

# KNOCKIN PARISH COUNCIL

MINUTES of a meeting of **KNOCKIN PARISH COUNCIL** held in the Assembly Rooms, Knockin on Tuesday 18<sup>th</sup> June 2013 after the Annual Parish meeting, 7.30

Present, Cllr Keay, Cllr Lawson, Cllr Ward, Cllr Roberts, Cllr Moseley, Cllr Donovan  
Cllr Walpole (Shropshire Council)  
Clerk: P. O'Hagan,  
0 members of the public present

## **39/13 TO ACCEPT APOLOGIES FOR ABSENCE**

**RESOLVED** to accept the following apology for absence  
Cllr Doyle

## **40/13 DISCLOSABLE PECUNIARY INTERESTS**

1. Declaration of any disclosable pecuniary interest in a matter to be discussed at the meeting and which is not included in the register of interests. (councillors will be issued with updated code of conduct)  
None declared
2. To consider dispensation applications.

## **41/13 Public Participation Session** – a period of 15 minutes will be set aside for the public to speak on any items on the agenda (this may be extended at the discretion of the chairman) – none present

## **42/13 PLANNING MATTERS**

### **a) Planning matters for consideration**

13/01915/FUL Ashford Hall Knockin Oswestry SY10 8HL, Application under Section 73a of the Town & Country Planning Act for the change of use of agricultural land to domestic garden land; erection of boundary wall and railings

**It was RESOLVED to submit the following report and comments on the application**

### **Background**

1. On 3 January 2013 the Applicant was granted planning permission (Ref 12/04951/COU) for the change of use of agricultural land to domestic garden land, subject to a condition removing most relevant permitted development rights, and requiring the submission and implementation of a landscaping scheme. The application contained no details beyond a site plan and a planning statement. The application form states that the existing boundary treatment is "Blockwork and rail as existing" and that the proposed boundary treatment would be "Blockwork and rail as existing".
2. The Parish Council opposed the application. In March 2013 they expressed concern that unauthorized works were in progress, but following a visit by planning officers it was determined that the works were in accordance with the permission, and this was confirmed in a letter of 21 March 2013, in which it was stated that the levelling of the land was in accordance with the permission, and that there was no objection to boundary treatment to match the existing (ie walls and railings)

3. In May 2013 concern was again expressed on behalf of the Parish Council, and following that the Shropshire Council served a temporary Stop Notice alleging works and use of land in contravention of a condition and without planning permission. The reasons given for the notice were that there was considered to be an unacceptable risk of harm to the amenity and environment of the area by the carrying out of operational development comprising the wall, engineering works and a material change of use of land from agricultural to a domestic use. The last is taken to be a reference to extension of change beyond the approved extent.
4. The Applicant did not appeal the conditions applied to the 3 January approval, nor the Stop Notice. The present application seeks to regularise the position.

### **Planning Policy**

In their approval of 3 January, the Council referred to policies CS6 and CS17 of the Shropshire Core Strategy. The relevant extracts are requirements that development should:

**CS6 - respect and enhance local distinctiveness; protect, restore, conserve and enhance the natural, built and historic environment and be appropriate in scale, density, pattern and design taking into account the local context and character, and those features which contribute to local character**

**CS17 Protect and enhance the diversity, high quality and local character of Shropshire's natural, built and historic environment.**

5. The site lies adjacent to the Knockin Village Conservation Area. The National Planning Policy Framework states:

**137. Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.**

6. The use of the site prior to the works proposed and commenced was open countryside. The land lies outside, and separated from the approved development boundary of Knockin.

### **Development permitted by permission**

Application 12/04951/COU sought permission for a change of use of the land. It is a fundamental aspect of planning law that a permission for a change of use of land does not authorize any engineering or building works beyond that which is set out in the regulations concerning Permitted Development

7. The Parish Council had taken the view that the original proposal would
  - a) extend residential development into the open countryside, particularly through the exercise of permitted development rights; and
  - b) make it likely that the area of land between the site and the village boundary would be subject of pressure for development, contrary to the express views of the parishioners through the SAMDev process of the LDF.

8. The Council, in allowing the proposal, recognised concern 9 a), and applied condition 3, which removed permitted development rights for walls, fences, means of enclosure, hard surfacing and other similar developments. Detailed reasons were given – that the condition was *necessary to maintain the scale, appearance and character of the development, and to safeguard the amenities of the locality*. In the reasons for approval, the Council stated that *the development could be carried out without having an adverse impact on the character and appearance of the village and would have no adverse impact on the overall quality of the natural or historic environment*.
9. Another fundamental aspect of planning law is that conditions must be necessary, and meet certain other tests. The main test is whether, without the condition, planning permission would have to be refused. It was open to the Applicant to appeal condition 3 if it was considered unnecessary. No appeal was made, and it must be concluded that had they not been able to apply the condition, the Council would have refused the permission for a change of use.
10. Thus, the applicant was authorized in the permission to create a garden, without any significant earthmoving, and without any building works on the site.
11. In relation to concern 9 b) it can be taken that the Planning Authority concluded that a change of use of the land restricted by the condition would be an adequate protection to the character of the countryside and the setting of the village. The policies of the Council, and of the NPPF, do not only require these aspects of the environment to be protected, they must be “conserved and enhanced”, and developments should “enhance or better reveal the significance” of the Conservation Area.

#### **The proposals now made**

12. The present application seeks to regularize works carried out on the site. These are there to be seen, but they comprise:
  - a. The removal of some 2000 tonnes of soils from the site to disposal<sup>1</sup>.
  - b. The stripping of some 2000 tonnes of soils and their storage on adjacent land<sup>2</sup>
  - c. Levelling of land
  - d. The removal, without the necessary permission, of some 60m of hedgerow
  - e. The construction of foundations for walls surrounding the site, involving the importation of some 30 loads of concrete<sup>3</sup>
  - f. The construction of blockwork walls and pillars 2.4m above the ground level
  - g. Hard surfacing.

16. No retrospective permission is sought for the removal of hedgerows.

#### **Issues**

17. It appears that the main issue is whether the retention of the development described in 15 above would protect the character of the countryside of the locality, and the setting of the village; and whether it would preserve and enhance the setting of the Conservation Area. The changes need to be judged in relation to the attributes of the site before any work was undertaken, that is, open countryside within hedgerows.

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<sup>1</sup> These figures are estimates by Chartered Civil Engineers. It is open to the Applicant to supply evidence of different amounts.

<sup>2</sup>, <sup>4</sup> As ref 2

18. Prior to the works being carried out, the site was an important and highly visible part of the setting of the village, standing adjacent to small fields within the Conservation Area. It made a positive and highly important contribution to the setting of the Conservation Area, emphasizing the rural nature of the village, to which most of its historic fabric owes its origins.

19. The site is clearly visible from the Kinnerley Road, across a field. A public footpath crosses the field and the Applicant's land, such that the works are clearly visible at close quarters. They are also visible from a public footpath which runs along the eastern boundary of the site. Here the earthworks are prominent. There are public views of the upper part of the wall from the public amenity field at the rear of the Parish Hall. From all of these directions the work has an intrusive, urbanizing effect on the rural setting of the village. They emphasise the unfortunately poor quality of the design of Ashford Hall, which itself is out of character with the architectural attributes of the Conservation Area.

20. The policies of the development plan require that development should protect and enhance the assets of the County. That is an unusually strong requirement, and it means that development must play a positive part in improving the environment. This proposal would be harmful to the environment, and falls far short of the requirement to "enhance". The development would be contrary to policies CS6 and CS17. It would not preserve those elements of the setting that make a positive contribution to the Conservation Area, and is therefore contrary to the NPPF.

21. There is no necessity for the development which has been carried out. The permission granted for change of use permitted the establishment of the garden wished for by the applicant without the need for intrusive building in this rural area.

22. At the time of the first application, the Parish Council raised concerns that if the use of the land was changed to a residential use, then pressure for residential development on the intervening land to the rear of The Hollies and Juniper Cottage would be hard to resist, even though the people of the Parish had expressed a preference for another site in the SAMDEV process. It was the Planning Authority's view that the permission granted would not make the land vulnerable to development. However, if the urban type of development which the application seeks to regularize is retained, then that position will be more difficult to maintain. Indeed, a review of the plan would be indicated, to consolidate the village on its south side, rather than the north.

23. Since the proposal would be contrary to the development plan and National Planning Policy, planning permission should be refused. The Council should stand by its decision to enforce against the development undertaken without planning permission.

#### **Comments on the Applicant's statement**

24. The Applicant's planning consultant has submitted a statement, much of which is disputed. The following refers to the paragraph numbers of that statement.

2.1 *The Applicant states: Planning Permission No. 12/04951/COU was granted for a Change of Use of the agricultural land (to domestic garden land) on the 3rd January 2013. This Planning Permission has been implemented.* Planning permission 12/04951/COU has not been implemented. There is no garden use on the site, and the works go beyond a change of use, as explained in para 9 above.

3.1 *The applicant states: Site Location: Ashford Hall is located in the settlement of Knockin on the*

*southern side of the settlement on the outskirts of the built development*

The site is not Ashford Hall, but land adjacent to it. It should be described as “open countryside prior to unauthorized development”. It is not accurately described as being on the outskirts of built development, or even in the settlement, being separated from the village development boundary by 50m of fields.

4.1 *The Applicant states: Ashford Hall .....has been renovated and enclosed in the recent past at the front of the property with a wall of some 2.5 metres high.* Ashford Hall was built in about 1999. It is not a building of any merit, nor was it renovated. The enclosing wall is part of the original development.

4.2 *The Applicant states: It has, however, an unusually small and inadequate rear domestic curtilage, out of proportion with the grandeur of the residence.* The size of the curtilage was a choice of the original developer. It is a matter of opinion whether the existing grounds were “out of proportion”.

4.3 *The Applicant states: The length of the extended garden .. does not go beyond the existing village boundary .... This is the dimension of the land that is juxtaposed with the existing built part of the village.* This is wrong. The site lies wholly outside the existing village boundary (see p 12 of [http://www.shropshire.gov.uk/planningpolicy.nsf/viewAttachments/AWIN-8Y3DHL/\\$file/oswestry-area-samdev-preferred--options.pdf](http://www.shropshire.gov.uk/planningpolicy.nsf/viewAttachments/AWIN-8Y3DHL/$file/oswestry-area-samdev-preferred--options.pdf)). The site is mostly divorced from the village boundary by about 50m, and is not “juxtaposed”.

4.4 *The Applicant states: The additional land taken in, over and above that approved is to the south of this garden area and is illustrated on the submitted plan. Shropshire Council have considered this matter in response to an enquiry made by the applicant and have suggested an amended planning application be made to accommodate a minor amendment.* It is ludicrous to suggest that this application can be seen as a minor amendment to the change of use permission. It seeks approval of major works of development, which can by no means be seen as a minor change to a change of use of the land restricted to those aspects of a garden which require no building works.

4.5 *The Applicant states: We concur with Shropshire Council’s view....* The views with which the Applicant concurs are those expressed by a planning officer, and have since been refuted or disowned by the Council in the terms of the temporary Stop Notice. It behoves a professional advisor to be truthful in a statement – the existence of the Stop Notice and its reasons should at the least be acknowledged.

4.7 *The Applicant states: However, the garden walling has not been erected in accordance with any permitted development terms but in accordance with details specified in the planning application which were not disapproved by condition. The walling detail is expressly approved therefore by the planning permission granted.* The character of this wall design had also previously been approved by Shropshire Council for the existing wall that had been erected around the established garden of the hall. The Council in their letter dated 21st March 2013 acknowledged that the boundary treatment was appropriate and matched the existing boundary treatment. These extraordinary (underlined) statements are wrong. It appears to be the Applicant’s contention that by describing the existing and proposed boundary treatment as “Blockwork and rail as existing” the approval of the application approved the whole boundary as a repetition of the wall which exists

around the present house. This walling actually exists along a part of the site boundary. If the proposed boundary treatment is to be “as existing”, then it can only be where it exists – that is, the existing wall was to be retained. No treatment existed around the majority of the site.

There is no indication in the COU application that any proposal other than a change of use of land was proposed. There are nationally set requirements for the validation of planning applications, which are available on the Council’s web site. National requirements for validation are as follows:

*Your application MUST include the following:.....*

☐ *Location Plan(s)*

☐ *Block Plan*

☐ *Existing and Proposed Elevations*

The permission granted refers only to a plan which shows the extent of the scheme, which is all that was submitted with the application. There are no details of any existing and proposed elevations of any walling given, and therefore there can be no valid application for them, and no approval. A letter from a Council officer cannot, in law, change the terms of a planning permission. The advice of the officer given on 21 March 2013 was wrong; is acknowledged to be wrong by the service of the stop notice; and would be seen to be wrong by any competent planning professional.

*4.9/4.10 The Applicant states: .. the walling is not a boundary treatment but a means of enclosure within the land owned by the applicant. This permits extensive landscaping around the walling which will be barely perceptible once complete and maturing.*

*4.10 The walling itself avoids undue solidity by the use of black open railings between the piers. These, in turn are masked and softened by the design of the landscaping scheme. These considerations must have been uppermost in the Council’s mind when it was decided not to disapprove the proposed boundary treatment specified.* The implication of these paragraphs is that the walling will be acceptable because it will be masked/softened/barely perceptible due to landscaping. The landscaping scheme submitted shows that this would not be so. Furthermore, the fact that an unacceptable development might be partially hidden at some times of the year by landscaping does not make it acceptable. The landscaping scheme submitted gives details the species proposed as mainly silver birch and rowan, with underplanting of deciduous hedgerow species. In any event, the development would undoubtedly remain visible from public view points at the amenity field, the wall as a whole would be highly visible for 6 months of the year. The Council did not approve the proposed boundary treatment.

*4.11/4.12 The Applicant states: No soil has been imported into the site. The land is being regarded(sic - regraded) as part of the scheme implementation but finished site levels will not be altered.* This statement is so partial as to be mendacious. The development has been accomplished by weeks of intensive site earthmoving and heavy goods vehicle movement as soils have been shifted off the site to adjacent land, and exported from the site. To say that the land is being regraded “but finished levels will remain unaltered” conveys an impression that the original land levels will be retained. That is not so. For instance, levels at the south eastern corner of the site have been raised by at least 2m. No engineering works, such as earthmoving are within the scope for a change of use application. That is a matter of law, with which the consultant should be familiar.

#### **Deficiencies in the application**

25 This application is for the regularisation of works carried out without planning permission. That is

the meaning of an application under S73 of the Town and Country Planning Act 1990. No other use had been implemented on the site before the unauthorized works commenced. The application should detail the pre-existing state of the land, and the extent of works which have taken place. The plans submitted give no information as to levels, before and after; site features such as hedgerows; construction details such as foundations, or the proposed land use within the walling. The Applicant contends that there will be no perceptible difference in levels, even though this has been achieved by massive earthmoving. The application should detail these engineering works which need planning permission. The Council should use their powers to require additional information before determining the application.

#### **Conditions in the event of approval**

26 In the light of the history of this proposal, and the applicant's apparent inability to understand or observe planning conditions, the utmost care should be taken if approving the proposal. Conditions should be applied as follows:

- 1 Requiring submission of levels of the land on which soils have been tipped.
- 2 Requiring soils to be retained on site (to prevent further disturbance to the village), and regarded to approved levels.
- 3 Requiring replacement of removed hedges with native species.
- 4 Requiring preservation of trees within the applicants land holding
- 5 Requiring the walls and railings to be finished in a colour which blends with the rural surroundings. – ie, not black and white.
- 6 Removing permitted development rights for further building within the enclosure, as far as it may be visible externally.

#### **Conclusion**

27 The proposal is for a retention of development which the Council have already determined risks harm to the local environment. It is contrary to a condition which was necessary to protect the environment, and which was not disputed by the applicant. It would be contrary to the development plan and national policy, and since there are no material considerations indicating a decision other than in accordance with the development plan, the law requires that permission should be refused.

**Therefore Knockin Parish Council wish to see the site returned to its former state, from which it may be developed as a garden, with a planted boundary forming a soft transition to the surrounding countryside. We also resolved to ask the Shropshire Council to take action under the Hedgerow Regulations concerning the removal of hedgerows from the applicant's land.**

Meeting ended 20.00