

Report by the Director for Economy

ENFORCEMENT UPDATE REPORT

**Enforcement reference: AWEN/0292/20, Planning Application reference
AWDM/1743/19**

**Tree felling in advance of compliance with planning conditions at Former
Sussex Clinic, 44-48 Shelley Road, Worthing**

1. BACKGROUND

- 1.1 At the February meeting of the Committee, Members considered planning application reference AWDM/1743/19 for the *Demolition of existing building and construction of 50 bedroom care home (Class C2) with associated facilities, hard and soft landscaping including new access arrangements from Shelley Road* at the now former Sussex Clinic, 44-48 Shelley Road, Worthing.
- 1.2 The February meeting was the last meeting to be held prior to the COVID pandemic and therefore took place in the Gordon Room. The applicant and agent (as well as objectors) were present and spoke at the meeting.
- 1.3 Planning permission was resolved to be granted at the meeting, but much of the debate regarding the application concerned the proposed felling of trees and the necessity for replacement planting. As stated in the approved minutes of the meeting:

Members were shown a number of plans, which included a tree retention plan, to assist in their consideration of the application. The Officer made reference to the Council's Tree and Landscape Officer comments within the

report. The Planning Services Manager concluded his presentation by showing a number of photographs and advising the recommendation was to grant permission. Members raised queries with the Officer, which were answered in turn to the Members' satisfaction. In summary, these included:- clarification as to the location of trees with TPOs; the trees to be retained and location of new trees to be planted...

...A Member felt the removal and replanting of trees could be phased in an effort to protect the wildlife and reduce the impact of the development...

...In conclusion, the majority of Members agreed with the Officer's recommendation to approve the application however, they requested a more detailed landscape condition to specify the phasing and replanting of trees and shrubbery in consultation with the Chairman and Ward Councillors.

- 1.4 It was clearly evident from the discussion at the meeting that while it was acknowledged that a significant amount of tree felling would need to take place to facilitate the development, a phased approach to tree felling and replacement landscaping would reduce the impact upon the nearest neighbours to the development.
- 1.5 The decision notice was subsequently issued in March with the detailed landscaping condition requested by the Committee.
- 1.6 During September, it was brought to the attention of the Chair and Officers that the site had been cleared of the trees on site. This was prior to any of the pre-commencement conditions relating to the site having been discharged (not just the relevant landscaping condition). Indeed, a submitted landscaping scheme was withdrawn by the agent, prior to any determination, for reasons unknown.
- 1.7 In light of the Officer's efforts to negotiate a scheme that could be supported by the Committee and, in turn, the quite clear comments of the Committee in reasonably attempting to facilitate the development while protecting the amenities of neighbouring residents, it was considered extremely disappointing that the developer has proceeded in this manner. It was immediately agreed with the Chair, therefore, that the Officers would proceed to serve a Breach of Condition Notice (BCN).

2. CURRENT SITUATION

2.1 The BCN was served on Friday 2nd October.

2.2 2 separate notices have been served regarding the failure to comply with conditions 13 and 14 respectively of the permission granted under reference AWDM/1743/19. These conditions stated:

13. No development shall take place unless and until there has been submitted to and approved in writing by the Local Planning Authority a scheme of soft and hard landscaping.

The soft landscape scheme shall include a plan indicating all existing trees/shrubs and hedges on the site detailing which are to be retained and those which are to be removed, together with details of all proposed new and/or replacement tree/shrub/soft planting. The submitted details shall include not less than 30no. new and/or replacement trees and not less than 22no. shrubs plus written specifications and schedules of all new tree/shrub/soft planting stating their species, sizes and numbers/densities and the programme of implementation. The implementation programme shall be phased where possible to minimise the amount of time between removal of existing trees/soft planting on the site and the carrying out of the agreed new and/or replacement trees/shrubs/soft landscaping.

All soft landscape works shall be carried out in accordance with the agreed planting scheme and implementation programme. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced the following planting season with others of similar size and species, unless the local planning authority gives any consent for variation.

The approved hard landscape works shall be completed prior to first occupation of the buildings.

Reason: *In the interests of visual amenity and the environment and to comply with policy 16 of the Worthing Core Strategy.*

14. No development, including site works of any description, shall take place on the site unless and until all the existing trees/shrubs/hedges shown on the approved plan as being retained have been protected in accordance with an arboricultural method statement and tree protection plan (to include protection measures during and after construction and any

construction exclusion zones) in accordance with BS5837:2012 which shall have been submitted to and approved in writing by the local planning authority and shall include any proposals for pruning, crown reduction or other preventative works. Within the areas so protected the existing ground level shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon or bonfires take place. If any excavations are required in the fenced off areas they shall be undertaken and backfilled only by hand and any tree roots encountered with a diameter of 25 mm or more shall be left unsevered.

Reason: *To protect the trees from damage and to comply with policy 16 of the Worthing Core Strategy.*

2.3 The BCN requires in respect of Condition 13:

Submit for approval to Worthing Borough Council a scheme of soft and hard landscaping which shall include the following:

(i) A plan indicating all existing trees, shrubs and hedges on the site detailing which are to be retained, which are to be removed and those which were removed on or around 1 September 2020.

(ii) Details of all proposed new and/or replacement trees, shrubs and soft planting. The details shall include not less than 30 no. new and/or replacement trees and not less than 22 no. shrubs plus written specifications and schedules of all new trees, shrubs and soft planting stating their species, sizes and numbers/densities.

(iii) Include an implementation programme which is phased to minimise the amount of time between the removal of trees, shrubs and soft planting which took place on or around Tuesday 1st September 2020, any further removal of the remaining trees, shrubs and soft planting and the new planting of trees, shrubs and soft planting which for the avoidance of doubt shall take place no later than by the end of the planting season in February 2021.

(2) Following the submission of a scheme of soft and hard landscaping to Worthing Borough Council in accordance with Condition 13 and the requirement numbered (1) above and if approval is subsequently provided, to Comply with the scheme.

2.4 The BCN requires in respect of Condition 14:

(1) Replace the trees/shrubs/hedges that have been removed in contravention of the approved plan Drg No PL-121 REV |.

2.5 In both cases, the BCN takes effect immediately and the compliance period is 28 days.

2.6 An application to discharge condition 13 has already been received by the department and is awaiting validation at the time of writing this report. It should be stressed that the receipt of this application does not mean the BCN is complied with, since not only does the submission need to be made, but the details have to be agreed and the approved planting implemented in accordance with the approved details.

3. COMMENTS FROM THE LEGAL SERVICES OFFICER

3.1 It is a criminal offence not to comply with the requirements of a BCN. The offence is punishable on summary conviction in the Magistrates Court. The maximum penalty on conviction is a fine not exceeding level 4 on the standard scale, which is currently £2,500. Unlike an enforcement notice, there is no right of appeal against a BCN and its validity can only be challenged by way of Judicial Review.

4. CONCLUSION

4.1 Officers and Members of the Committee frequently seek to achieve the difficult balance between facilitating the required development in the town with the need to protect the amenities of surrounding residents. In this case, the Committee made it quite clear that a phased landscaping approach was required in this case to achieve such a balance. It is extremely frustrating that the wishes of the Committee were ignored on this occasion and it is therefore felt important to bring this update to the Committee to demonstrate that, where necessary, action will be taken where relevant conditions are not complied with, hence the serving of the BCN on 2 October.

4.2 As this matter progresses, the Committee will be provided with further updates when necessary.

Local Government Act 1972

Background Papers:

Breach of Condition Notices, served 2 October 2020

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Schedule of Other Matters

1.0 Council Priority

- 1.1 Compliance with planning policies as set out in the Core Strategy

2.0 Specific Action Plans

- 2.1 Planning Enforcement and Policy Guidance

3.0 Sustainability Issues

- 3.1 Matter considered and no issues identified

4.0 Equality Issues

- 4.1 Matter considered and no issues identified

5.0 Community Safety Issues (Section 17)

- 5.1 Matter considered and no issues identified

6.0 Human Rights Issues

- 6.1 Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns noninterference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those who have carried out unauthorised developments as well as those affected by them and the relevant considerations which may justify interference with human rights has formed part of the assessment process in deciding whether enforcement action is expedient.

7.0 Reputation

- 7.1 Residents and members would expect that planning conditions are complied with and that the Council will take action when clear breaches occur.

8.0 Consultations

8.1 Consultation with Legal Services as set out in the report.

9.0 Risk Assessment

9.1 Enforcement action is a discretionary activity which should only be taken here there is clear evidence to do so. The felling of trees provides clear evidence that action should be taken in this case.

10.0 Health & Safety Issues

10.1 Matter considered and no issues identified

11.0 Procurement Strategy

11.1 Matter considered and no issues identified

12.0 Partnership Working

12.1 Matter considered and no issues identified