

PLANNING COMMITTEE

4TH SEPTEMBER 2014

REPORT OF THE HEAD OF REGULATORY SERVICES

ALLEGED NON-COMPLIANCE WITH CONDITION OF PLANNING PERMISSION – HALL FARM, KLONDYKE LANE, THORPE SATCHVILLE. PLANNING PERMISSION REFERENCE: 14/00131/FUL

1. PURPOSE OF THE REPORT

- 1.1 To report to the Committee an allegation of works taking place in the installation of ground mounted photovoltaic panels without the compliance with a condition requiring the provision of a 3m high hedge to be planted before the panels were installed, and determine what action should be taken in this respect.

2. RECOMMENDATION

- 2.1 **That the works carried out meet the objectives of condition 8 of planning permission 14/00131/FUL and therefore there is insufficient justification for Enforcement Action.**

3. BACKGROUND

- 3.1 Members may recall the application for the installation of 1002 ground mounted photovoltaic panels reported on 24th April 2014. It was resolved to grant planning permission for the installation of the panels, with a request to add a further condition to the officer's recommendation to require the planting of a hedge. The condition reads:

Prior to the installation of any PV panels, a dense quickthorn hedge shall be planted within 20m of the southernmost array of photo voltaic cells hereby approved, for the length marked yellow on the plan below, forming part of this certificate. The hedge shall be planted at a height no less than 3m and thereafter shall be allowed to grow and be maintained at a height no lower than 3m, for the duration of the time that the photovoltaic panels are present on the application site. (Alternatively, a lower hedge may be planted prior to the installation of the panels but no panels shall be installed until it has reached a height of 3m).

Reason: In the interest of residential and visual amenity.

- 3.2 Complaints were received from 11th August 2014 advising that the panels had been installed without compliance with the condition in that a 3 metre high hedge had not been planted to satisfy the terms of the condition. Upon the receipt of the complaints the site was visited by the Lead Enforcement Officer, also on 11th August 2014, to view what works if any had been carried out at the site.
- 3.3 On inspection, it was found that the owner of the site had created a 1.5 metre high earth bund upon which had been planted a hedge made up of 2m high and 0.5m high plants spaced at 0.5m. At the bottom of the earth bund, a similar

hedge had been planted which was staggered with the hedge planted on the bund.

- 3.4 The bund and hedge planting were completed towards the end of May/beginning of June 2014 prior to the commencement of the installation of the panels in June 2014.

4. APPRAISAL

- 4.1 The starting point for this issue is whether or not the works that have been carried out are in breach of the terms of the condition and as such are open to enforcement action. Secondly, consideration as to whether the works undertaken are sufficient to meet the objectives of the condition and, thirdly, whether enforcement action is necessary (including proportionate and justified) and/or will be effective.
- 4.2 Two particular concerns have been expressed as being the breaches of the condition, that the hedge that has been planted is not 'dense' as specified by the condition and that it is not 3m high.
- 4.3 The hedge has been planted with plants of 2m and 0.5m high spaced at 0.5m. With a second line of plants forward of this line staggered to be in between the first line of plants. This means that when viewed perpendicular to the hedge line, the plants are spaced at 0.25m spacing.
- 4.4 The developer advised that no plants could be purchased at a height of 3m and as such, in order to meet the terms of the condition the developer has created an earth bund of 1.5m high onto which they have set the plants. The total height of the planted hedge is 3.5m. A review of market availability of hawthorn/quickthorn plants has revealed that plants of 3m high are unavailable, generally the tallest being 1.5m.
- 4.5 Officers are of the opinion that the density of the plants that have been set meets the terms and intention of the requirements of the condition. The hedge has been planted in two rows with plants spaced at 0.25m (10inches), which is considered to be a 'densely' planted hedge.
- 4.6 The hedge that has been planted does meet the minimum height of 3m, albeit because they are planted on an earth bund. It is considered that the works carried out meet the height provisions of the condition and, due to the formation of the bund, provides the benefit of an immediate screen to the panels, impermeable to views, which would not have been provided had only a hedge been planted.
- 4.7 The condition was applied "*in the interest of residential and visual amenity*". It is understood that there are limited views of the panels from any residential property, other than the developers. There is a footpath that leads close to the panels from which the site can be seen, but the site is not readily seen from any other nearby vantage point. The Committee is invited to consider whether the works undertaken fulfil the reason the condition was imposed, i.e. to mitigate and 'soften', the impact of the development.

- 4.8 Officers are of the opinion that the planted hedge meets the intentions of the condition in that:
1. The hedge was planted before the panels were installed.
 2. The hedge is densely planted.
 3. The hedge, assisted by the bund, is 3m high.
- However we have been presented with an argument that the full terms of the condition are not met because the plants themselves are not 3m high.
- 4.9 Nevertheless, the Committee must consider is whether the works that have been carried out satisfy the terms of the condition. If it is concluded that the works do not meet the condition then they must consider what action, if any, is necessary to remedy the breach.
- 4.10 A Local Planning Authority has a discretionary power under the provisions of the Town and Country Planning Act 1990 to determine what action should be taken to remedy the breach of planning control (it does not necessarily follow that where a breach is established, enforcement action will follow). In these circumstances, the following courses of action that could be taken:
1. To take no further action in these matters.
 2. To serve an enforcement notice requiring the removal of the bund and planting, and replacement with 3m. high planting as originally specified.
 3. In the light of the unavailability of 3m high plants, the removal of the photovoltaic panels until planting has reached such a height.
- 4.11 A Local Planning Authority has general discretion to take enforcement action, when it is regarded as expedient to do so. The decisive issue is whether it would be in the public interest to take action, having due regard to whether the breach of planning control unacceptably affects public amenity or an existing use of land and buildings meriting protection in the public interest.
- 4.12 Any action that is taken by the Local Planning Authority must be commensurate with the breach and must be reasonable. This means that any action taken must not be based on irrational factors, taken without proper consideration of the relevant facts and planning issues; or based on non-planning grounds.

Background Documents:

Planning Permission 14/00131/FUL

Contact Officer:

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