

Planning Committee: 20 December 2011

Item Number: 15

Investigation Number: ENF 236/25/09

Town/Parish Council: Blackdown

Case Officer: Christine Zacharia

Brethrens Meeting Room, Sandy Lane, Blackdown, Leamington Spa

Unauthorised Construction of a New Vehicular Access and Driveway
Land owner(s) The Trustees of the Sandy Lane Meeting Room Trust

This matter is being presented to Committee in order to request that enforcement action be authorised.

BACKGROUND

This enforcement case has involved the investigation of two alleged planning breaches:

- i. the unauthorised use of the land as a burial ground
- ii. the unauthorised construction of a new access driveway

Of relevance to this investigation and report is a Lawful Development Certificate which was issued by the Council on the 21 February 2007 for the ancillary use of the car park and grounds of the site as a private burial ground for members of the congregation at the Brethren's Meeting Room, Sandy Lane, Leamington Spa (W07/0123). The Certificate states that the District Planning Authority is satisfied that the proposal is ancillary to the **authorised use of the land which is that of a place of worship within Class D1 of the Use Classes Order 1987 (as amended)**, and therefore the proposal to use the grounds for private burials is not a material change of use given the relatively limited number of burials expected (2-3 per year) and as such is considered to be de minimus. For the purposes of the Certificate, the new unauthorised access and driveway area did not form part of the certificate application but did fall within the land ownership of the applicants.

There are various emails and meetings on file between the Council, 'The Brethren' and their agents. The Council has consistently advised of their concern regarding development in the Green Belt and concerns over highway safety with regard to the unauthorised access and driveway.

The unauthorised access and driveway remains in situ without the benefit of planning permission.

RELEVANT POLICIES

Warwick District Local Plan 1996-2011

Policy DP6 – Access

PPG2 relating to development within the Green Belt.

PLANNING HISTORY

W/07/0123 – Lawful Development Certificate for the ancillary use of the car park and grounds as a private burial ground for members of the congregation – Granted - 21/02/07

W/09/1171 – Formation of a driveway and path within the burial ground (Retrospective) withdrawn 2010.

W/11/0446 – Formation of new vehicular access path and on site car park to serve burial ground – currently invalid.

KEY ISSUES

The Site and its Location

The site is located close to the edge of the built up area of Leamington in the Green Belt close to the junction of Sandy Lane and the A445 Leicester Lane.

It comprises a Brethrens Meeting Room within its own grounds which has two existing access points from Sandy Lane. The third unauthorised access has been constructed to serve the site from the busy A445 Leicester Lane, and close to a busy traffic island.

Assessment

The main issues are

- i. Whether there has been a material change of use to a separate burial ground i.e. a new planning unit, or whether this remains an ancillary use to the lawful D1 (place of worship) use.
- ii. Whether the burial use has so intensified to such a degree that it can no longer be regarded ancillary to the main use.
- iii. Whether the new access is unauthorised operational development requiring planning permission, and if so whether it is expedient to pursue formal enforcement action for the breach of planning control.

The Lawful Development Certificate issued on the 21 February 2007 described the lawful use of the land as "Ancillary use of car park and grounds as a private burial ground for members of the congregation". The Certificate was correctly issued, as use of part of the grounds as a burial ground and was properly considered as being ancillary to the D1 (place of worship) use of the whole site and consequently was not a material change of use constituting development.

When considering whether a new planning unit has occurred in this instance, the physical subdivision of the land to create a separate plot for burial grounds by the formation of a new access can only be said to constitute a new separate 'planning unit' if it is distinct from any other part of the land, and the change is so radical and material so as to create this separation. On inspection of the site, no evidence was found to support such a radical change had occurred. Physically the site remains

substantially undivided from the rest of the site notwithstanding the new unauthorised access.

In terms of intensification, there is no evidence to suggest that the burials have increased to such an extent to render this element of the use no longer ancillary but a main use. The agents advise that between 29/09/2009 – 09/05/2011, twelve burials have taken place and that these were all for members of the Brethren. Whilst this is higher than anticipated in 2007, the increase in numbers is not considered to be significant in planning terms to the extent that it amounts to a material change of use.

Concerns have been raised by the Environment Agency regarding river pollution following on from the number of burials taking place on the land now and potentially in the future. This is a matter for the EA to resolve with the landowner, and officers are liaising closely with them, updating them of the lawful planning use of the site.

Turning to the unauthorised access and driveway, Council records and Google maps show that the access is new development, less than four years old and therefore not immune from enforcement action.

The Highway Authority, have advised that they would not support the new access in its current form due to concerns over highway safety and therefore it is contrary to Policy DP6 of the Local Plan. Furthermore the Council have concerns over the impact of this inappropriate development in the Green Belt, and considers the new vehicular access and driveway to form an unjustifiable visual intrusion on the land adversely affecting the character and appearance of this area of Green Belt contrary to PPG2.

Conclusion and Justification for Enforcement Action

The ancillary use of the car park and grounds as a private burial ground for members of the congregation remains ancillary and lawful.

The access and driveway comprise unauthorised operational development requiring planning permission. It is considered expedient to pursue formal enforcement action for this breach in the public interest.

RECOMMENDATION

That appropriate enforcement action be authorised directed at the cessation of the use of the unauthorised vehicular driveway and access by the closure and dismantling of the access and driveway; the removal from the land of all materials and structures that currently facilitates the unauthorised vehicular access; the restoration of the Land to its condition before the breach took place, with a compliance period of TWO months.
