
BREACH OF PLANNING CONTROL AT SIMLA RESTAURANT, FERRY ROAD, HULLBRIDGE

1 SUMMARY

- 1.1 To consider the report of the Head of Planning Services regarding breaches of planning control, namely the failure to comply with a planning condition requiring an area of hardstanding to be kept clear of vehicle parking
- 1.2 Members will need to consider whether it is expedient to serve enforcement notices, etc. and this function is discretionary. However, the mechanisms of such actions are statutorily controlled

2 INTRODUCTION

- 2.1 Members may recall considering whether to take enforcement action here in November 2003. It was agreed that action could be taken against the construction of a hardstand (Minute No.03/538). However, since that decision was taken additional historical evidence has come to light, which now results in further Committee consideration being required. Authorisation is now sought for a slightly different breach of planning control.
- 2.2 This relates to the breach of a condition rather the construction of an extensive hardstand. The history below explains the origin of the condition, which was imposed in connection with a previous Enforcement Notice and the subsequent appeal from 1992.

3 PLANNING HISTORY OF THE SITE

- 3.1 There has been a restaurant/café on this site for many years and records indicate that this use pre-dates the introduction of general planning control in 1948. There have been applications to provide parking for customers in recent years
- 3.2 Planning application ref.F/0858/90/ROC for 19 parking spaces and a boundary fence was refused on the grounds that the hard surfacing would be visually detrimental to the adjacent listed buildings and the area generally.
- 3.3 In 1991 an Enforcement Notice was served against the unauthorised construction of a car parking hardstanding on the site. The Inspector on the appeal into this Notice took the view that "the dwellings on the north and south boundaries of the site could experience considerable nuisance from noise and general disturbance in the late hours caused by patrons and staff leaving the car park....." but allowed the hardstanding to remain. However, this was on

the condition that the surfaced area around the premises should not be used for the parking of motor vehicles.

- 3.4 A subsequent application (Ref. 99/0047/FUL) for alterations to the front boundary wall and the formation of three parking spaces was submitted in 1999. This was also refused due to the loss of privacy and amenities by reason of noise intrusion from vehicles, etc, late at night.

4 PLANNING AND HUMAN RIGHTS ISSUES

- 4.1 The site is within a residential area with several dwellings nearby, including a number of listed buildings. When the Inspector allowed the appeal above the condition was imposed to prevent parking here, which would have a significant impact on the residential amenities. Such a use is therefore contrary to Policies H24 and EB6 of the Rochford District Local Plan which deals with safeguarding amenities in residential areas and the issue of non-conforming uses respectively.
- 4.2 More recently (2003) Anglian Water has laid further material on the hardstanding in conjunction with some important drainage works nearby. This has resulted in increased complaints from neighbours and the Parish Council about the hardstanding and its use. Whilst originally it was felt that this was an entirely new hardstanding, various documents, photographs, etc have indicated that the original hardstanding covered the vast majority of the site. Accordingly it is now considered that the recent works were an act of repair and maintenance to the original hardstanding.
- 4.3 Accordingly action cannot now be taken against the hardstanding's construction, but the planning condition still applies. Evidence from neighbours and officers' own inspections have now confirmed that vehicles have been parking in this area. This is clearly contrary to the condition. The continued use is detrimental to neighbours' amenity and can now be the subject of enforcement action.
- 4.4 Whilst it may be that such action will have an effect on the restaurant owner's right to operate a legitimate business, the condition was imposed to safeguard the rights of adjoining occupiers. Accordingly it is not considered that such action would seriously undermine Human Rights.

5 RISK IMPLICATIONS

5.1 Strategic Risk

The Council is required to produce a Local Plan detailing the Authority's policies in the District and the Authority should demonstrate its commitment to delivering the aims and objectives in line with this document.

5.2 Resources Risk

The Council may be liable for costs incurred during the defence of any appeal, including the appellant's claims for costs, if the Authority's action is judged to be unreasonable. Costs may also be claimed during legal action to obtain compliance with a notice.

5.3 Reputation Risk

If action is not taken in this case this Council will be seen to not implement its policy objectives to the full. A precedent may also be set making it difficult for the Authority to resist similar breaches. Consequently unless it is serious in its commitment to ensure that development is in accordance with Local Plan policies, these very policies will be undermined

6 RECOMMENDATION

6.1 It is proposed that the Committee RESOLVES

That the Head of Planning Services be authorised to take all necessary action including the issue of Notices and action in the Courts to secure the remedying of the breach now reported.

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Background Papers:

None

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