handed over to a registered social landlord at a discounted premium (50% market value) and shall be used for the purpose of providing housing accommodation for rent to meet the objectives of a registered landlord (except where the tenants exercise their right to purchase property under the Purchase Grant Scheme included in the Housing Act 1996 and except also that the conditions are not binding or enforceable against any mortgagee or chargee (or person deriving the title from such mortgagee or chargee which is in possession of these plots (or either of them) pursuant to any mortgagee or chargee and which mortgagee or chargee in exercising the power of sale).

In support of the application the agent argues that the imposition of the condition is inappropriate in that it is not fairly or reasonably related in scale and kind to the proposed development nor is reasonable in all other respects. He points out that the development represents a net increase of seven units, the two existing dwellings on the site being demolished and their replacement with nine.

He points out that the possible continuation of development from the scheme then under consideration spread across nine separate land ownerships and that, to assemble the land into a single site could only be attempted by a major developer and that no discussions have been taking place with any other owners of land in the vicinity. He points out that any development on adjoining land is not dependent upon the application site as there are a number of other access points that could be used to enter the site, and that the Council cannot direct that access approved to the application site must be used for a larger development.

The agent continues by stating that the implications of requiring a substantial proportion of affordable housing as part of a small development are considerable; that construction costs for small developments are higher than for larger developments because of economies of scale, and quotes that Circular 6/98, concerning affordable housing, makes it clear that it will be inappropriate to seek any affordable housing on some sites. He further quotes the circular that housing developments of 25 or more dwellings or residential sites of one hectare or more, irrespective of the number of dwellings; housing developments in Inner London of 15 or more dwellings, or residential sites of 0.5 of a hectare or more, again irrespective of the number of the dwellings, are appropriate for affordable housing and that, in settlements in rural areas with a population of 3,000 or fewer, the Local Planning Authority should adopt appropriate thresholds.

He quotes the Council's UDP containing current policies, stating that:

“Given the economics of small schemes any threshold must not stifle development but equally should provide the opportunity to address rural needs wherever possible. It is therefore suggested that 10 units or more is an appropriate threshold for settlements less than 3,000 population.”

He points out that, for larger populations, the threshold is 15 units or 0.5 hectares, that the plan lists the settlements of over 3,000 but omits Bembridge (which has a population of approximately 3,800) and argues that 15 is the lowest threshold figure allowed by the circular for settlements of over 3,000 population, arguing that the development is less than half of the size of the set threshold and quotes

that it is a net increase of only seven, although the development is actually for nine units but the two existing properties are to be demolished. He argues that the planning condition requires two of the seven to be made available, thus equating to 28.5%, whereas the Council's requirement is to seek to achieve a figure of 20%, and that the requirement is significantly in excess of what would currently be required from major developments, stating that it is an inequitable situation which unfairly penalises a small landowner without aspirations to become a major developer and thus threatens the viability of the scheme.

DEVELOPMENT PLAN/POLICY

The site is within the designated development envelope for Bembridge but is not under any specific designation. The site is not within an Area of Outstanding Natural beauty nor with a designated conservation area.

Policy H14 states:

“On those sites allocated to residential development shown on the proposals map and those which become available but are not currently available, the Council will seek to negotiate an element of affordable housing as part of the scheme.”

The scale and type of provision will be considered in relation to local needs, however, the Council is seeking to achieve 20% of housing on appropriate sites to be developed and handed over to a registered social landlord at a discounted price (50% market value). Mechanisms will need to be put in place to ensure that such provision remains in affordable use in the long term.

On suitable sites where the Council considers it preferable to provide affordable housing it may be prepared to accept

- a) an appropriate contribution of serviced land which may also include built affordable housing units;
- b) a financial contribution sufficient to enable a Housing Association to provide the agreed number of units, either by new building, or the purchase of existing stock.”

The supporting text of the UDP recognises certain settlements of over 3,000 population where developments in excess of 15 units or 0.5 hectares irrespective of the number of units will trigger an automatic need for provision of affordable housing, recognising the settlements of Ryde; Shanklin/Lake/Sandown; Cowes; East Cowes; Freshwater/Totland, Wootton and Ventnor and, with the exception of Newport, makes the observation that the remaining settlements on the Island have less than 3,000 population, but Bembridge is not listed in the settlements over 3,000 population although it has a population of 3,800. Circular 06/98 of 1998 refers to planning and affordable housing.

PPG3 relates to housing.

CONSULTEE RESPONSES

None at the time of writing. Council's Housing Officer confirms that the applicant has not approached the Housing Department to discuss the provision of affordable housing on the site but advises me that Island Housing Register for Bembridge indicates, for one bedroomed accommodation there are presently 230 applicants of which 11 are homeless persons; for two bedroomed accommodation there are 172 applicants of which 16 are homeless families and, for

three bedroomed accommodation there are 96 applicants of which 17 are homeless families.

PARISH COUNCIL COMMENTS

Bembridge Parish Council “reluctantly recommend approval and regret that loss of the possibility of affordable housing, whilst recognising that the condition was not strictly in accordance with the UDP”.

THIRD PARTY REPRESENTATIONS

None at the time of writing.

CRIME & DISORDER IMPLICATIONS

Relevant Officer has been given the opportunity to comment but no observations have been received. However, it is not anticipated that there would be any crime and disorder implications generated by this particular proposal.

EVALUATION

In essence this application seeks consent to remove from the previous planning permission, the condition requiring the provision of two of the units as affordable housing units. In support of the application the agent has offered arguments as explained in the Details of Application section above but, in essence, argues that the site is a redevelopment of land of less than 0.5 of a hectare; less than the 15 dwellings threshold as detailed in the supporting text of the UDP; argues that 15 dwellings is the appropriate threshold since Bembridge has a population of more than 3,000; that the development comprises only seven new dwellings as two are to be demolished, and that imposition of the condition would stifle development.

Members will appreciate the exact wording of the policy as detailed above. The intention of this policy is to provide affordable housing for adoption by a registered social landlord to ensure that housing is available, where needed for rent by persons who are not able to afford property on the open market. It will be seen from the Housing Officer's representation that there is an existing, substantial need for affordable housing in the Bembridge area and therefore the desire to provide such accommodation is substantiated.

Policy H14 states that on those sites allocated for residential development show on the proposals map and those which become available but are not currently available, the Council will seek to negotiate an element of affordable housing as part of the scheme. In addition, the policy also states that the scale and type of provision will be considered in relation to local needs; however, the Council is seeking to achieve 20% of housing on appropriate sites to be developed and handed over to a registered social landlord at a discounted price.

It is acknowledged that the policy supporting text appears to set the threshold in this area at 15 or 0.5 of a hectare but Bembridge is mentioned neither in the list of named settlements where 15 applies, and does not fall within a settlement of less than 3,000 population. However, be that as it may, despite the fact that the site has an area of 0.2-0.25 hectares and despite the fact that only nine units are proposed following the demolition of two existing on site, it is quite clear that this site forms part of a larger tract of land, land abutting the site, which is likely to be developed in the near future. Applications for development have been submitted on adjoining land and indicators of desire to develop adjoining land have been received in the form of inquiries, and given the right circumstances and scheme are, in my opinion, likely to receive favourable consideration for the continuation of development from that now proposed. The application immediately to the north-east was refused on poor arrangement and adverse effect on adjoining properties but the Appeal Inspector also found

that the development as proposed would prejudice future development and therefore fully expected this land to be developed for housing, the cumulative area of which would exceed the 0.5 hectares and the total number is likely to exceed 15 by some considerable way. Having taken these factors into account when the application was first considered in September of last year, the Development Control Committee felt the need for social housing provision was quite appropriate bearing in mind the likely continuation of development into the adjoining land. The only fair way of dealing with the proportionate supply of social housing on this and the adjoining land was to require a "pro rata" provision at each stage of the continuing development rather than waiting until the threshold of 15 was reached and then requiring 20% of the whole, as this would prevent development as the responsibility for provision would fall wholly on one, comparatively small development.

One of the applicant's arguments against the imposition of the condition is that the application site is small and such a responsibility will negate the profitability of the scheme. It should be remembered that planning permissions also exclusively benefit the land and such a permission could not be made personal. It is not inconceivable that with an extant permission, this land could be sold to a developer who could then continue the development into the adjoining tract of land and therefore "small developer" argument is void.

Whilst the financial side of this development is not one which should necessarily influence the decision, it is pointed out that the condition requires two units to be sold at 50% of market value to a registered social landlord. The selling of two of the units at 50% market value is obviously the same as one property at 100% which, essentially, means that the development would therefore be equivalent to the loss of one dwelling, which in many instances can be necessarily negotiated out to make a development acceptable.

The applicant's supporting information indicates that he intends to provide housing for his children who presently are either in or awaiting availability of social housing elsewhere. This is seen as an acknowledgement that social housing is necessary and indeed supports the Housing Officer's assertion of the volume of demand.

The policy includes the so-called windfall sites where land has not been identified in the UDP for housing and requires the same level of provision. There is clearly a requirement for housing in Bembridge, of which this development would provide merely two houses, and any continuing development into the adjoining land would also provide a pro rata provision. It is, however, difficult to see where else in Bembridge a potential site of greater than 15 units could be proposed, since much of the land is restricted in its potential due to considerations of access, character of the particular area or for other reasons. In essence if affordable housing is not provided at this stage, not only would it be more difficult to require such provision on a subsequent adjoining development but it is difficult to see where else in Bembridge such provision could be made.

In summary, the decision to require affordable housing units was considered fair bearing in mind the need in this area and the fact that it was to be provided on a pro rata basis on a site which is very likely to be the first phase of a continuing development into the adjoining land, and on that basis I do not consider it would be appropriate to remove the condition.

HUMAN RIGHTS

In coming to this recommendation to refuse planning permission, consideration has been given to the rights set out in Article 8 (Right to Privacy) and Article 1 of the First Protocol (Right to Peaceful Enjoyment of Possessions) of the European Convention on Human Rights. The impacts this development might have on the owners/occupiers of the other property in the area and other third parties have been carefully considered. Whilst there may be some interference with the rights of the applicant to develop the land in the manner proposed, it is considered that the recommendation to

refuse is proportional to the legitimate aim of the Council's Unitary Development Plan and in the public interest.

JUSTIFICATION FOR RECOMMENDATION

Having given due regard and attached appropriate weight to the factors explained in the Evaluation section above, it is felt that the condition imposed on the original planning permission requiring the provision of two units of affordable housing to be sold to a registered social landlord at 50% off market value was fair; that the likelihood of the development being the first phase of a continuing development into adjoining land was high and the approach taken to require a pro rata provision on each of the subsequent phases of development was justifiable, meeting a proven need in Bembridge, and the retention of the condition is justifiable and appropriate in accordance with policy H14 of the Isle of Wight Unitary Development Plan.

RECOMMENDATION - REFUSAL

Conditions/Reasons:

- 1 The removal of the condition would result in the development of a first phase of a continuing development which cumulatively would fail to provide an element of low cost housing for rent thus depriving a section of the community access to housing and would therefore be contrary to policy H14 (Locally Affordable Housing as an Element of Housing Schemes) of the IW Unitary Development Plan and the Government's objective of facilitating housing for the whole community within PPG3 - Housing.

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2. [TCP/01290/R](#) P/00879/04 Parish/Name: East Cowes Ward: East Cowes North
Registration Date: 21/04/2004 - Development by Council Itself (Reg 3)
Officer: Miss. S. Wilkinson Tel: (01983) 823566
Applicant: Isle of Wight Council

Renewal: Siting of temporary building for use as a play group and change of use of agricultural land for educational use
Holy Cross RC Primary School, Millfield Avenue, East Cowes, Isle Of Wight, PO326AS

REASON FOR COMMITTEE CONSIDERATION

Report requested by Local Member, Councillor Mrs Lloyd who has indicated that residents have approached her on a number of occasions prior to the lodging of this application expressing concern over the condition of the road (Millfield Avenue) and the traffic movement generated by the school.

PROCESSING INFORMATION

This is a minor application the processing of which has taken 12 weeks to the date of this Committee meeting. The application has gone beyond the prescribed 8 week period for determination of a planning application due to delays in consultees submitting comments which were considered essential to the consideration of the application.

LOCATION & SITE CHARACTERISTICS

Application relates to a mobile classroom, used for the purposes of the pre-school in conjunction with Holy Cross Roman Catholic Primary School, located on the northern side of Millfield Avenue, off the access track to the convent. The application also relates to a change of use of a small parcel of

agricultural land for educational use to the south of the school building. The mobile classroom is located in front of the main school building with a picket fence boundary enclosing a small play area to the side of the structure. The school site is located within the grounds of Convent of the Cross.

RELEVANT HISTORY

TCP/1290/G – An application was approved in July 1993 for a single storey extension to enlarge existing reception, office and stockroom.

TCP/1290/K – An application for temporary planning permission was approved in July 1998 for the siting of a temporary building for use as a playgroup and change of use of agricultural land for educational use.

TCP/1290/L – An application was approved in August 1998 for a first floor extension over existing roof patio to form classroom to include external fire escape staircase on north east elevation.

TCP/1290/M – An application was approved in November 2001 for the renewal of the siting of temporary building for use as a playgroup and change of use of agricultural land for educational use.

DETAILS OF APPLICATION

Consent is sought for the renewal of planning permission for the siting of a mobile classroom and the change of use of agricultural land for educational use. The mobile classroom has been located on the site since 1998 within the parcel of agricultural land under consideration for change of use for education. A further application was submitted in 2001 for its renewal which was granted, which did not attract any objections. The mobile classroom is used for a playgroup currently attended by 42 pupils although it is anticipated that the number of children will be reduced to 34 from September 2004.

DEVELOPMENT PLAN/POLICY

Relevant policies of the Unitary Development Plan are considered to be as follows:

S6 – Development will be expected to be of a High Standard of Design

D1 – Standards of Design

U5 – Schools Provision

CONSULTEE RESPONSES

Highway Engineer comments that the surface condition of the road is very poor and improvements are required. However, as this application only seeks to renew the existing use, he did not feel that the Highway department could raise an objection or justify any improvements to the surface of the road. In summary the Highway department return no comment on the application.

PARISH/TOWN COUNCIL COMMENTS

East Cowes Town Council raises no objection.

THIRD PARTY REPRESENTATIONS

Six letters were received from local residents objecting on grounds which can be summarised as

follows:

- Condition of the road (Millfield Avenue)
- Nuisance caused by noise and dust clouds
- Parking problems
- Quality of the road being insufficient to accommodate fire engines and heavy emergency vehicles to access the school
- The road (Millfield Avenue) contains no lighting or pavements
- Potholes in road fill with rainwater
- Road not subject to speed limit
- Suggestion that access to the school is via St. Thomas Road
- Health and environmental risk of dust clouds
- During winter months rain blocks the drains causing flash flooding

CRIME & DISORDER IMPLICATIONS

No crime and disorder implications are anticipated.

EVALUATION

Determining factors in considering this application are whether the poor condition of the road (Millfield Avenue) is exacerbated by traffic generated by the playgroup facility at Holy Cross RC Primary School and whether any evidence to support this result is an acceptable loss of a community facility.

The site lies within the grounds of the Convent of the Cross and is accessed via entrance gates off Millfield Avenue, a private unmade road over which a number of residential properties have right of way. The mobile classroom is located in close proximity to the school building on a small part of land previously used for agricultural purposes, at a distance from residential properties.

The original application for temporary consent was approved in 1998 and attracted a number of letters of support in relation to the necessity for the application as Holy Cross RC Primary School was the only school in the area that did not have an associated playgroup, which was a much needed facility for the community. This issue is still a matter of consideration with the playgroup accommodating 42 pupils at present, a number that will reduce to 34 in September. Currently 113 pupils attend the school itself, a number of which are intakes from the associated playgroup. The increase in traffic generation caused by the playgroup is not significant to this figure. It is likely sibling groups attend both school and playgroup. Consequently, children attending both establishments may travel in the same vehicle. Additionally, the school is within walking distance for a number of local residents, whose families are likely to attend both school and playgroup.

The renewal of this consent was approved in 2001 with no letters of representation being received and the Highways department making no comment.

A number of objections raised in relation to this application relate for the most part to the condition of Millfield Avenue. This road has been slowly deteriorating, although there is no evidence to suggest this is purely due to the playgroup facility and as such, previous approvals did not attract any objections from the Highways department. In this respect Members should be aware that circumstances regarding this renewal have not altered and the private road is outside the application site.

The continued use of the small parcel of agricultural land to the south of the main school building to accommodate the mobile would not have a detrimental impact on agricultural provision, the

environment, neighbouring properties or the surrounding area.

Whilst no condition was placed on the original consent for a road survey, there is no evidence to suggest that the deteriorating condition of Millfield Avenue is due in most part to the playgroup. Additionally it is not considered that circumstances have changed significantly since the renewal of 2001 to warrant a refusal at this time.

HUMAN RIGHTS

In coming to this recommendation to grant planning permission, consideration has been given to the rights set out in Article 8 (Right to Privacy) and Article 1 of the First Protocol (Right to Peaceful Enjoyment of Possessions) of the European Convention on Human Rights. The impacts this development might have on the owners/occupiers of the other property in the area and other third parties have been carefully considered. Whilst there may be some interference with the rights of these people this has to balance with the right of the applicant to retain the mobile classroom for use as a playgroup. Insofar as there is an interference with the rights of others it is considered necessary for the protection of the rights and freedom of the applicant. It is also considered that such action is proportional to the legitimate aim of the Council's Unitary Development Plan and in the public interest.

JUSTIFICATION FOR RECOMMENDATION

Having given due regard and appropriate weight to the material consideration referred to in this report, I am of the opinion that circumstances have not changed significantly from the previous renewal to justify refusing the current application, and therefore take the view that the proposal is consistent with development plan policies, particularly S6, D1 and U5. I therefore recommend accordingly.

RECOMMENDATION - APPROVAL

Conditions/Reasons:

1 This permission shall be for a limited period expiring on 31 June 2009, on or before which dated the building shall be permanently removed from the site and the land shall be restored to its condition prior to the siting of the mobile classroom or such agreed condition unless the prior written consent of the Local Planning Authority has been obtained in writing for a further period.

Reason: The building is of a type not considered suitable for permanent retention.

2 This permission shall enure solely for the benefit of the Local Authority.

Reason: To comply with Regulation 3(4) of the Town and Country Planning General Regulations 1992.

3 The external walls of the mobile classroom hereby approved shall be maintained in a matt dark brown colour unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of the character of the area and to comply with Policy D1 (Standards of Design) of the Isle of Wight Unitary Development Plan.

3. [TCP/11796/K](#) P/00578/04 Parish/Name: Newchurch Ward: Newchurch
Registration Date: 15/03/2004 - Full Planning Permission
Officer: Mr. C. Boulter Tel: (01983) 823575
Applicant: Stoneham Construction Ltd

**Revised layout to part of approved scheme under TCP/11796/J to provide 4 dwellings; vehicular access
Bartletts Service Station, High Street, Newchurch, Sandown, Isle Of Wight, PO360NF**

REASON FOR COMMITTEE CONSIDERATION

Report requested by local Member, Councillor Richards, shortly after application was publicised. He considers the proposal represents overdevelopment, above Government guidelines, addition of one more unit will reduce the available parking by 5 spaces, and queries as to whether a contribution to social housing should have been provided.

PROCESSING INFORMATION

This is a minor application, the processing of which has taken 19 weeks to date. The processing of this application has gone beyond the prescribed 8 week period for determination because of the need to obtain revised plans from the applicants to meet Highways requirements and the need to prepare a report for the Development Control Committee.

LOCATION AND SITE CHARACTERISTICS

Site of former Bartletts Service Station on east side of Winford Road at the southern end of Newchurch Village. Site is currently being developed for residential purposes under a planning permission issued in July 2002. Application site itself includes the access onto Winford Road and the rear part of the site, roughly triangular, behind the newly constructed terrace of frontage development and an existing former barn which is to be converted to 3 dwelling units.

RELEVANT HISTORY

TCP/11796/J-P/2222/01 – Demolition of garage and workshop; residential development of 12 houses to include conversion of existing barn, with associated parking and alterations to vehicular access, approved July 2002.

DETAILS OF APPLICATION

To construct a pair of semi-detached houses in the area of plot 7, approved in 2002 for a detached house, with consequent adjustment to the boundaries and locations of the two detached dwellings originally approved on plots 8 and 9.

Whilst access arrangements remain the same (the access road is already constructed to base level) the internal parking and circulation areas are amended. This has resulted in a reduction in the number of parking spaces provided from 18 under the 2002 consent to 13 now proposed.

DEVELOPMENT PLAN/POLICY

PPG3 (Housing) advises Local Authorities to make best use of urban land by ensuring that residential development is appropriately located. It also encourages the adoption of higher densities

than have previously been the norm and suggests that a figure of 30-50 dph would be acceptable in most circumstances. There are, however, locations where, accordingly to the pattern of existing development, lesser or greater densities will be acceptable. The guidance does not suggest that 50 dwellings per hectare is the maximum appropriate density in any location.

The part of the site fronting Winford Road is within the development envelope for Newchurch defined in the Unitary Development Plan (UDP) whilst the rear part, which has consent for residential development as part of the overall redevelopment of the garage site, is outside. The whole site is within UDP Parking Zone 4.

The following policies of the UDP are relevant:

- S1 - New Development Concentrated in Existing Urban Areas;
- S6 - High Standards of Design;
- S11 - Reduced Reliance on Private Car;
- G1 - Development Envelopes for Towns and Villages;
- G4 - General Locational Criteria;
- D1 - Standards of Design;
- D2 - Standards for Development within the Site;
- H5 - Infill Development;
- H6 - High Density Residential Development;
- H14 - Locally Affordable Housing as an Element of Housing Schemes;
- P3 - Restoration of Contaminated Land;
- TR3 - Locating Development to Minimise the Need to Travel;
- TR7 - Highway Considerations for New Development;
- TR16 - Parking Policies and Guidelines.

CONSULTEE RESPONSES

Highways Engineer and Contaminated Land Officer recommend conditions if approved.

PARISH/TOWN COUNCIL COMMENTS

Parish Council objects strongly because of significant reduction of number of parking spaces and potential effect on road safety in Winford Road/High Street.

THIRD PARTY REPRESENTATIONS

Two local residents object on grounds of loss of privacy from overlooking by more windows, over-development, and loss of parking spaces.

EVALUATION

Application proposes 4 dwellings on a part of the site originally approved for 3. Density is increased on this part of the site from 23 dph to 31 dph. Over the whole of the site, density is increased from 50 dph to 54 dph. Remembering 30-50 dph figure of PPG3 is a guideline only, increase of 4 dph overall is not sufficient to warrant refusal on density grounds alone. Proposal is in accordance with S1, G1 and H6.

Provision of a pair of semis on the site brings new building about 1 metre closer to the south-western boundary of the site at its furthest from the nearest bungalow in Winford Road, but 3 metres further away at its nearest point. Resiting of dwellings on plots 8 and 9 results in corner of the dwelling on original plot 9 (now plot 10) being 1 metre closer to the boundary of the site with Tanners Lane. This is not significant in streetscape terms.

The detached dwelling originally proposed for plot 7 had no windows in its west elevation, but plot 12 of the current scheme has kitchen and small living room windows at ground floor, and bedroom and WC at first floor. Plot 13 has living/dining room at ground floor and bedroom at first floor on the western side. 2 metre high screen fencing is to be provided on the western boundary to screen ground floor windows, and bearing in mind the relationship between the approved three storey dwellings and the adjoining bungalow, bedroom windows at first floor will not significantly increase direct overlooking.

Relationship with three storey dwellings to the north west is acceptable, hall and landing windows facing in this direction. Resiting of dwelling on what are now plots 11 and 12 does not compromise the relationship between them, and I conclude that the proposal is compliant with G4, D1, D2 and H5.

Appearance of proposed dwellings is acceptable and continues the theme in design and materials of the approved scheme. Proposal is not significantly different in visual appearance, bearing in mind the consented development, and is therefore compliant with D1 and D2 regarding appearance and character of the area.

A condition of the scheme approved in 2002 required 18 parking spaces, including garages, to be provided prior to the bringing into use of the development. Appendix G of the UDP produced a guideline parking requirement of 40 spaces for the originally approved scheme, based on 1 space per bedroom and 4 visitors' spaces.

Site is within Parking Zone 4, so under Appendix G 0%-100% provision would be acceptable. Proposal now under consideration provides a total of 13 spaces, in the light of a guideline requirement for 42 spaces. This is still within the 0%-100% range, and bearing in mind Government policy to reduce reliance on the private car, the Local Planning Authority's aim of reducing the environmental impact of the motor vehicle reflected in UDP policies S11, TR3 and TR16, and the absence of objection from the Council's Highway Engineer regarding inadequate car parking, a refusal on these grounds would in my view be unsustainable.

UDP paragraph 7.49 suggests that 10 units or more is an appropriate development threshold for the provision of affordable housing for settlements of less than 3000 population. Nonetheless, the 2002 consent for 12 dwellings did not carry a requirement for the provision of affordable housing, and in my view it would now be unreasonable to impose such a requirement in respect of one additional housing unit.

Site clearance and other development has already taken place in accordance with the approval and conditions imposed under TCP/11796/J. I do not therefore think it necessary to re-impose conditions regarding remediation of possible contamination of the site as recommended by the Contaminated

Land Officer.

I consider the proposal to be compliant with the overall aims and specific policies of the UDP and recommend accordingly.

HUMAN RIGHTS

In coming to this recommendation to grant planning permission consideration has been given to the rights set out in Article 8 (Right to Privacy) and Article 1 of the First Protocol (Right to Peaceful Enjoyment of Possessions) of the European Convention on Human Rights. The impacts this development might have on the owners/occupiers of other property in the area and other third parties have been carefully considered. Whilst there may be some interference with the rights of these people this has to be balanced with the rights of the applicant to develop the land in the manner proposed. Insofar as there is an interference with the rights of others it is considered necessary for the protection of the rights and freedom of the applicant. It is also considered that such action is proportional to the legitimate aim of the Council's Unitary Development Plan and in the public interest.

JUSTIFICATION FOR RECOMMENDATION

Having given due regard and appropriate weight to the material considerations (including the consent for 12 dwellings granted in 2002) as discussed in this report, I am of the opinion that the scheme under consideration is compliant with UDP policies regarding its density, appearance, relationship with adjoining properties, parking and access arrangements, and therefore should be approved.

RECOMMENDATION - APPROVAL

Conditions/Reasons:

- 1 The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.
- 2 No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: In the interests of the amenities of the area and to comply with Policy D1 (Standards of Design) of the IW Unitary Development Plan.
- 3 No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed ("*before any of the dwellings hereby approved are occupied*") (in accordance with a timetable agreed in writing with the Local Planning Authority). Development shall be carried out thereafter in accordance with the approved plans.

Reason: In the interests of maintaining the amenity value of the area to comply with Policy D1 (Standards of Design) of the IW Unitary Development Plan.
- 4 Notwithstanding the provisions of any current Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), no extension, building or structure permitted by Part 1, ("*Classes A, B, C, D and E*") of the 1995 Order, as amended, shall be erected within the curtilage of the site without the prior written approval of the Local Planning Authority.

Reason: In the interests of amenities of the area and to comply with Policy D1 (Standards of Design) of the IW Unitary Development Plan.
5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and en-enacting that Order) (with or without modification), no windows/dormer windows (other than those expressly authorised by this permission) shall be constructed.

Reason: In the interests of the character and amenities of the area and to comply with Policy D1 (Standards of Design) of the IW Unitary Development Plan.
6 Details of the design and construction of any new roads, footways, accesses, car parking areas together with details of the disposal of surface water drainage shall be submitted to, and approved by, and thereafter constructed to the satisfaction of the Local Planning Authority.

Reason: To ensure an adequate standard of highway access and drainage for the proposed dwellings and to comply with Policy TR7 (Highway Considerations) of the IW Unitary Development Plan.
7 No dwelling shall be occupied until those parts of the roads and drainage system which serve that dwelling have been constructed in accordance with a scheme agreed by the Local Planning Authority.

Reason: To ensure an adequate standard of highway and access for the proposed dwellings and to comply with Policy TR7 (Highway Considerations) of the IW Unitary Development Plan.
8 The car parking/turning/loading/unloading shown on ("*plan 2008/P/4*" for "*the plan*") to and forming part of this decision notice shall be retained hereafter for the use by occupiers and visitors to the development hereby approved.

Reason: To ensure adequate off-street parking provision and to comply with Policy TR7 (Highway Considerations) of the IW Unitary Development Plan.
9 Visibility splays of $x = (2.5m)$ and $y = (60m)$ dimension shall be constructed prior to commencement of the development hereby approved and shall be maintained hereafter,

Reason: In the interests of highway safety and to comply with Policy TR7 (Highway Considerations) of the IW Unitary Development Plan.

4. [TCP/12736/B](#) P/01551/03 Parish/Name: East Cowes Ward: East Cowes North
Registration Date: 06/08/2003 - Full Planning Permission
Officer: Mr. A. White Tel: (01983) 823550
Applicant: Mr & Mrs P Richardson

Demolition of double garage & workshop; construction of 2 storey maisonette with integral garage
land between 2b and R S Motors, Well Road, East Cowes, PO32

REASON FOR COMMITTEE CONSIDERATION

Report requested by local member, Councillor Margaret Lloyd, as she is not prepared to agree to the application being dealt with under the delegated procedure owing to the number of issues involved such as flooding, highways and environmental from being next door to a motor vehicle repair garage.

PROCESSING INFORMATION

This is a minor application, the processing of which has taken 49 weeks to date. The processing of this application has gone beyond the prescribed 8 week period for determination of planning applications because of ongoing negotiations, further consultations, officer work load and the need for committee consideration.

LOCATION & SITE CHARACTERISTICS

The site is situated on south western side of Well Road, approximately 40 metres south east of its junction with Castle Street and currently occupied by of a timber clad double garage and forms part of the curtilage of 2 York Avenue. The site is bounded to the north west by a modern terrace of three houses and to the south east by a motor vehicle repair garage.

RELEVANT HISTORY

None

DETAILS OF APPLICATION

Consent is sought to replace the existing timber garage with a house comprising of double integral garage and bedroom at ground floor level with living room, kitchen, bedroom and bathroom at first floor level.

DEVELOPMENT PLAN POLICY

PPG3 (Housing) encourages efficient use of land in urban areas by promoting higher densities whilst also stressing the need for good design in new housing developments in order to create attractive, high quality living environments in which people will choose to live.

PPG25 (Development and Flood Risk) confirms that flood issues have long been recognised as being material planning considerations. However, in view of the apparent increased frequency and severity of flooding in recent years, particularly since 1998, the Government is looking for a step-change in the responsiveness of the land use planning system to the issues of flood risk management as far as they affect the development process.

The site is situated within the development envelope for East Cowes as identified on the Isle of Wight Unitary Development Plan (UDP). Relevant policies are as follows:

- S1 - New developments will be concentrated within existing urban areas
- S6 - All developments will be expected to be of a high standard design
- G1 - Development envelopes for towns and villages
- G4 - General locational criteria for development
- G6 - Development in areas liable to flooding
- D1 - Standards of design
- D2 - Standards for development within the site
- H4 - Unallocated residential development to be restricted to defined settlements
- H5 - Infill developments
- P1 - Pollution and development

CONSULTEE RESPONSES

Highway Engineer comments that the existing double garage is positioned at the back edge of the footway within Well Road and does not have the benefit of any setback distance or turning area. Well Road is an extremely busy, 'A' Classified Highway and any access would require a turning area to allow vehicles to enter and leave the site in a forward gear. Although the site has an existing vehicular access, the Highway Engineer would not like to see its use continued as it constitutes a significant hazard to highway users both pedestrian and vehicular. It was therefore suggested to the applicant that they consider a no parking option as the site straddles parking zones 1 and 2, but this was duly declined. Highway Engineer has since reconsidered his original comments and feels that he cannot sustain a reason for refusal. This is due to the existing access arrangements and us of the site.

Environmental Health Officer states that the proposed dwelling would adjoin a commercial garage and comments that a situation could arise where intervention by his section could be required to restrict the business activity or require substantial modification to the business operations which could affect its economic viability. He does however recognise that no complaints have been received by his department as a consequence of the existing operator and he also notes that there are existing residential premises in close proximity.

Environment Agency confirms that the site lies within an area identified as being at risk of tidal flooding and therefore request that a Flood Risk Assessment is submitted before a formal comment is made. The Agency confirms that the predicted 0.5% probability extreme sea level in the year 2060 for this area is 3.2 metres above Ordnance Datum Newlyn. This makes an allowance of a 6 mm/year for global warming/land sinking but does not take into consideration wave heights which should be allowed for when setting design levels.

PARISH/TOWN COUNCIL COMMENTS

East Cowes Town Council raise no objection.

THIRD PARTY REPRESENTATIONS

None

CRIME & DISORDER IMPLICATIONS

No crime and disorder implications are anticipated.

EVALUATION

This is essentially a brownfield site within the development envelope boundary for East Cowes. As such, the principle of residential development is considered to be acceptable. The proposed development has, however, raised a number of issues which warrant close examination, hence the request by the Local Member for Committee consideration.

One such issue is flooding. Although not within an Indicative Flood Plain, the Environment Agency confirm that the site is at risk of tidal flooding and, owing to the lack of a Flood Risk Assessment as recommended in PPG25, is unable to make a formal comment on this application. The application has been held in abeyance for some time but a Flood Risk Assessment has not been submitted. In

the absence of this, the Local Planning Authority and Environment Agency cannot be satisfied that all precautions and measures can be taken to minimize the risk to life and property. In consequence, the proposed development fails to satisfy the requirements of Policy G6 of the UDP.

Notwithstanding the fact that a Flood Risk Assessment has not been submitted, the Environment Agency has indicated that it is likely to object to any form of residential development on this site. In order to account for the possible extreme sea level in the year 2060 together with global warming/land sinking, it is necessary to set floor level at a minimum height of 3.2 metres Above Ordnance Datum (AOD). This may well be achievable, but highway/pavement level outside of the premises would only be approximately 2.2 metres (AOD) which is 1 metre below predicted sea level and may therefore present access problems for emergency vehicles whereby life could be put at risk. The Environment Agency is therefore likely to object to the development regardless of the content of any future Flood Risk Assessment.

Environmental Health Officer draws attention to the adjoining garage premises and the potential conflict between a commercial use of this nature and the proposed dwelling. He is aware of other dwellings in proximity to the garage including a new development immediately behind and confirms that no complaints have been received. However, he is aware that the proposed dwelling would immediately abut the commercial garage which could change from its current use or even level of use, potentially resulting in complaints. Bearing in mind though that the Environmental Health Officer does not formally object, that there are residential dwellings within similar proximity to the commercial garage and that certain mitigation measures can be undertaken at the time of the construction work, I do not see that this particular concern would warrant a reason for refusal in this respect.

Highway Engineer originally objected to the development on grounds that the proposed integral garage would abut the back edge of the pavement and that the site cannot accommodate adequate facilities to enable vehicles to turn. It was suggested that parking be deleted from the scheme altogether, but this was declined for numerous reasons including one that accommodation other than the garage may create further problems in respect of flooding. The Highway Engineer has reconsidered his original comments and feels that he could not sustain a reason for refusal bearing in mind that a vehicular access has long been established on this site.

Whilst accepting the principle of development on this site and that the proposal would fit quite comfortably into the street scene and alongside neighbouring land uses, I am of the view, that, in the absence of a Flood Risk Assessment, adequate precautions and measures cannot be taken to minimise the risk to life and property and as such the proposed development fails to meet Policy G6 of the UDP.

HUMAN RIGHTS

In coming to this recommendation to refuse planning permission, consideration has been given to the rights set out in Article 8 (Right to Privacy) and Article 1 of the First Protocol (Right to Peaceful Enjoyment of Possessions) of the European Convention on Human Rights. The impact this development might have on the owners/occupiers of the other property in the area and other third parties have been carefully considered. Whilst there may be some interference with the rights of the applicant to develop the land in the manner proposed, it is considered that the recommendation to refuse is proportional to the legitimate aim of the Council's Unitary Development Plan and in the public interest.

JUSTIFICATION FOR RECOMMENDATION

Having given due regard and appropriate weight to all material considerations referred to in this report insufficient information in the form of a Flood Risk Assessment has been submitted with this

application to demonstrate that adequate precautions and measures can be taken to minimise the risk to life as a result of flooding. Accordingly, the proposed development does not satisfy Policy G6 of the UDP.

RECOMMENDATION - REFUSAL

Conditions/Reasons:

- 1 The information accompanying this application is inadequate and deficient in detail in respect of a Flood Risk Assessment so that the Local Planning Authority is unable to consider fully the risks that flooding may present and in the absence of further details it is considered that the proposal would present an unacceptable risk to life and property and is therefore contrary to Policy G6 (Development in Areas Liable to Flooding) of the Isle of Wight Unitary Development Plan.

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5. [TCP/14948/G](#) P/02436/03 Parish/Name: Gurnard Ward: Gurnard
Registration Date: 17/12/2003 - Full Planning Permission
Officer: Mr. A. White Tel: (01983) 823550
Applicant: Ms C Frankl-Bertram

**Demolition of 6 beach chalets; erection of 3 detached houses
1-6 Beach Chalets, Marsh Road, Cowes, PO31**

REASON FOR COMMITTEE CONSIDERATION

Report requested by local Member, Councillor Tony Mundy, following consultation under the agreed delegated procedure for reasons that several chalets in this area are run down and in need of replacing and that proposal will improve appearance of area in general and assist in regeneration of Gurnard Marsh. It is also considered that work to nearby bridge has helped to alleviate flooding in the area. Although Councillor Mundy was advised of the technical and fundamental policy objections to this development, he would not agree to this application being dealt with under the agreed delegated procedure.

PROCESSING INFORMATION

This is a minor application, the processing of which has taken 32 weeks and 4 days to date. The processing of this application has gone beyond the prescribed 8 week period for determination of planning applications because of protracted consultations, officer workload and the need for Committee consideration.

LOCATION & SITE CHARACTERISTICS

This application relates to a row of six beach huts situated on the northern side of Marsh Road, approximately 90 metres west of Solent View Road. Each of the six huts are almost identical, being modest in size and finished in horizontal UPVC cladding under mineral felt roofs.

Members will be familiar with Gurnard Marsh, where there has been a steady increase in the number of units, originally intended for tourist accommodation, being occupied on a more permanent residential basis. As a result, a number of chalets are lawfully in permanent residential use. Despite this, Gurnard Marsh still retains much of its traditional style seaside architecture and can be characterised mainly by small, pitched roof, timber clad chalets which appear to be of a temporary

nature.

The application site itself forms part of a rectangular parcel of land positioned between more permanent residential dwellings to the east and a restaurant to the west. The Gurnard Marsh Design Brief adopted as Supplementary Planning Guidance in October 1998 describes this parcel of land as having the following characteristics:

“seaside spirit; communal open spaces; smaller scale; strong visual unity; temporary appearance; vertical rhythm.”

RELEVANT HISTORY

TCP/14948/E/M/7187 – Continued use of existing chalets for residential purposes, for a temporary period of 5 years, at Beachside Chalets, Marsh Road. Refused – November 1989 on policy grounds, i.e. outside development envelope and not allocated for residential development.

DETAILS OF APPLICATION

Consent is sought to replace six existing beach huts with three permanent dwellings. Two of the three proposed units would be narrow fronted having limited accommodation at first floor level. The third unit would be larger, having almost double the frontage of one of the smaller houses. All three dwellings would offer open plan accommodation at ground floor level with limited gallery/bedroom accommodation at first floor level. Each dwelling would be clad in timber boarding under a part pitched and part flat roofed structure being covered in solar water heating panels, photo electric cells and zinc. The larger of the three dwellings would have its own garage attached to the southern end of the building and the other dwellings would be served by a communal parking area off Marsh Road.

The following has been extracted from the applicants supporting statement:

“The proposed redevelopment replaces the six existing chalets with three beach houses. The new beach houses have been specifically designed to address the following issues: -

- 1. Retain and enhance the beachside qualities of their environment.*
- 2. Retain the open field to Marsh Road and provide a public face to Marsh Road.*
- 3. Retain the open sea frontage.*
- 4. Raise the buildings above 2060 flood levels on piles reducing the footprint within the flood plain.*
- 5. Optimise the orientation to provide south facing roofs for solar hot water heating and solar power generation.*
- 6. Provide rain water and grey water recycling to conserve water and reduce impact on sewers.*
- 7. To enhance the distinct identity of a self sufficient, independent, beachside, community outside the village envelope.”*

DEVELOPMENT PLAN/POLICY

PPG20 (Coastal Planning) confirms that development should be located within developed areas unless it requires a coastal location. Given both the physical and policy constraints in most parts of undeveloped coast, it should not be expected to accommodate new development that could be developed inland or in existing developed areas.

PPG25 (Development and Flood Risk) sets out that land liable to flooding is a material planning consideration, but planning authorities should apply the precautionary principle to the issue of flood

risk and avoid such risk where possible. The Government expects Local Planning Authorities to apply a risk based approach to the preparation of development plans and their decisions on development control through a sequential test. Developers seeking sites for housing and other development should also have regard to this test. Accordingly, in considering applications for development, Local Planning Authorities should give priority in permitting sites for development in descending order to the flood zones set out in table 1 of PPG25. The application site falls within the lowest of these zones considered to be at high risk.

Site is outside of any development envelope boundary and is in a tidal flood plain. The following policies are considered relevant to the determination of this application:

- S1 – New Development will be Concentrated Within Existing Urban Areas
- S4 – The Countryside will be Protected from Inappropriate Development
- S6 – All development will be expected to be of a high standard of design.
- S10 – Areas of Designated or Defined Scientific, Nature Conservation, Archaeological, Historic or Landscape Value
- G1 – Development Envelopes for Towns and Villages
- G2 – Consolidation and Infilling of Scattered Settlements Outside Development Envelopes
- G4 – General Locational Criteria for Development
- G5 – Development Outside Defined Settlements
- G6 – Development in Areas Liable to Flooding
- D1 – Standards of Design
- D2 – Standards for Development within the Site
- D13 – Energy Conservation
- H4 – Unallocated Residential Development to be Restricted to Defined Settlements
- H9 – Residential Development Outside Development Boundaries
- C1 – Protection of Landscape Character
- C3 – Development of the Coast Outside of Defined Envelopes
- C5 – Coastal Protection Works - Developed Coastline
- C8 – Nature Conservation as a Material Consideration
- C9 – Sites of International Importance for Nature Conservation
- TR7 – Highway Considerations for New Development

Paragraph 4.22 of the explanatory text to Policy G6 cites Gurnard Marsh as an area where development should be restricted to limited improvements of existing properties.

Gurnard Marsh Design Brief was adopted as Supplementary Planning Guidance in October 1998 and describes the chalets in question as:

"harmonising well in traditional building materials, colour, scale and detail. In the past, the visual unity has been supported by the former communal character of the open space around the chalets. Enclosure of parts of this lawned area has created a partly cluttered appearance in the space abutting Marsh Road."

CONSULTEE RESPONSES

Highway Engineer recommends conditions should consent be granted.

Environment Agency has withdrawn its earlier holding objection following the submission of a Flood Risk Assessment which it considers to be acceptable. The Agency recognises that the site is within an area designated at high risk with an annual probability of flooding of 0.5% or greater from a tidal/coastal source. However, it is considered that there will be no additional persons at risk within the flood plain and there may even be an improvement of the situation with regard to the risk to life on this site by raising the slab level as shown on the submitted drawings.

English Nature confirm that the foreshore in front of the site is included in the candidate Special Area of Conservation (cSAC). They ask that the following points are taken into consideration:

- Although the current coastal strategy is 'hold the existing defence line', this policy is being reviewed under the Northwest Coast Strategic Study and the long term sustainability of increasing defences is being reassessed.
- The proposal may increase pressure for coastal defence and this, in turn, could affect estuary processes for which the adjacent site is designated. English Nature does not wish to see any further enhancement of coastal defences that may interfere with coastal processes.
- Possible increase in capital value of the property leading to an increased requirement for coastal defences.

PARISH/TOWN COUNCIL COMMENTS

Gurnard Parish Council has no specific objection, but comments that it has concerns relating to the stability of the site.

THIRD PARTY REPRESENTATIONS

Three letters of objection from local residents can be summarised as follows:

Existing units are merely beach huts with limited accommodation.

Vast increase in size compared with the existing huts. This would have an unacceptable impact, both on adjoining properties and the wider area in general.

Reduce open aspect.

Four letters of support have been received on the basis that the proposal would enhance the appearance of the area.

CRIME AND DISORDER IMPLICATIONS

No crime and disorder implications are anticipated.

EVALUATION

The main considerations in this instance relate to the principle of development, flood risk, the potential need for coastal protection works and the impact on the character of the area in general.

The site is outside of any development envelope boundary and is within a tidal flood plain. The applicant claims that each individual hut is totally self contained and, as such, has permanent residential status. There is planning history in this respect, although not that recent. Permission was refused in 1989 to use existing chalets for residential purposes. A Planning Contravention Notice was also served in this respect in 1995 but no further action was taken. I believe that the claim by the applicant in respect of residential status can only really be established through the submission of an application for a Lawful Development Certificate.

As the site is outside of any development boundary, the proposal must be considered in the light of Policies G5 and H9. Having regard to the sporadic arrangement of chalets together with the general characteristics of the immediate area, I am of the view that the proposal would not constitute acceptable infilling. The proposal is not a conversion or an affordable scheme and neither is it associated with agriculture or tourism. The remaining issue for consideration is whether the proposal satisfies criterion A, i.e. replacement of similar scale and mass to the existing. This raises two issues. Firstly, I am not entirely satisfied that the alleged residential use on site is lawful and therefore consider it inappropriate to consider the replacement of the existing chalets on a matter of principle. Secondly, even if residential use can be established on each individual chalet, I am of the opinion that the three dwellings as proposed, being so radically different in scale, mass and design cannot be justified against H9(a). As proposal does not require a rural location and would not be of benefit to the rural economy, it does not have the support of Policy G5. The proposal also falls foul of Policy C3, because the coastal location is clearly not essential for the proposed housing development.

Again, if residential use is established on this site, it does not necessarily follow that the existing buildings, which are of a temporary appearance, should be replaced by permanent development. Because the application site lies outside of the development envelope it is by definition undeveloped coastline in terms of Policy C3, and residential use does not require a coastal location. Policy G6, and in particular paragraph 4.21 and specifically paragraph 4.22 of the explanatory text cite Gurnard Marsh as an area where development should be restricted to limited improvements to existing properties. Therefore, regardless of the lawful use of the site, I see no policy reason to justify granting consent for permanent housing development on this site.

The supporting text to Policy H9 also draws attention to Policy D1. Even if the principle of this development was accepted, it is my view that the proposal would fail D1(a) on the basis that the proposed dwelling would detract from the characteristics of the site and the immediate area. The small scale and temporary nature of the existing huts contribute to the setting of this part of Gurnard Marsh. It is my opinion that approval of this application would start to erode that character. Previous approvals for replacement dwellings in the immediate locality have related to permanent existing dwellings as opposed to chalets/huts. Even if it can be demonstrated by the applicant through the submission of a Lawful Development Certificate that these chalets have residential status, it is my view that they have a non-domestic seaside appearance that contributes to the setting of Gurnard

Marsh. The dwellings as proposed, although of interesting individual designs, would not, in my opinion, respect the distinctiveness of the surrounding area and therefore conflicts with Policy D1 and the objectives of the Gurnard Marsh Design Brief.

Although the Environment Agency raise no objection in respect of flooding following the submission of what it considers to be an acceptable Flood Risk Assessment, on the basis that risk to life would be no greater than it is at present, it is acknowledged by the Agency that the proposed development would take place within an area designated at high risk with an annual probability of flooding of 0.5% or greater from a tidal or coastal source. PPG25 offers advice in this respect and recommends that a precautionary approach is taken, with particular reference to flood zones. Note (a), attached to Table 1 of that guidance, makes it clear that flood zones should be identified according to floodwater levels that are predicted in the absence of defences. This site would fall within Zone 3(b) of Table 1 which refers to high risk areas and states that general purpose housing should not normally be granted unless it can be shown that there are no reasonable options available in the lower risk flood zones 1 or 2. This sequential approach is in line with the principles of sustainable development, but no information has been submitted with this application to demonstrate a shortage of sites in the lower risk categories. Essentially, this is a sparsely developed area of coast comprising of six small chalets originally intended as temporary holiday accommodation. I consider there to be no justification whatsoever to allow permanent residential accommodation within such an unsustainable and vulnerable area outside of any development envelope boundary.

English Nature confirm that the foreshore in front of the site forms part of the cSAC to protect estuary processes. It is considered that this development may increase the requirement for coastal defence as has been indicated on the submitted plans, but not included as part of the application, and this could affect estuary processes for which the adjacent site is designated. The area is at risk from coastal flooding which is likely to increase with sea level rise of at least 6 mm per year over the next 50 years. English Nature does not wish to see any further enhancement to the coastal defences such that they may interfere with coastal processes. The concern of English Nature is that any possible increase in capital value of the property could in turn lead to an increased requirement for coastal defences, and any such works would have the potential to have an adverse impact on the European Site. As such, the proposal would be contrary to Policy C5 which states that new developments which will increase the pressure for coastal defence or flood prevention measures will not be permitted.

Although having no specific objection to this development, Gurnard Parish Council does express concern over any potential ground stability implications. The site is outside of the Cowes to Gurnard Slope Stability Study and is not subject to any significant constraints in respect of ground movement. The Council's Building Control Manager also indicates that the method of foundation design as shown in a submitted engineer's report is likely to be acceptable for this site subject to monitoring in accordance with Building Regulations. I am therefore satisfied that the proposal would be acceptable from a ground stability point of view and that there are no underlying reasons to recommend a separate reason in this respect.

To conclude, I see no reason that would outweigh the fundamental policy objections to this development or that would justify departing from the principle of sustainability in such a sensitive coastal location. In accordance with section 54a of the Town and Country Planning Act 1990, I have no alternative other than to recommend refusal in the case of this development.

HUMAN RIGHTS

In coming to this recommendation to refuse planning permission, consideration has been given to the rights set out in Article 8 (Right to Privacy) and Article 1 of the First Protocol (Right to Peaceful Enjoyment of Possessions) of the European Convention on Human Rights. The impacts this

development might have on the owners/occupiers of the other property in the area and other third parties have been carefully considered. Whilst there may be some interference with the rights of the applicant to develop the land in the manner proposed, it is considered that the recommendation to refuse is proportional to the legitimate aim of the Council's Unitary Development Plan and in the public interest.

JUSTIFICATION FOR RECOMMENDATION

Having given due regard and appropriate weight to all material considerations outlined in this report, I am of the opinion that the replacement of six modest beach chalets with three permanent dwellings is not acceptable in terms of principle, scale, mass or design and would conflict with the objectives of only permitting essential and sustainable development within vulnerable coastal locations. The proposal is therefore contrary to policies of the UDP.

RECOMMENDATION - REFUSAL

Conditions/Reasons:

- 1 The site lies within a rural coastal area of scattered development outside the designated development boundary and the proposal, which comprises an undesirable intensification of development would be prejudicial to the unique character of the area and therefore contrary to Policy S1 (Concentrated Within Existing Urban Areas), Policies G1 (Development Envelopes for Towns and Villages), G2 (Consolidation and Infilling of Scattered Settlements Outside Development Envelopes), G4 (General Locational Criteria for Development) D1 (Standard of Design) and C1 (Protection of Landscape Character), of the Isle of Wight Unitary Development Plan.
- 2 The site lies outside the defined development envelope and no justification has been established to show why the proposal should be permitted as acceptable development in the countryside as defined in Policy G5 (Development outside Defined Settlements) and is therefore contrary to policies S1 (Concentrated Within Existing Urban Areas), Policy S4 (Countryside Will Be Protected From Inappropriate Development), and is therefore contrary to Policy H9 (Residential Development Outside Development Boundaries) and G1 (Development Envelopes for Towns and Villages) of the Isle of Wight Unitary Development Plan.
- 3 Insufficient information has been submitted to demonstrate why the proposed housing development should be permitted within a high flood risk location. In the absence of such information and considering the sequential approach advocated by PPG25 (Development and Flood Risk), the Local Planning Authority is of the opinion that there are sufficient risk free locations to meet housing demands on the Isle of Wight before considering to permit development within such an unsustainable coastal location. In consequence, the proposal is contrary Policy C3 (Development of the Coast Outside of Development Envelopes) of the Isle of Wight Unitary Development Plan.
- 4 The proposal, by reason of scale and mass, would be an intrusive development out of scale and character with the prevailing pattern of development and in consequence would be contrary to policies D1 (Standard of Design), D2 (Standards of Development within the Site) and C1 (Protection of Landscape Character) of the Isle of Wight Unitary Development Plan and the Gurnard Marsh Design Brief.
- 5 It is the opinion of the Local Planning Authority that approval of this application would increase the pressure for coastal defence, which in turn would have the potential of damaging the adjacent European site (cSAC) and in consequence would be contrary to Policy C5 (Coastal Protection Works - Developed Coastline) of the Isle of Wight Unitary Development Plan.

6. [TCP/26277](#) P/00832/04 Parish/Name: Ventnor Ward: Ventnor West
Registration Date: 15/04/2004 - Full Planning Permission
Officer: Mrs. H. Byrne Tel: (01983) 823594
Applicant: Mr & Mrs K Baker

Conservatory on rear elevation at 1st floor level
18 Foxhills, Whitwell Road, Ventnor, PO38

REASON FOR COMMITTEE CONSIDERATION

Report has been requested by Local Member, Councillor Buster Bartlett as he is not prepared to agree to the application being dealt with under the delegated procedure. He considers the conservatory in position as proposed, would overlook adjacent property owners.

PROCESSING INFORMATION

This is a minor application, the processing of which will have taken 12 weeks to the date of the committee meeting. The application has exceeded the prescribed 8 week period for the determination of planning applications due to the need for committee consideration.

LOCATION & SITE CHARACTERISTICS

Application relates to a house on a newly developed residential area along the Ventnor to Whitwell road. Profile of land that estate built on, slopes quite steeply from top row of houses down towards Whitwell Road level, majority of plots on estate slope down towards the road and due to the orientation of the houses does afford a certain amount of mutual overlooking. Property, the subject of this report, is single storey at the front and two storeys at the rear. Balconies are a prominent feature of the area, on both the front or rear elevations.

RELEVANT HISTORY

TCP/7690/M – 26 detached houses and landscaping, planning permission granted 16 June 1993, on the land at The Heights, Whitwell Road, Ventnor.

DETAILS OF APPLICATION

Consent is sought for a small conservatory to be built at 1st floor level at the rear of the property, utilising part of the existing balcony as a base. The conservatory projects 2.9 metres at the rear wall and is 3.6 metres wide, resulting in the proposal extending 1.1 metres beyond existing balcony, supported by steel columns clad in timber.

DEVELOPMENT PLAN/POLICY

Site is located within the development envelope. Relevant Unitary Development Plan policies are as follows:

S6 - All Development will be Expected to be of a High Standard of Design

D1 – Standards of Design

G4 - General locational criteria for development

H7 - Extension and alteration of existing properties

CONSULTEE RESPONSES

National Air Traffic Services have raised no safeguarding objections to the proposal.

PARISH/TOWN COUNCIL COMMENTS

Ventnor Town Council see no reason why planning consent should not be issued in respect of this application.

THIRD PARTY REPRESENTATIONS

The application has attracted two letters of objection. The points raised are summarised as follows:

- Total loss of privacy to rear garden and rear accommodation.
- A substantial reduction in light to the rear rooms of their property.
- Proposed conservatory would be unacceptably intrusive.
- Requested visit to objectors property to assess.

CRIME AND DISORDER IMPLICATIONS

No crime and disorder implications are anticipated.

EVALUATION

Determining factors are policy considerations, amenities currently enjoyed by adjoining property occupiers and how the development will affect the character and appearance of the area.

Regarding the impact on neighbouring properties, the main area of objectors concern relates to the increased levels of overlooking and the potential for loss of light and amenity that the proposed conservatory will cause. It is appreciated that the proposal will present some overlooking of adjacent properties however I do not consider that this will be a significant increase, detrimental to the amenities of these property owners as overlooking exists already from the balcony of the property. There is also sufficient distance between boundaries to minimise impact.

The proposed conservatory is of modest size, projecting a total of 2.9 metres and 1.1 metres from the existing balcony and being only 3.5 metres in width. It is of a lightweight construction and will be supported by the existing balcony and two thin steel columns clad in timber. Due to the profile of the land the conservatory will be visible from the road below, but given the size of the proposal, I do not consider that there will be an adverse impact on the character of the area. There are several conservatories, of similar construction and size, at 1st floor level in the locality.

I am firmly of the view that the proposed conservatory will have no adverse impact on the neighbouring property in terms of loss of light, overshadowing and loss of amenity. Furthermore the proposed conservatory may in fact reduce the physical presence of the occupants of the property utilising the existing balcony.

A full inspection of the site has been made from the existing balcony and road below.

HUMAN RIGHTS

In coming to this recommendation to grant planning permission consideration has been given to the rights set out in Article 8 (Right to Privacy and Article 1 of the First Protocol (Right to Peaceful Enjoyment of Possessions) of the European Convention on Human Rights. The impacts this development might have on the owners/occupiers of other properties in the area and other third parties have been carefully considered. Whilst there may be some interference with the rights of these people this has to be balanced with the rights of the applicant to develop the land in the manner proposed. Insofar as there is an interference with the rights of others it is considered necessary for the protection of the rights and freedom of the applicant. It is also considered that such action is proportional to the legitimate aim of the Council's Unitary Development Plan and in the public interest.

JUSTIFICATION FOR RECOMMENDATION

Having given due regard to and appropriate weight to all material considerations referred to in this report, I am satisfied that the proposed conservatory represents an acceptable form of development and that proposal will not detract from the character of the locality or amenities of adjoining neighbours.

RECOMMENDATION - APPROVAL

Conditions/Reasons:

- 1 Time limit - full - A10
- 2 The materials to be used for the external finishes for the development hereby approved shall be as detailed on the plans and application forms accompanying this decision unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of the amenities of the area and to comply with Policy D1 (Standards of Design) of the Isle of Wight Unitary Development Plan.

OTHER MATTERS NOT RELATING TO CURRENT PLANNING APPLICATIONS

- | | |
|---------------------------------|--|
| (a) TCP/24467B/P/2093/03 | Detached house with detached garage; alterations to vehicular access on land adjacent 1 Pelham Road, Ventnor, IOW |
|---------------------------------|--|

Officer: Andrew White

Tel: 01983 823550

Summary

To consider whether alterations to the approved detached garage can be treated as an amendment to the approved plans.

Background

In April 2004 conditional Planning Permission was granted for a dwelling with detached double garage together with alterations to the vehicular access. The application was determined under the delegated procedure in consultation with the Local Member and Chairman of Development Control Committee.

The proposed amendment relates to the approved double garage. This was shown on the approved plans as having a hipped roof. It is now proposed to construct gable walls at either end of the approved garage. The neighbouring property occupier (9 Steephill Court Road) was notified of the proposed amendment in accordance with the adopted procedure. This resulted in the neighbour lodging an objection to the proposed amendment on the following grounds:

- Would be within 5 metres of patio doors that serve lounge
- The new roof profile would be very oppressive

Owing to the objection received and the adopted procedure in respect of amendments, this matter is before Members for consideration.

Evaluation

The proposed amendment relates solely to the design of the roof as both the footprint and the ridge height would be the same as that shown on the approved plan. The determining factor is therefore considered to be whether the additional roof mass associated with gable end construction as opposed to being hipped is likely to have a significant impact on the occupants of the adjoining property, 9 Steephill Court Road.

The garage would be situated at an oblique angle to both the common boundary and No. 9 itself, being situated some 5.6 metres from the objector's north-west facing wall at its closest point. Ridge line of the approved garage is just under 10 metres from the objector's property at its closest point. The garage would be set at a similar level to the objector's property with ridge height being just over 5 metres.

Having regard to what is considered as an acceptable degree of separation between buildings and that the garage in question is situated on the north-western side of the objector, I am of the opinion that the additional roof mass associated with this amendment would not have a significant impact upon the neighbouring property occupiers.

In essence, I do not consider that the resultant building would depart significantly from the approved plans. In particular, I am reasonably confident that had the proposal been presented to the authority in this form, it would have been recommended for approval.

Human Rights

In coming to a recommendation that the proposed alteration to the garage roof should be treated as an amendment to approval under TCP/24467B, consideration has been given to the rights set out in Article 8 (Right to Privacy) and Article 1 of the first protocol (Right to Personal Enjoyment of Possessions) of the European Convention on Human Rights. The impact the development, as proposed in the amended plans, might have on the owners/occupiers of other property in the area and other third parties have been carefully considered. Whilst there may be some interference with the rights of these people, this has to be balanced with the right of the applicant to develop the land to the manner now proposed. In so far as there is an interference with the rights of others it is considered for the protection of the rights and freedom of the applicant. It is also considered that such action is proportional to the legitimate aim of the Council's Unitary Development Plan and in the public interest.

Options

1. To decline to accept the alterations to the approved plans as an amendment and require the

developer to submit a further planning application.

2. To accept the alterations to the garage roof as an amendment to the Approval granted under TCP/24467/B/P2093/03 and advise the applicant accordingly.

Recommendation

To accept the alterations to the garage roof as an amendment to the Approval granted under TCP/24467/B/P2093/03 and advise the applicant accordingly.

ANDREW ASHCROFT
Head of Planning Services

(b) Ref: P/26102 & E/20443H

**Current Enforcement action against
caravans - used for residential purposes
Sheep Lane Farm, Blythe Shute, Chale,
and Hawthorn Manor Farm, Chale Green**

Officer: Steve Cornwell

Tel: 01983 823592

SUMMARY

To assess the new evidence which has emerged following the issuing of the two Enforcement Notices and the submission of Appeals by interested parties and to consider if the Local Planning Authority should review its position relating to the alleged breaches of planning control.

BACKGROUND

At the 23 April 2002 Development Control Committee Meeting, Members authorised enforcement action with regards to the unauthorised residential use of a number of mobile homes at the above sites. At a further meeting on 4 November 2003, Members considered an updated report and after careful consideration of the facts (including the issue of Human Rights) Members resolved to adopt the following two recommendations:

1. To reaffirm the Committee's decision of 23 April 2002 to take enforcement action against the remaining mobile homes/caravans which were mentioned in the 2002 report.
2. To authorise enforcement action requiring the cessation of use of the two mobile homes at Hawthorn Manor Farm and the cessation of the residential use of the caravan and mobile home at Sheep Lane Farm, and the removal of the caravan and mobile homes from the respective farms. Time period for compliance had to be six months from when the Notice takes effect.

Following the Committee authorisation, the landowner continued to indicate that he could provide evidence to show that some of the caravans had been on the two sites in excess of 10 years and were therefore immune from any enforcement action. However, despite numerous opportunities to bring the necessary evidence forward nothing was forthcoming and as a consequence the Council served the Enforcement Notice at Sheep Farm Lane dated 29 January 2004 with an effective date of

12 March 2004, and a compliance period of six months. The second Notice at Hawthorn Manor Farm was served dated 30 January 2004 with an effective date of 12 March 2004 and a compliance period of six months.

At Sheep Lane Farm the notice required the cessation of use of caravans and mobile homes marked A, B, C, D and E on the land for residential purposes and the removal of caravans B, C, D and E from the land. Whilst it was accepted that caravan A had been on the site in excess of 10 years and therefore its removal could not be required there was some doubt of its residential use during that period. Hence the requirement to cease its use but not to remove it from the land.

For Members information I attach as Appendix I to this Report a copy of a plan showing the position of caravans A to D and as Appendix II a copy of a plan showing the location of caravan E.

At Hawthorn Manor Farm the requirement was to cease to use caravans A, B, C and D for residential or any other use not ancillary to agriculture and to remove caravans B, C and D from the land. I attach as Appendix III a copy of a plan showing the positions of the caravans. The Council accepted that a further caravan on site was being used for residential purposes but that it was immune from action because of the length of time involved. This caravan is identified on the Plan attached as Appendix III in cross hatching. It was also recognised that caravan A had been on site for a substantial number of years giving it some immunity from being removed but questions remained over the length of time of any residential use and this is reflected in the requirements outlined above.

Appeals were submitted against the two notices by a solicitor acting for the landowner concerned (which is the same person on both sites) and by the individual who occupied caravan A at Hawthorn Manor Farm and by the occupants of caravans A and B at Sheep Lane Farm. All the individual occupants appealing against the Notice have used the same Agent which is the organisation known as People off the Streets. The grounds of appeal to be covered by both sides, are as follows:

- Ground A. That Planning Permission should be granted for what is alleged in the Notice.
- Ground D. At the time the Enforcement Notice was issued it was too late to take enforcement action against the matters stated in the Notice.
- Ground E. The Notice was not properly served on everyone with an interest in the land.
- Ground G. That the time given to comply with the Notice is too short.

Given the range of issues to be discussed the Planning Inspectorate have indicated that the matter should be dealt with by a three day Public Enquiry.

As part of the Appeal process the landowner has acknowledge that caravans D and E at Sheep Lane Farm and caravans B and C at Hawthorne Manor Farm are not immune from action and consequently that their residential use will cease and they will be removed from the land. In addition, further written supporting evidence has been presented which supports the proposition that the remaining caravans had been in residential use in excess of 10 years.

The appellants have also been encouraged to seek information from the Housing Benefit Section with regards to the duration and level of payments in support of people occupying caravans at both sites. This information is not directly available to the Planning Officers but was available to the appellants if they wrote in asking for it. Officers have also had the opportunity of viewing this information after it was obtained by the landowner.

FINANCIAL IMPLICATIONS

Given the preliminary indication by one of the appellants that the Appeal will involve issues relating to travellers, it's the senior solicitors view that a barrister will be required to represent the Local Planning Authority over a potential 3 day Public Enquiry and this is estimated to cost in the region of approximately £7,000 – £10,000

OPTIONS

1. To note the information contained in this report but to indicate to both appellants the Local Planning Authority will continue with both Enforcement Notices seeking to support their contents on appeal if necessary.
2. To note the contents of this report and advise the landowner's solicitor that the agreement outlined at the end of the conclusion section is acceptable. That is:

Sheep Lane Farm

1. That the Local Planning Authority accepts the retention and residential use of caravans A, B and C.
2. The Local Planning Authority invites (without prejudice to the final decision) an application for a Lawful Development Certificate relating to the residential use of caravans A, B and C on the grounds of the period of time they have been present. This application to be submitted within 10 days.
3. That immediately prior to the submission of the Lawful Development Certificate, the Local Planning Authority will withdraw the Enforcement Notice relating to Sheep Lane Farm.
4. That caravans D and E will be removed within 28 days.
5. If the caravans to be removed at Sheep Lane Farm are not removed within the one month period (together with other items) then a further Enforcement Notice will be served.

Hawthorn Manor Farm

1. That the Local Planning Authority accepts the retention and continued use of caravan A for residential purposes.
2. The Local Planning Authority will invite (without prejudice to the final decision) an application for a Lawful Development Certificate relating to the residential use of the two remaining caravans at Hawthorn Manor Farm. The application to be submitted within 10 days.
3. That caravan B will not just cease to be used but will physically be removed from the site within 2 months. (the removal of this caravan does involve the temporary dismantling of an adjoining building).
4. That for the avoidance of any future confusion both the caravans positioned in front of the house (C and D) are removed from the site.
5. That all the caravans to be removed from Hawthorne Manor Farm are removed within 2 months.

General Points relating to both sites

The Local Planning Authority will reimburse the appellant with regards to that element of the appeal fees which have been received by the Local Planning Authority.

The appellant will not make an application for costs against the Local Planning Authority for the withdrawal of the Enforcement Notices.

CONCLUSION

There are currently 5 caravans at Sheep Lane Farm and 5 caravans at Hawthorn Manor Farm.

At Sheep Lane Farm the appellant has already acknowledge that he cannot support the Appeal relating to 2 of the caravans whilst the Local Planning Authority has already accepted that 1 of the caravans can stay even if it is successful in having its residential use curtailed.

At Hawthorn Manor Farm the appellant has offered to remove 2 of the caravans whilst the Local Planning Authority has had to accept that 1 of the caravans, which is used for residential purposes, is immune from action due to the time which has now past. With regards to a second caravan whilst the residential use must cease but the caravan itself can remain on site.

Following the information submitted by the landowner with his Appeal, which includes fresh information not previously seen by the Local Planning Authority and the further information supplied by Housing Benefit, the Council has been reconsidering its position in terms of whether the original enforcement notices can be sustained through the appeal process. It is the view of the officers supported by the senior solicitor that the case for the landowner is stronger than originally believed and as a consequence is likely to be more successful on appeal.

Given the circumstances as outlined above, a meeting was held with the landowner and his solicitor on Wednesday 30 June 2004 and the following proposal was put forward.

Sheep Lane Farm

1. That the Local Planning Authority accepts the retention and residential use of caravans A, B and C.
2. The Local Planning Authority invites (without prejudice to the final decision) an application for a Lawful Development Certificate relating to the residential use of caravans A, B and C on the grounds of the period of time they have been present. This application to be submitted within 10 days.
3. That immediately prior to the submission of the Lawful Development Certificate, the Local Planning Authority will withdraw the Enforcement Notice relating to Sheep Lane Farm.
4. That caravans D and E will be removed within 28 days.
5. If the caravans to be removed at Sheep Lane Farm are not removed within the one month period (together with other items) then a further Enforcement Notice will be served.

Hawthorn Manor Farm

1. That the Local Planning Authority accepts the retention and continued use of caravan A for residential purposes.

2. The Local Planning Authority will invite (without prejudice to the final decision) an application for a Lawful Development Certificate relating to the residential use of the two remaining caravans at Hawthorn Manor Farm. The application to be submitted within 10 days.
3. That caravan B will not just cease to be used but will physically be removed from the site within 2 months. (the removal of this caravan does involve the temporary dismantling of an adjoining building).
4. That for the avoidance of any future confusion both the caravans positioned in front of the house (C and D) are removed from the site.
5. That all the caravans to be removed from Hawthorne Manor Farm are removed within 2 months.

General Points relating to both sites

The Local Planning Authority will reimburse the appellant with regards to that element of the appeal fees which have been received by the Local Planning Authority.

The appellant will not make an application for costs against the Local Planning Authority for the withdrawal of the Enforcement Notices.

Subject to agreement on all sides the action will result in the removal of a total of 5 caravans whilst the remaining 5 caravans will have their presence and use confirmed through the Lawful Development Certificate process. This will establish a clear base point from which to judge any subsequent issues if they are on either site.

Given the information which was held by the Local Planning Authority, I believe that the decision to take enforcement action and serve notices on both sites were entirely reasonable and a proportionate response with regards to what were seen as breaches of Planning Control.

The additional information which has come to hand as a result of serving the notices and the subsequent appeals is of a quality which the Local Planning Authority has been seeking from the landowner for some considerable time.

In my view, the information which is presently available is of a nature that if seen earlier then the Local Planning Authority would not have proceeded with enforcement action. On that basis I believe that the negotiated points which are outlined above would result in a satisfactory outcome avoiding the need for the resources to be committed to support the Notices at a 3 day Public Enquiry. Although the Authority could sustain its case against the Appeals under grounds A, E and G the weight of evidence now available questions if we could maintain the appeal against ground D, (that is that the time the caravans have been on site is more than 10 years and so immune from any action.) I would suggest therefore that Members adopt Option 2.

HUMAN RIGHTS

In coming to this recommendation to resolve the outstanding breaches of planning control consideration has been given to the Rights set out in Article 8 (Right to Privacy) and Article 1 of the First Protocol (Right to Peaceful Enjoyment of Possessions) of the European Convention of Human Right. Whilst the decision to initiate enforcement action was considered a proportionate response to the alleged breach of planning control at the time the new evidence which has come forward leads me to believe this is no longer the case. Accordingly, to pursue the enforcement action in the light of

this additional information would I believe be an interference with the rights of the parties concerned. Accordingly, the proportionate response to withdraw the Enforcement Notice as part of a package which accepts the removal of certain caravans and an application for Local Development Certificates to establish the authorised use of other caravans on the two sites is considered the most appropriate course of action and would be in the wider public interest.

RECOMMENDATION

To note the contents of this report and advise the landowner's solicitor that the agreement outlined at the end of the conclusion section is acceptable. That is:

Sheep Lane Farm

1. That the Local Planning Authority accepts the retention and residential use of caravans A, B and C.
2. The Local Planning Authority invites (without prejudice to the final decision) an application for a Lawful Development Certificate relating to the residential use of caravans A, B and C on the grounds of the period of time they have been present. This application to be submitted within 10 days.
3. That immediately prior to the submission of the Lawful Development Certificate, the Local Planning Authority will withdraw the Enforcement Notice relating to Sheep Lane Farm.
4. That caravans D and E will be removed within 28 days.
5. If the caravans to be removed at Sheep Lane Farm are not removed within the one month period (together with other items) then a further Enforcement Notice will be served.

Hawthorn Manor Farm

1. That the Local Planning Authority accepts the retention and continued use of caravan A for residential purposes.
2. The Local Planning Authority will invite (without prejudice to the final decision) an application for a Lawful Development Certificate relating to the residential use of the two remaining caravans at Hawthorn Manor Farm. The application to be submitted within 10 days.
3. That caravan B will not just cease to be used but will physically be removed from the site within 2 months. (the removal of this caravan does involve the temporary dismantling of an adjoining building).
4. That for the avoidance of any future confusion both the caravans positioned in front of the house (C and D) are removed from the site.
5. That all the caravans to be removed from Hawthorne Manor Farm are removed within 2 months.

General Points relating to both sites

The Local Planning Authority will reimburse the appellant with regards to that element of the appeal fees which have been received by the Local Planning Authority.

The appellant will not make an application for costs against the Local Planning Authority for the withdrawal of the Enforcement Notices.

ANDREW ASHCROFT
Head of Planning Services