

UTT/0535/09/FUL: Change of use of open pasture land to public amenity space at Land to North West of junction of High Street & Dunmow Road Hatfield Broad Oak

Development Control Committee – 12 August 2009 - item 5

Committee:	Development Control	Agenda Item
Date:	12 August 2009	5
Title:	UTT/0535/09/FUL: Change of use of open pasture land to public amenity space at Land to North West of junction of High Street & Dunmow Road Hatfield Broad Oak	
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Summary

- 1 This report brings to the Committee’s attention the Permitted Development Rights that could be exercised on the site as an indirect result of the planning permission the Committee resolved to grant at its meeting on 22 July 2009. Unfortunately in error these rights were not brought to the Committee’s attention at the meeting. The omission was realised shortly after the meeting and Officers consider that if the matter had been brought to the Committee’s attention it would have had an influence on the conditions attached to the permission. With knowledge of those rights the Committee will now be able to decide whether it wishes to remove those rights by attaching an additional condition to the permission, which is currently held in abeyance pending consideration of this item, before it is issued.

Recommendation

THAT THE COMMITTEE ATTACHES THE ADDITIONAL PLANNING CONDITION DETAILED IN THE REPORT WITHDRAWING SOME OF THE PERMITTED DEVELOPMENT RIGHTS WHICH COULD OTHERWISE BE EXERCISED ON THE SITE BY THE PARISH COUNCIL.

Background Papers

Application file. Committee report attached.

Impact

Communication/Consultation	Application was subject to normal publicity and lead to the submission of representations reported to Committee at the last meeting.
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Community Safety	None
Equalities	None
Finance	None
Human Rights	None
Legal implications	None
Sustainability	None
Ward-specific impacts	Will affect the development that occurs on the site without the control of the local planning authority
Workforce/Workplace	None

Situation

- 2 The Committee will be familiar with the concept of Permitted Development Rights. These are in effect nationwide planning permissions granted by secondary legislation to permit development to be carried out without the need for normal planning permission. Examples of these rights include householder extensions, agricultural development and telecommunications masts.
- 3 Some of these Rights are granted with regard to types of development, like those listed above, while others are granted to types of organisation for example Highways Authorities, the Environment Agency and, as relevant in this case, Local Authorities. A Local Authority includes a Parish Council. Hatfield Broad Oak Parish Council is the applicant and would operate and maintain the site.
- 4 The Rights would accrue to the land not due to the permission for the change of use itself but by the involvement of the Parish Council. The Permitted Development Rights for Local Authorities are specified in the Town and Country Planning (General Permitted Development) Order 1995 as amended, Schedule 2, Part 12 which states:

“DEVELOPMENT BY LOCAL AUTHORITIES

Class A

Permitted development

A. The erection or construction and the maintenance, improvement or other alteration by a local authority or by an urban development corporation of—

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(a) any small ancillary building, works or equipment on land belonging to or maintained by them required for the purposes of any function exercised by them on that land otherwise than as statutory undertakers;

(b) lamp standards, information kiosks, passenger shelters, public shelters and seats, telephone boxes, fire alarms, public drinking fountains, horse troughs, refuse bins or baskets, barriers for the control of people waiting to enter public service vehicles, and similar structures or works required in connection with the operation of any public service administered by them.

Interpretation of Class A:

A.2 The reference in Class A to any small ancillary building, works or equipment is a reference to any ancillary building, works or equipment not exceeding 4 metres in height or 200 cubic metres in capacity. “

- 5 A second class in Part 12, Class B, relates to the deposit of material on a site that was used for that purpose in 1948. There is no indication that this is the case and therefore those rights are not raised in this report.
- 6 The application committee report stated that the application was for the change of use only and not for any other development and therefore the openness would not be affected by the grant of planning permission. However due to the involvement of the Parish Council it would be possible for it to erect, construct, maintain, improve or alter the type of development referred to in paragraph (a) and (b) above. In the case of a building, paragraph A.2 above identifies that it could be a sizeable building of up to 4 metres in height or 200 cubic metres in capacity. Such a building could detract from the openness of the site and would also be the fall back position when considering an application for a larger building. Similar comments would apply to works or equipment on the land.
- 7 Paragraph (b) refers to smaller scale equipment that could be erected. Most of the listed developments would have little or no affect on the openness of the site. The Committee should also note that in Parts 2 and Part 4 of the General Permitted Development Order, Rights exist to permit the erection of fencing and for buildings and uses for temporary periods. These rights already exist on the site and would continue to exist unless removed by condition. It is not considered that exercising these rights would materially affect the openness of the site.
- 8 In considering whether to remove permitted development rights a balance has to be struck between exercising reasonable controls to achieve sound planning aims and unnecessarily removing rights that Parliament has deemed to be appropriate in most circumstances. It is not appropriate to seek to micro manage or predict all future possibilities. Circular 11/95 *Use of Planning Conditions* says on the issue:

“Both development orders and the Use Classes Order, however, are designed to give or confirm a freedom from detailed control which will be acceptable in the great majority of cases. Save in exceptional circumstances, conditions

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should not be imposed which restrict either permitted development rights granted by development orders or future changes of use which the Use Classes Order would otherwise allow. The Secretaries of State would regard such conditions as unreasonable unless there were clear evidence that the uses excluded would have serious adverse effects on amenity or the environment, that there were no other forms of control, and that the condition would serve a clear planning purpose.”

- 9 As the items listed in paragraph (a) above have the clear potential to erode the openness of the site, one of environmental value, a condition removing those rights so that such development would be subject to the need to obtain planning permission would be reasonable. The other rights listed in paragraph (b) and covered under Parts 2 and 4 of the Order would have less of an effect and therefore in accordance with Government advice it is not suggested that such rights be removed. The suggested planning condition to be attached in addition to those attached by the resolution at the last committee is:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification), no development within Part 12 Class A(a) of Schedule 2 of the Order shall take place.

REASON: To protect the openness of the site from uncontrolled development.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Inability to protect the openness of the site if condition is not attached	4 Certainty	Uncontrolled change to the appearance of the site	Attach the suggested condition
Inability to defend an appeal against removal of permitted development rights	2 Some	Removal of planning condition and subsequent loss of ability to control development	Attach the suggested condition whose scope is limited to deal with that element of permitted development rights that would be harmful.