

HAM PARISH COUNCIL

MINUTES OF A PLANNING MEETING

A planning meeting of Ham Parish Council took place at 7pm on 10th August 2020 over Zoom video conference.

Present: Mr C Dean (Chairman), Lady Walker (Vice-chairman), Mr J Marriage, Mr M Humphreys, Mr D Bicknell and 14 members of the public.

1. Apologies

none

2. Declarations of Interest:

none

3. Matters Arising:

The Chairman summarised the recent applications that had been approved by Wiltshire Council and noted that a new application had been presented for Sunnymead to be discussed before the deadline of the 2nd September.

4. Planning Applications

4.1 Application Ref: 20/05452/FUL

Application for Full Planning

Proposal:- Insertion of dormer windows into the west and south roofs.

At: Brights Meadow, Ham, Marlborough, SN8 3RB

Richard Springford, the architect for the application, explained that when the application was first considered there was a large belt of trees and hedges which have since been removed, and as a result visibility is two way from both the roof, 1st floor and indeed the ground floor. He explained that Velux windows, which would not require planning, were a fall back but that dormer windows were preferred. Further to this, privacy could be restored through the planting of new trees, and the applicants were more than happy to consider this.

The Chairman then read the following from James Eldridge, resident of the neighbouring property Yew Tree Cottage.

“As the occupier of Yew Tree Cottage, the nearest property to Brights Meadow I object most strongly to the proposed dormer windows being inserted into the west facing roof.

As an already substantial high building these windows would seriously impact on my property. There would be an unacceptable degree of overlooking into my garden and habitable windows.

The applicant has suggested planting more trees to mask these dormers. Unfortunately, it would take many years to reach the height required to have any effect and of course being deciduous they would lose their leaves in winter and give no cover.

I have no objection to dormers being inserted in the south facing roof. However, I do take issue with the architects design statement 'that there will be no new overlooking to the west and that the nearest property is shrouded behind trees. I would also suggest that the submitted block plan of Brights Meadow has been drawn in such a way as to make this large house appear much smaller than it actually is.

In addition to the documents you already have could I add this map showing the 2 trees in the garden of Yew Tree Cottage which were felled in this area on 19th April 2020. An apple and a cherry, both rotten and about 15 ft in height, maximum. These would not have provided any cover as suggested in the application.

Finally – a question as to whether the dormers could not be inserted on the east facing side of the west wing.”

In response Richard Springford explained that the design of the house was the reason behind the existing plans, and that due to a circular staircase to the rear of the property east facing dormers were not possible.

Mrs. Hastie, the applicant, confirmed that the plans were correct and matched the Land Registry document. In addition, that the west facing side faces down the drive rather than directly towards Yew Tree cottage.

Andrew Melsom, a near neighbour also questioned the size of the property, but that due to the screening of existing trees and hedges did not think he would be affected.

The Chairman added that he visited the site that afternoon with councillor David Bicknell and felt that there was an issue with Yew Tree being overlooked by the proposed dormers in the West facing side.

Mrs. Hastie reaffirmed that they were happy to plant trees as necessary to shield the garden at Yew Tree, and there was no desire to overlook the neighbouring properties, or indeed the new extension being built at Yew Tree cottage.

James Eldridge asked if the application was written before or after April when two trees which were removed. There followed a discussion of when the design statement was written with reference to these trees, and how the removal of these trees affected the degree of being overlooked.

The Chairman explained that his opinion was to support the application subject to the removal of the west facing dormer windows. All councillors agreed with this position.

4.2 Manor Farm Covenant

The Chairman read the following summary:

“Paul Clarke purchased what is now known as Ham Estate in 2010. He decided to sell two plots of farmland with redundant barns, together with planning permission for a large country house on each site. One site, known in the planning application as Wansdyke, was on land between Ham Spray House and Spray Road. The other site was Manor Farm. The initial scheme which covered both sites was for two very large houses with associated outbuildings. This caused consternation in the village and the Parish Council objected to both. Then, after considerable negotiations with both Paul Clarke and his architect, Mike Fowler, and a significant reduction in size of both building complexes, the Parish Council agreed to support the planning application, subject amongst other things to restrictive covenants on both sites (ie a separate covenant for each site). The main element of both covenants was that the owner of the site could not build outside the envelope/footprint of the building complex as set out in the planning application. Paul Clarke consented to these conditions.

On 31 March 2011 Planning Application E/10/1620/FUL came before the Eastern Area Planning Committee. What is important to note is that in their written brief to the Planning Committee members the planning officers commented that Ham Parish Council supported the application subject to the covenants. At the meeting the Parish Council duly supported the application, and the application was approved. It was hailed as a victory for common sense on both sides.

After the approval the covenants were signed by both parties. They were drafted by Horsey Lightly, solicitors in Newbury, who hold the original copies. The covenants are enforceable to the successors in title of the two sites. The legal fees were paid by Paul Clarke.

The Wansdyke site, together with its associated planning consent, was bought by owners of Ham Spray House who have chosen not to build on it, but instead to create park with a new access road to the house running through it. The original planning consent could always be revived, and the covenant remains in force.

The Manor Farm site was purchased by Iain Lindsay and Fiona Kenneth. The planning consent allowed them to convert one of the barns into a main dwelling with a new single storey projection and to build two new smaller barns immediately adjacent to the main dwelling on its eastern front, one as a garage/store and the other as guest accommodation: in fact, what you see there now except that the guest barn has so far not been built. This barn allows for a living room, kitchen and cloakroom downstairs and two bedrooms and a bathroom upstairs. In 2013 Mike Fowler approached the Parish Council on behalf of Lindsay/Kenneth for permission to enlarge the single storey projection. This caused an initial difficulty as some immediate neighbours were already opposed to the planning consent, but the Parish Council paved the way for a variation to the covenant and this was duly approved and implemented. What is important here is that there was no obligation on the Parish Council to do this but was done out of goodwill towards the owners. Both are signatories to the covenant and its amendment, and Fowler Architecture & Planning are also aware that the site is covered by a restrictive covenant.

In Summary,

The covenant was setup by Ham Parish Council in 2011 on behalf of the village with the primary reason to prevent building outside of the agreed planning envelope. A Deed of Variation was agreed in 2014 by all parties.

The original covenant requires any seller of Manor Farm to ensure that the purchaser enters into that covenant. So, on purchasing the property with its planning permission, the Lindsays were required to sign the original covenant. This was before they signed the later Deed of Variation.

I would also like to add that I have received a letter signed by the 6 closest neighbours who would be affected by the planning application. Paul Clark, George and Rose Clowes, James Eldridge, Jessica Kary, Susie Phillips and Rags & Oliva Simmonds. Whilst some of the detail is for the next part of the meeting, they ask that the Parish Council uphold and enforce the Restrictive Covenant on several counts:

1. It contravenes the original Planning Permissions E/10/1420/FUL and 13/04494/FUL.
2. The external dimensions exceed those permitted.
3. The site and footprint exceed those permitted.
4. The proposed openings in the north and south are in contravention."

The Chairman then opened to the floor for comments.

There were no further points added so the Chairman explained that the council needed to decide on its position with regards to whether the covenant could be amended.

The Chairman explained that his position was that the Parish Council had an obligation to uphold the covenant, and that the alteration made in 2014 did not set a precedent. In addition, that further changes were not in the interest of the village. As a result, the Chairman voted not to allow further amendments to the covenant. Each councillor in turn agreed that the covenant should stand as is.

The Parish Council recorded a unanimous decision not to allow further amendments to the existing covenant.

4.3 Application Ref: 20/04932/FUL

Application for Full Planning

Proposal:- Erection of single-storey annex accommodation.

At: Manor Farm, Ham South East C198 To Ham Hill, Ham, SN8 3RG

Following the decision on the covenant, the Chairman explained that as a result he felt there was no choice but to object to the planning application brought by the applicants, due to the fact that the application clearly broke the terms laid out in the covenant on several fronts. He apologised to the applicants and the architect that there was no need to discuss the details of the application itself.

He then asked his fellow councillors if they agreed with this position, and to submit a decision to object to the application as a result of the position of the proposed annexe.

All councillors unanimously agreed to object to the application.

Mrs. Lindsay, the applicant, asked to speak and explain her position. She began by saying she was unsure which way round things would proceed, and that whilst her statement may now seem irrelevant, she wished to give it anyway.

She explained that it had been 7 years since they came to the village, and in that time got married, had children and had made many improvements to the property, not least as it was an industrial site beforehand. She had hoped to ask for the Parish Council's support for the application as it was intended to provide accommodation for her mother, who has experienced considerable personal loss. As a result of her mother's disability needs the original 2 storey annexe covered by the existing planning in place was not suitable.

They wanted to build something fit for purpose, hence a single storey design, and that the change in location was as a result that the new annexe would not fit in the original area. The new annexe is lower in height and slightly smaller in total floor space, agricultural in style with no windows facing the road. The proposed location is far back from the road and far away from the nearest neighbouring house. She explained that she had hoped to address some the concerns raised that had been posted online and had hoped that the community would provide their support. She also explained that they were also offering to give up the original space, so that the annexe in this application was a replacement to the one in the existing planning permission, and that the covenant could be amended to cover this.

Finally, she explained her disappointment that these aspects could not be discussed.

The Chairman asked if anyone else would like to speak.

Mr. Fowler, the architect, asked if he could say one thing and explained that he felt that the procedural situation that had been engineered had stifled free speech, and that not a single merit on the planning application was discussed. He went on to explain that the covenant was not a planning issue and that we could if we wanted to choose to vote not to amend the covenant but still discuss the planning application. He said it was made clear to us by Wiltshire council of this situation and that we could not stifle freedom of speech by engineering a manoeuvre.

The Chairman explained that this was not the advice he had received from Wiltshire.

Mr. Fowler continued to explain that covenants are a separate branch of law and planning for the annexe could be granted even if it was not implementable. The covenant would then be for another battle or a court to decide. He repeated that we cannot stifle freedom of speech by objecting to the covenant and that the Parish Council had not allowed debate.

Mr. Melsom asked to speak. He explained that these situations are very difficult but felt that the Parish Council had come to the right decision. He pointed out that Paul Clark and 5 other near neighbours had made it very clear they did not want this application to proceed. On the point of vocabulary, he explained that he had never considered this as an annexe but as a new dwelling. The Lindsays did sign a covenant in which they agreed not to build outside of the pre-agreed permissions. He went on to say that the Parish Council has the right to uphold the covenant and had given good reason to do so, and that he felt that the procedure that was followed was absolutely fine as there were two separate agenda items. He concluded by saying that he fully supported the Parish Council's decision.

Mr. Fowler interjected again and complained that the covenant was inserted into the agenda, that it was artificially put in, that this was engineered and is wrong.

Mr. Buchannon-Dunlop asked to speak. He explained that the part missed by both the applicants and the architect is that both parties knew from the beginning that there was a restrictive covenant in place and why, that it was there to stop any proliferation on the site and that this was what the village wanted in 2011 when it was signed. There was a minor variation agreed in 2013 which was quite different to the application being presented today. He continued to say that there is guest barn in the existing planning permission which a good architect could make suitable for a person with disabilities. And that being called unreasonable by the architect was unreasonable in itself, the covenant and the site are bound together. He also explained that as mentioned Wiltshire will not take note on the covenant when coming to a decision but that there is no reason why it cannot be discussed in relation to this. Finally, he concluded by saying that if the council was not prepared to amend the covenant then there is no point discussing the application in any detail as it would break the covenant.

Mr. Fowler interrupted saying he had a further point and that he would be interested to see the minutes as he was also recording the meeting. He explained that the decision on the application being refused was made without any discussion of the merits of the application, and what was the harm in the application. Again, he repeated that there had been no discussion and yet the Parish Council had voted against it.

The Chairman explained that he respectfully disagreed.

Mr. Fowler continued explaining that there had been 6 objections and this had been orchestrated, and that we should look at the substance and what is the harm, and that we should not look at the covenant.

Mrs. Lindsay explained that she like to be able to report back to her mother why the application had been objected to, and what the reasons were in planning terms. She reiterated the difficulties her mother would have with a larger building.

The Chairman explained that he could not add anything further and that the meeting was effectively at an end.

Mrs. Lindsay asked if she was still allowed the original 2 storey building in the original location. The Chairman responded by explaining that yes, of course, the original planning alongside the covenant still stands, and that Mr. Fowler was involved in this when she moved in.

Mr. Fowler asked that because there was an absence of debate what were the reasons for the objection. The Chairman asked not to go back over the meeting at this stage.

Mr. Fowler continued to ask for a motion and accused the Chairman of making the minutes up after the fact. The Chairman responded that the minutes would be written accurately.

Mr. Fowler again questioned on what basis the application was refused and the link to the decision not to amend the covenant.

The Chairman responded that the minutes would be prepared in due time and made available, and that the consultation period, likely to be extended by 3 weeks due to updated site plans submitted by Mr. Fowler, would allow more time for comments to be submitted.

Mr. Fowler continued to ask how we could submit our comments when none were made, that this was a public meeting and we could not make things up afterwards.

The Chairman responded that we had been through this several times, and that we had objected to the application. He then thanked everyone and called the meeting to a close.

The meeting ended at 8pm.