

**Planning Committee:** 03 May 2005

**Principal Item Number:** 20

**Application No:** W 05 / 0232

**Registration Date:** 14/02/2005

**Town/Parish Council:** Lapworth

**Expiry Date:** 11/04/2005

**Case Officer:** David Edmonds

01926 456521 [planning\\_appeals@warwickdc.gov.uk](mailto:planning_appeals@warwickdc.gov.uk)

**Oaktree Wharf, Lapworth Street, Bushwood, Lowsonford, B95 5HQ**

Change of use of former railway and canal side land to use as domestic garden and keeping of animals; construction of vehicular access road; erection of timber shed for storage of personal effects; erection of blockwork building for storage of animal feed, fuel, agricultural equipment and domestic washing area, and; creation of mooring involving concrete path/retaining surface and raised deck area (partly retrospective) FOR R & D Giblin

---

**SUMMARY OF REPRESENTATIONS**

Rowington Parish Council: Objections on following grounds:

1. Change of use to domestic garden timber shed, block work building, etc, is inappropriate development and therefore contrary to green belt policy and harms the rural character of the Arden Special Landscape Area.
2. Developments harm that part of the Lowsonford Conservation Area to the west of Lapworth Street
3. Various works has harmed an area of wildlife habitat
4. Effect of residential mooring particularly the proposed structures on setting of the Stratford Canal.
5. Harm to outlook of neighbouring residential properties.
6. Query about the ownership of the existing access drive, part of which is shown within the application site, and is thought to be entirely in the ownership of Warwick District Council

Lapworth Parish Council: Objections because the site is within the Green Belt there is no need for a domestic garden where no house exists.

WCC (Highways): 'Holding objection' unless or until the applicant has submitted a plan to demonstrate that a car can be turned within the curtilage of the site as to enable it to leave and re-enter the highway on a forward gear.

WCC (Ecology): The application site is part of Ecosite 24/16, Rowington Junction to Henley-in-Arden (Disused Railway) and part of the application site is part of Ecosite 47/16, Stratford-on-Avon Canal, where both have been identified as a potential Site of Importance for Nature Conservation (pSINC).

They recommend refusal of planning permission on grounds that it has caused and would continue to harm protected species recorded or suspected on site, namely water voles and slow worms, together with the damage to a site of substantial nature conservation interest. They consider that the lack of information, in terms of ecological surveys to determine the presence or absence of protected species and evaluated the site within the SINC criteria conflicts with

planning policy and justifies the refusal of the application. The extent of the site clearance works do not support the applicant's assertion that site is being managed for the benefit of wildlife. The accepted wildlife management approach would be to selectively thin the embankment by coppicing the shrubs in rotation. However, even after the site clearance works the disused railway and canal margins still have substantial nature conservation value to justify its designation.

They have referred the issues of site clearance works and impact on legally protected species as matters to Warwickshire Police for investigation into potential offences under the Wildlife and Countryside Act 1981. This is a separate matter to the consideration of this retrospective planning application.

British Waterways: No objection, in principle to a residential mooring subject to landscaping conditions requiring planting of predominantly native species. However, there are objections to the proposed mooring pontoon shown on the 1:100 plan as a galvanised steel structure and the white painted rendered finish of the half built blockwork building. They state that none of the land edged red, including the canal bank is in their ownership.

Inland Waterways Association: No objections

Campaign to Protect Rural England, Warwickshire: Consider that the site is in the Green Belt and Arden Special Landscape Area and should only be permitted in 'very special' circumstances. They welcome efforts to tidy up the site but do not wish to see the site over-developed.

General Public:

19 letters of objection had been received on the following grounds:

- Development of this nature is inappropriate in principle in the Green Belt
- The former railway embankment with its mature soft landscaped slopes is a distinctive natural visual buffer between the village and the surrounding countryside and its change of use to residential with associated buildings/ driveways would harm the soft character of the edge the village and reduce its attraction to tourists
- Perceived expansion of the village that could lead to further proposals such as more outbuildings and possibly the construction of a dwelling on the site
- Access to the site via the existing shared access track is dangerous in terms of poor visibility impaired by the bridge abutments and difficulty of vehicles entering and leaving in a forward gear
- Intensification of use of existing shared access track has damaged it and led to and increase in on street car parking
- Use of top of embankment for residential purposes would harm privacy of neighbouring properties it overlooks
- Loss of wildlife on the site resulting from clearance of much of the tree and shrub cover
- Loss of tree and shrub cover on the embankment has reduced its sound attenuation qualities in respect of M40 motorway noise.
- No need for new mooring when there is ample provision opposite the Fleur de Lys public house

- Keeping of animals on the site could lead to an odour nuisance to occupants of neighbouring properties
- Fears that the existing access drive adjacent to no. 11 Gifford Terrace would be obstructed in the future by a gate.
- Fears that the agricultural machinery that would be stored would be for a business use possibly as a base for a fencing or landscaping contractor.
- Fears that the removal of vegetation has affected the stability of the embankment.

In response to applicant's claim that the site has been in residential use as a garden for at least a 10 year period, in the past, to have become established as the lawful use, a further 7 letters have been received giving the various information:

- The letters are mainly from longstanding residents living in the village for between the last 40 and 60 years some of which are supported by some good historic photographs
- Apart from a relatively small, linear piece of land between the embankment bottom and the gardens of the Giffard Terrace houses that may have been used as a vegetable patch for a few years, there is no evidence of the land being in residential related uses at any time.

Descriptions of the site over this time include 'uncultivated', 'haven for wildlife', 'quiet woodland area', 'disused railway bank' and these descriptions are supported by the historic photographs

### **RELEVANT POLICIES**

(DW) ENV3 - Development Principles (Warwick District Local Plan 1995)

(DW) ENV1 - Definition of the Green Belt (Warwick District Local Plan 1995)

(DW) ENV27 - Ecological Development (Warwick District Local Plan 1995)

(DW) ENV30 - Protection of Canal Corridors (Warwick District Local Plan 1995)

(DW) C8 - Special Landscape Areas (Warwick District Local Plan 1995)

DAP1 - Protecting the Green Belt (Warwick District 1996 - 2011 First Deposit Version)

DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011 First Deposit Version)

DP2 - Amenity (Warwick District Local Plan 1996 - 2011 First Deposit Version)

(DW) ENV6 - Protection and Enhancement of Conservation Areas (Warwick District Local Plan 1995)

DAP3 - Protecting Special Landscape Areas (Warwick District 1996 - 2011 First Deposit Version)

DAP10 - Protection of Conservation Areas (Warwick District 1996 - 2011 First Deposit Version)

DP6 - Access (Warwick District Local Plan 1996 - 2011 First Deposit Version)

### **PLANNING HISTORY**

Aug.1979. (W79/827) Refusal of planning permission to erect 7 dwellings

Jan. 1980. (W79/1532) Refusal of planning permission to erect 4 bungalows.

The application forms for both these developments described the site location as '*Disused railway embankment O.S. Ref SP1868-1968, Lowsonford*'. In answer to the questions '*Present use of buildings and land*' and '*If vacant, the last previous use*' the applicant, Edward Hitches, responded '*None*' and '*Railway*' respectively.

## **KEY ISSUES**

### **Introduction:**

Members may recall that there was an item on the agenda for the Planning Committee meeting of 4th April 2005 but that it was decided not to present the report. This would allow full consideration of claims made by the applicant, a few days before that Committee, that the use of the site as a garden had continued for over a 10 year period in the past to have now acquired immunity from planning enforcement action. It would also allow the human rights implications of the case to be explicitly considered.

### **The Site and its Location**

The broadly linear 0.46 hectare site comprises former British Railway land consisting mainly of an embankment stretching from Lapworth Street which forms the south-west boundary to the Stratford Upon Avon Canal forming the north-east boundary; together with a 30 metre long and 5 metre wide stretch of the west bank of the canal. The south-east boundary adjoins no. 12 Gifford Terrace being one half of a pair of semi-detached houses and the last of a row of similar properties on the north-east side Lapworth Street. Beyond the north-west boundary lies open countryside. Both the village and the surrounding countryside are part of the West Midlands Green Belt and is set within the Arden Special Landscape Area.

### **Details of the Development**

The application seeks permission for the change of use of the land, described above, to a garden and keeping of animals and for the erection of an existing and a proposed building, various engineering operations together with the creation of a mooring. The erection of 2 outbuildings, on the lower slopes and base of the south east side of the embankment comprise a pitched flat roof timber structure 5.5 metres x 3.5 metres and a larger flat roofed blockwork/rendered building 13.4 metres x 3.1 metres. The mooring comprises a raised galvanised framework supporting decking and paving and a paved surface, adjacent to the canal, and also Vehicular access to the site would be gained via the construction of a new access road parallel with the existing access track and divided by a post and rail fence. A chicken coup that has been placed on the land is not the subject of the application.

The supporting letter states that the land has been in the ownership of the applicant's family for 50 years being used for the keeping of fowl and pigs and that their canal boat had recently been moored on the canalside. The intention had been to refurbish outbuildings and clear overgrown land. It is stated that an outbuilding collapsed during refurbishment and that the timber building is being used to store personal belongings following a house move. The new drive to the site was started to avoid using the existing rough track. The proposed retaining surface for the bank replaced the previous overgrown bank that has suffered from erosion.

In support of the assertion that a residential use as a garden is the lawful use of the site the applicant has supplied a copy of a legal agreement dating from 1947 between The Great Western Railway Company ('The company') and Edwards Hitches (The tenant') relating to the application site. The agreement indicates that the company agree to let and the tenant to take the site that was part of the Company's disused Henley in Arden Branch Railway. It stated that it was to be used as 'garden ground and for the keeping of poultry and for no other purpose'.

#### **Assessment of lawfulness issue:**

It is considered that the aforementioned tenancy agreement, whilst indicating an intention to use the site as 'garden ground', does not prove that it was subsequently in such residential use for over a ten year period, to become the lawful use of the site. The recollections of residents, who have lived in the area for up to 60 years, highlighted in the Summary of Representations section, indicate that the overwhelming majority of the site, notably the embankment, has always been in woodland use. It appears that some of the flat land between the embankment and the curtilages of the Gifford Terrace houses have occasionally, over a few years, been used for the keeping of animals/ fowls or growing of crops as an allotment type garden/ small holding. However, this nature of use indicates that the land was in predominantly woodland use with fringe agricultural uses rather than being related to any residential use. The recollections of local residents is confirmed by the documents associated with the two planning applications, submitted in 1979/80, where the applicant, described the site as having no use, being formerly part of the railway. In conclusion, on the evidence available, on the balance of probabilities, the lawful use of the site is not related to any residential use.

#### **Assessment of Planning Merits:**

It is considered that prime purpose of the application relates to the residential use of the land (including that part of the canal that the house boat floats). In terms of planning law, the long-term stationing of a houseboat, adjacent to the site, for the express purpose of permanent residential accommodation is material change of use that is equivalent to the full time residential occupation of a caravan. In this case the residential use of the site has extensive physical manifestations in terms of the engineering operations for the access, the two buildings, and the existing and proposed mooring operational developments. Such residential use and operational developments raises issues of compliance with rural protection policies - (green belt, rural character), highway safety and the living conditions of neighbouring properties.

In terms of green belt policy, the mainly residential related use of the buildings that are the subject of the application would not be one of the specific purposes that would make them appropriate, in principle. In particular, the use of the buildings for the storage of personal effects, and as a washing area would not be for agriculture, and are not "essential" facilities for outdoor recreation, The keeping of animals and storage of fuel appears to be incidental to the residential use of the land rather than a use in its own right. Therefore the retention of buildings would conflict with policy (DW) ENV1 which seeks to protect green belts from inappropriate development. It is also considered that the engineering

operations associated with the driveway, to create a platform for the timber shed and in association with the moorings, cumulatively harm the openness and rural character of the green belt .

In terms of the use of the land, PPG 2 "Green Belts" indicates that there needs to be strict control over uses that conflict with the main purposes of including land within it e.g preserving openness and conserving identity of villages. In this context , the residential use of the land including that part of the canal that the houseboat floats together with the proposed use of the embankment as a domestic garden would be a use that would conflict with the purposes of a Green Belt area. The development site is also clearly beyond the physical limits of the built up area of the village of Lowsonford.

Regarding rural character, the buildings and other operations, the loss of trees/shrubs and the residential use of this distinctive railway embankment site that has provided a soft edge to the village would unacceptably harm the rural character of the Arden Special Landscape Area and it is not considered that the impact of a domestic garden use cannot be effectively mitigated by new planting. It would result in an expansion of suburban influences and begin to erode the soft rural edge of the village, thereby conflicting with some of the key guidelines of the Warwickshire Landscape Guidelines. This was adopted as Supplementary Planning Guidance to augment the rural protection policies such as (DW) C8, in the development plan. Moreover, it is considered that the stationing of the canal boat for permanent residential accommodation, together with the canal side domestic accoutrements amounts to suburbanisation that would unacceptably harm the rural setting of the Stratford Canal, contrary to policy ENV30.

Turning to highway safety, the comments of the highway authority reveal doubts that turning space can be achieved on the site and certainly none are currently proposed. It is considered that such turning space can only be achieved by further cutting into the embankment causing even greater visual intrusion, which would be unacceptable. Therefore it is considered the current development causes unacceptable harm to highway safety contrary to policy (DW) ENV3.

Regarding living conditions of neighbouring property, it is not considered that the intensification of the use of the first part of the access and the residential use would cause unacceptable harm in terms of noise and disturbance from vehicles. However, the change of use of the embankment sides and top to a domestic garden will increase potential for overlooking. The keeping of chickens on the site can be regarded as an agricultural activity and in itself does not require permission.

Taking account of the comments of the County Ecologist, it is clear that the lack of information in terms of ecological surveys to determine the presence or absence of protected species; together with the damage to the site of substantial nature conservation interest has resulted in unacceptable harm to nature conservation interests. The application would thereby conflict with policy (DW) ENV27 'Nature Conservation' of the adopted Warwick District Local Plan – April 1995

In respect of perceived harm to the setting of the Conservation Area, it is considered that the site is too far away with the concentration of buildings and operations out of sight of the conservation area for it to cause unacceptable harm to the setting. It is also considered that the clear felling of the site's vegetation would have a negligible effect on the ability of the embankment to attenuate motorway noise. There is currently no firm evidence of instability in the embankment.

Regarding the potential use of the site as a storage depot for plant, this is a separate planning matter that is unrelated to the current application. It would need to be the subject of a separate enforcement investigation before conclusions could be reached and to this end a new enforcement file has been set up.

On the question of the ownership, whilst there may be doubts that the applicant owns all the land, particularly the canal bank, he has signed a certificate stating that he does, indeed, own all the land. Certainly, Warwick District Council does not own any of the site and neither does it appear that British Waterways own the canal bank. Under planning law, an applicant for planning permission need not be the owner of land the subject of a planning application, and the consent of whomsoever does hold an interest in the land is not required, although applicants for planning permission are legally obliged to notify landowners under section 66 of the Act. Regarding fears that the existing access would be obstructed by gates, this is not a planning matter but an issue between the adjoining landowners. However, since WDC is one such landowner, the Council's Estates Surveyor has been alerted.

### **Human rights issue under Human Rights Act 2000:**

The applicants have not explicitly cited any personal circumstances arguments for their residential use of the land related to the Human Rights Act. It is considered that it was incumbent upon them to indicate clearly that it was being relied upon prior to a decision being taken. However it is incumbent on the authority, also, to consider such matters.

The principles of the Convention have now been embodied into the Human Rights Act which came into force on 2nd October 2000. The appellant's usual human rights argument in such planning cases is that their right of respect for family/private life or their right of property has been breached. Rights protected by Articles 8 and 1 (First Protocol) in the Act are qualified in terms of restrictions imposed in the public interest. It is first necessary to consider firstly, whether the council's refusal of planning permission or issuing an enforcement notice would interfere with the applicants human rights; thereafter, whether any interference is in accordance with the law, has a legitimate aim and is proportionate.

The applicant has not presented significant human rights arguments in their written submissions. However, verbally, they have indicated that their house-boat is their only home, now that the sale of their house has been completed. Also, they have indicated that the bulk of the proceeds of the house has been spent on the houseboat and that if they cannot settle on the site they would effectively have no-where to go. However, no information has been submitted to substantiate these personal circumstances or to demonstrate that alternatives

such as renting permanent residential accommodation and/ or living permanently on the boat but not stationing it permanently at any one site. On the face of it the house boat appears to offer a reasonably comfortable home and that it is not necessary to have a permanent mooring.

In conclusion, whilst it is accepted that the implementation of the recommendation, below, would result in such human rights being interfered with, it is not accepted that the rights have been violated, since those rights are not absolute. Interference is permissible where it is necessary for the preservation of the environment and consequently in the public interest.

### **REASON FOR RECOMMENDATION**

The proposal is considered to conflict with the policies listed above.

### **RECOMMENDATION**

#### A. Refusal for the following reasons

- 1 The application site is within the Arden Special Landscape Area in the Warwickshire Structure Plan and identified more precisely in the Warwick District Local Plan. In such areas, priority will be given to the conservation and protection of the landscape and Policy ER.4 of the Warwickshire Structure Plan 1996-2011 and Policy (DW) C8 of the District Plan seek to ensure that development does not damage the local landscape character. It is considered that the proposed development would extend suburban influences into the countryside and replace the current soft landscape dominated edge with a hard built edge to the village. It would thereby conflict with policies ER.4 and (DW) C8 and emerging policy DAP3 of the first deposit version of the Local Plan (1996-2011), as augmented by the Warwickshire Landscape Guidelines, adopted as SPG in 1994.
- 2 The site is situated within the Green Belt and the Warwickshire Structure Plan 1996-2011 together with the Warwick District Local Plan and Planning Policy Guidance Note 2 states that, within the Green Belt, the openness and rural character of the area will be retained, protected and wherever possible enhanced. Local Plan policy (DW) ENV1 and emerging policy DAP1 of the first deposit version of the Local Plan (1996-2011) state that development will not normally be permitted, except in very special circumstances, for the construction of new buildings, unless it fulfils specific criteria. The proposed development does not satisfy any of these criteria and, in the Planning Authority's view, very special circumstances sufficient to justify departing from the development plan have not been demonstrated.
- 3 The proposed scale and type of mooring and canal bank surfacing and the erection of the block building would represent an encroachment of suburban influences on land adjoining the Stratford-Upon-Avon Canal that would unacceptably harm the character and setting of the canal, contrary to policy (DW) ENV30 of the Warwick District Local Plan, 1995.
- 4 The application plan does not demonstrate that a car can be turned within



the curtilage of the site as to enable it to leave and re-enter the highway in a forward gear. It is considered that any potential amended plan to demonstrate this would result in an unacceptable amount of earthworks cutting into the embankment to create a level surface for a turning area. The use of the proposed access without space to turn would lead to reversing movements onto the highway to the detriment of highway safety. The application would thereby conflict with policy (DW) ENV 3 of Warwick District Local Plan, 1995 and DP6 of Warwick District Local Plan 1996-2011 (First Deposit Version), 2003

- 5 The residential use of the embankment sides and top would result in an unacceptable loss of privacy for the neighbouring residential properties, thereby conflicting with policy (DW) ENV 3 of the Warwick District Local Plan, 1995 and DP2 of the Warwick District Local Plan 1996-2011 (First Deposit Version), 2003.
- 6 The application site is part of Ecosite 24/16, Rowington Junction to Henley-in-Arden (Disused Railway) and part of the application site is part of Ecosite 47/16, Stratford-on-Avon Canal, where both have been identified as a potential Site of Importance for Nature Conservation (pSINC). The lack of information in terms of ecological surveys to determine the presence or absence of protected species; together with the damage to the site of substantial nature conservation interest has resulted in unacceptable harm to nature conservation interests. The application would thereby conflict with policy (DW) ENV27 'Nature Conservation' of the adopted Warwick District Local Plan – April 1995 and DP3 'Natural Environment' of Warwick District Local Plan 1996 -2011 (First Deposit Version) 2003

B. That enforcement action be taken to:

- a. Cease the use of the land for residential use (including that part of the canal that is being used for the stationing of a house boat used for long term residential accommodation); and replanting and restoration of the site (apart from canal) to a predominantly woodland use commensurate with its status as an Ecosite and pSINC
- b. The demolition/ dismantling of the two buildings used for storage and the removal and reinstating of engineering operations related to the access and the moorings
- c. Period of compliance:
  - 4 months to cease the residential use of the land and to demolish/ dismantle the two buildings to remove materials and removal/reinstatement of the engineering operations
  - 12 months to replant and restore the site to a predominantly woodland use.

Note: The enforcement action would not be seeking to remove the right of the owners to use parts of the land for the keeping of poultry or other animals or for the stationing of animal shelters e.g. chicken coups that may not amount to building operations.