

RYEDALE DISTRICT COUNCIL

PLANNING COMMITTEE - 18 NOVEMBER 2014

Report of the Head of Planning

Non-compliance with both condition 06 of planning approval 00/00400/OUT and condition 6 of approval 02/00880/FUL at Steam & Moorland Garden Centre, Malton Road, Pickering North Yorkshire

Purpose of the Report

To advise Members of alleged breaches of planning control and recommend an appropriate course of action.

1. SITE LOCATION

1.1 The site lies to the south of Pickering outside the defined development limits for the settlement, to the eastern side of the A169 Malton to Pickering road. It is approximately 1.3km from Pickering Town Centre. It currently consists of an established garden centre and garden machinery sales and repairs business. There are two main buildings on the Steam and Moorland Centre complex which may be described as follows :

- 1.1.1 the Garden Centre building; and
- 1.1.2 the Machinery Centre building .

2. BREACHES OF CONDITIONS

2.1 The breaches of planning control comprises the breach of conditions restricting the range of goods which may be sold from both the Garden Centre building and the Machinery Centre building on the Steam and Moorland Centre complex. These are described below.

2.2 Non-compliance with Condition 06 on approval 00/00400/OUT (the Garden Centre building)

Condition No. 06 states:-

The building(s) hereby approved shall only be used as a garden centre for the display and sale of the following categories of goods:

- (i) Pot and bare rooted plants, ornamental fruit bushes and trees, seeds/bulbs, vegetable and bedding plants, ornamental and fruit trees, cut flowers;
- (ii) Garden requisites such as composts, fertilisers, weed killers/disinfectants, spray equipment, netting, cloches, plant supports;
- (iii) Gardening and greenhouse tools and equipment;

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- (iv) Gardening protective clothing and footwear;
- (v) Garden pond liners, pumps and equipment, pebbles, aquatic plants, fish and fish food;
- (vi) Fencing, path and patio construction materials such as gravel, paving slabs, edging materials;
- (vii) Garden furniture and ornaments such as seating, umbrellas, barbecue and barbecue fuel, bird tables, feeders and bird feed;
- (viii) Incidentals such as gardening books and videos, cards, artificial flowers, small animal feed (e.g. rabbit food); and
- (ix) Natural and artificial Christmas trees, Christmas decorations, table decorations, Christmas cards.

The building(s) and land shall not be used for any other purpose (including any other purpose in Use Class A1 of the Schedule of the Town & Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument re-voking or re-enacting that Order with or without modification).

Reason:- The site is in open countryside where current planning policy would not normally permit general retail uses.

2.2 Non-compliance with Condition 06 on approval 02/00880/FUL (the Machinery Centre building)

The building hereby approved shall only be for the display, sale and maintenance of the following categories of goods

Garden and Agricultural Machinery

The building shall not be used for any other purpose (including any other purposes in Use Class A1 of the Schedule of the Town & Country Planning (Use Classes) Order 1987, or any provisions equivalent to that Class in any statutory instrument revoking or re-enacting that Order with or without modification).

Reason:- As the site is located in open countryside where a wider retail use may not be appropriate and would be contrary to Policy R4 of the Ryedale Local Plan.

3. WHAT BREACHES HAVE OCCURRED

3.1 The use of the site was investigated by the Council's Enforcement Officer after complaints from operators within Pickering Town Centre regarding the goods for sale at the site. Complaints were received between November 2010 and January 2011.

3.2 When visiting the site, the Enforcement Officer noted numerous items for sale that fell outside those listed in Condition 06 of approval 00/00400/OUT. These included power tools and DIY items, pets and pet housing, general clothing, fuel, children's toys.

- 3.3 The appeal statement submitted by the appellant in relation to the appeal against the decision of the Local Planning Authority to refuse application ref. 13/01242/CLEUD states the following in relation to the Machinery Centre building:

*“The Local Planning Authority was provided with a detailed explanation of the circumstances relating to the sale of DIY goods. It is correct that DIY goods have been (and still are) sold from the adjoining Machinery Centre, which was opened for trading in 2006, but this does not alter the fact that they have also been sold from the application premises since 2003.”*

4. HISTORY

- 4.1 Outline planning permission was granted, closely followed by the reserved matters submission, for the erection of a garden centre which was approved on 3 October 2000. The main building, the subject of a CLEUD appeal, consists of a floor space of around 850-900m<sup>2</sup>. This has been described as the Garden Centre building. Building control records show that this building was completed on 7 September 2001.
- 4.2 The second building on the Steam and Moorland complex has been described as the Machinery Centre. Building control records show that this building was completed on the 3<sup>rd</sup> January 2008.
- 4.3 Planning permission has been granted for a link building between the above two buildings comprising a proposed entrance and first floor café. Planning permission for this was approved on 10 August 2010. The planning permission was the subject of a variation application which was granted on 9 December 2011. The time condition expires on 8 December 2014. A further variation application was received on Friday 20 June 2014. This planning permission has not been implemented. The site of the link building is part of the CLEUD application site.
- 4.4 The detailed planning history of the Steam and Moorland complex is as follows :

14/00692/73A Variation of condition 05 of approval 11/00749/FUL to apply condition restricting retail sales to building singular as opposed to building(s) plural.  
Application received on Friday 20 June 2014.  
This application was approved on 28 August 2014.

13/01242/CLEUD This application was in respect of the alleged retail sale of goods in breach of condition 06 of approval 00/00400/OUT for more than 10 years. This application was registered on 30 October 2013. The application was considered by the Planning Committee meeting on 1 July 2014: Refused.

Members of the Planning Committee encouraged the applicant to submit an application for a variation of condition for a limited extension of the range of goods that may be sold from the Garden Centre for consideration by the Planning Committee.

Appeal Lodged. Public Inquiry scheduled for 17 March 2015.

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- 13/00560/73A Variation of condition 06 of approval 00/00400/OUT dated 04.08.2000 to allow the sale and display of additional goods as listed within the submitted supporting documentation dated 13th May 2013 – This planning application was considered by the Planning Committee meeting on 29 July 2014.  
At the early part of the agenda relating to declarations of interest Councillor Ann Hopkinson declared that she was a director and shareholder of the garden centre at Item 14 on the agenda relating to the Steam and Moorland Garden Centre Limited.  
When the Planning Committee considered the Steam and Moorland planning application Councillor Hopkinson refused to leave the Committee meeting despite being requested to do so by Councillor Raper the Chairman of the Planning Committee.  
The impasse was dealt with by the Planning Committee resolving to defer consideration of the planning application.  
By a letter from Councillor Ann Hopkinson dated 12 October 2013, addressed to Councillor Raper as Chairman of the Planning Committee and the Members of the Planning Committee, Councillor Hopkinson apologised for causing disruption and also acknowledged that the constitution did require her to leave the Planning Committee meeting on 29 July 2013 because of her interests.  
Councillor Ann Hopkinson ceased to be a substitute Member of the Planning Committee as from 31st October 2013.
- The planning application was WITHDRAWN on 6 December 2013
- 11/00749/73A Variation of condition 16 of approval 10/00114/FUL dated 10.08.2010 to change reference to approved plans and substitution of some plans – APPROVED – 9 December 2011. Time condition expires on 8 December 2014.
- 11/00622/73A Variation of Condition No. 06 of approval 00/00400/OUT dated 04.08.2000 to allow the display and sale of additional goods as listed within the submitted supporting documentation dated 17 June 2011 – Appeal dismissed by decision letter dated 19 July 2012.
- 10/00114/FUL Erection of a two-storey, link extension between two existing buildings to form covered display and sales area to ground floor and cafe, offices, storage and staff room to first floor – APPROVED 10/08/2010
- This planning permission includes a condition which deals with the issue of the outdoor sales area and is currently being considered through a discharge of condition application pursuant to the planning permission granted in respect of planning application reference 11/00749/73A.
- 05/01199/ADV Advertisement Consent granted for the display of 3m by 2m non-illuminated post mounted V name sign.

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- 02/00880/FUL      Erection of building for use as garden and agricultural machinery centre and associated parking – APPROVED 13/09/2004
- 00/00917/REM      Erection of garden centre with associated parking and access – APPROVED 03/10/2000
- 00/00400/OUT      Erection of Garden Centre – APPROVED 04/08/2000.

5.      PLANNING POLICY CONTEXT

5.1      The relevant planning policy considerations are:

National Planning Policy Framework (NPPF)

- |              |   |                                       |
|--------------|---|---------------------------------------|
| Paragraph 14 | – | Achieving Sustainable Development     |
| Section 2    | – | Ensuring the vitality of town centres |
| Section 3    | – | Supporting a prosperous rural economy |

Ryedale Plan - Local Plan Strategy

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|-------------|---|--|
| Policy SP7  | – | Town Centres and Retailing                       |
| Policy SP19 | – | Presumption in Favour of Sustainable Development |
| Policy SP20 | – | Generic Development Management Issues            |

6.      APPRAISAL

6.1      The planning permission granted for the garden centre in August 2000 restricted the sale of goods from the site to a category largely linked to items found within a garden. The items outside this range were listed as ‘incidentals’ under viii) namely gardening books and videos, cards, artificial flowers and small animal feed; and listed Christmas items, under ix) natural and artificial trees, cards and decorations. This granted planning permission for a reasonable level of additional products in association with the Garden Centre. This condition was applied to prevent general retailing from this site as it would prejudice the vitality and viability of Pickering Town Centre.

6.2      A detailed list of unauthorised items currently for sale at the garden centre include:

- Power tools, nails, screws, paint
- Pets - fish, budgies, together with cages and animal houses
- Clothes - outdoor wear, work clothes, overalls, boots, shoes and socks
- Coal - coal bunkers, logs
- Children’s toys - go-karts, sledges
- Books, diaries and address books, clocks, ornaments
- Jams, toasters, thermos flasks

This list is not exhaustive and such items as vacuum cleaners and freezers have also been sold from the site.

6.3      Following a meeting with the owners of the business in May 2011, a planning application was subsequently received on 20 June 2011 to vary Condition 06 on

approval 00/00400/OUT. It listed the following items to be included for sale from the garden centre:

- Garden and general toys
- Garden gates and furniture; handles, bolts, locks, chain
- Conservatory furniture and decorations
- Greenhouses and sheds and ancillary goods necessary for the erection and maintenance; alarms, ladders, door fittings, hooks, power sockets, wiring flex, sealant, paint and watering systems
- Giftware; candles, pictures, pottery, ceramics and glassware, bath and beauty, soft furnishings (cushions etc) and homeware style gifts e.g. trays, coaster, biscuit tins
- Winter necessities; coal, logs, lighters, grit, de-icer, fuel, fireside accessories
- Animal feeds
- Farm shop style produce; jams, biscuits, breads, vegetables, meats
- Water features, aquatics, spas and pools
- Country and protective style clothing and footwear
- Hardware goods ancillary to gardening goods; hand tools, light power tools, fixing
- Solar and electrical lighting and items required for their installation, switches, cables, bulbs.

- 6.4 On the application for the original outline permission in 2000, the applicants at that time were advised that the sequential test was needed to be undertaken in accordance with PPG6 - 'Town Centres & Retail Development' 1996 and Policy R4 - Retail development outside the Town Centre Commercial Limits of the Draft Local Plan at the time. The applicants made a case that the proposed garden centre was closely aligned with Rogers Nurseries which is immediately to the north of the site and shares the same access. They also argued that this would allow Rodgers Nurseries to focus on its key plant business and less on the retail side. The applicants were asked to submit a list of products they would sell from the Garden Centre, which they did. It is clear from the outset that the sequential test was required for general retailing. The applicants made a case, however, that it had specialist links with the adjoining nursery use. The Planning Committee accepted this argument but subject to the imposition of Condition 06 limiting the range of goods that could be sold.
- 6.5 In 2012 a planning appeal was received against the non-determination of planning application 11/00622/73A to vary Condition 06 of planning approval 00/00400/OUT. The appeal was dismissed by the Planning Inspector. Members are referred to the appendix of this report which includes a copy of the Inspectors decision.
- 6.6 In 2014 a Certificate of Lawfulness was refused in respect of the retail sales of goods in breach of condition 06 of approval 00/00400/OUT. The applicant had not demonstrated to the satisfaction of the Local Planning Authority that a breach of condition 06 had occurred for a period of 10 years. The applicant has appealed this decision and the Public Inquiry is scheduled for 17 March 2015.
- 6.7 The appeal statement in relation to the CLEUD appeal for the Garden Centre referred to in paragraph 3.3 above clearly indicates a breach of condition in the Machinery Centre.
- 6.8 In view of the applicant's refusal to adhere to National Planning Policy, the nature of the complaints received, and the evidence of the clear breaches of planning conditions, it is

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considered that the Local Planning Authority should take action to remedy these breaches of planning control.

7. WHY IS IT CONSIDERED EXPEDIENT TO SERVE A NOTICE?

7.1 The site is located in open countryside outside the development limits of Pickering and well outside of any identified Town Centre Commercial Limits. Without information to satisfy the sequential test requirements identified in Section 2 of the NPPF, the general retail sales as detailed above from the garden centre are contrary to national planning advice contained in the NPPF. This use would adversely impact on the vitality and viability of Pickering town centre. The breach of control would also form an unsustainable form of development contrary to the requirements of Para. 14 of the NPPF and Policy SP19 of the Ryedale Local Plan Strategy. In this instance, with a clear breach of a planning condition (imposed for good reason and which is supported by national policy), it is considered expedient to take action and issue a Breach of Condition Enforcement Notice.

7.2 The expediency reason to serve an enforcement notice is outlined below:

1. The unauthorised breach of condition is contrary to Policy SP7 of the Ryedale Local Plan Strategy and Section 2 of the NPPF as it constitutes the unauthorised sale of goods from an out of town centre location. Policy SP7 only supports proposals which “maintain and enhance the vitality and viability of each town centre” and which involve development “redevelopment of land and buildings within or on the edge of the Town Centre Commercial Limits”. The unauthorised sale of goods in this location does not maintain and enhance the vitality and viability of Pickering and does not involve the redevelopment of land and buildings within or on the edge of the Town Centre Commercial Limits. Therefore, without the submission of a sequential test as required by the NPPF in such circumstances, it has not been demonstrated that no harm to Pickering town centre has occurred and that the development would be sustainable. The development is thereby contrary to Para. 14 and Section 2 of the NPPF, and Policy SP7 and SP19 of the Ryedale Local Plan Strategy.

8. STEPS NECESSARY TO REMEDY THE BREACH

8.1 This report seeks authorisation to serve a formal enforcement notice to ensure compliance with Condition 06 on approval 00/00400/OUT and Condition 06 on approval 02/00880/FUL to achieve compliance with Condition 06 of both the above planning permissions the necessary steps include:

1. The cessation of the sale of goods on the site which are not permitted under Condition 06 of planning permission ref. 00/00400/OUT together with the removal of those unauthorised goods from the site.
2. The cessation of the sale goods on the site which are not permitted under Condition 06 of planning permission ref. 02/00880/FUL together with the removal of those unauthorised goods from the site.

9. SUGGESTED PERIOD FOR COMPLIANCE

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9.1 The suggested period for compliance is one month.

Recommendation

The Council Solicitor be authorised in consultation with the Head of Planning and Housing Services to issue an enforcement notice pursuant to section 172 of the Town and Country Planning Act 1990 (as amended) requiring :

- (i) The cessation of the sale of goods on the site which are not permitted under Condition 06 of planning permission ref. 00/00400/OUT together with the removal of those unauthorised goods from the site; and
- (ii) The cessation of the sale of goods on the site which are not permitted under Condition 06 of planning permission ref. 02/00880/FUL together with the removal of those unauthorised goods from the site.

Background Papers

Investigation file 08/00145/BC

Investigation file 10/00156/BC

Application 00/00400/OUT

Application 10/00114/FUL

Application 11/00600/73A

Application 13/01242/ CLEUD