

Meeting:	Development Control Committee
Date:	Wednesday 7 June 2006
Subject:	Former Cloister Wood Fitness Club
Responsible Officer:	Andy Parsons
Contact Officer:	Frank Stocks
Portfolio Holder:	To be confirmed
Key Decision:	No
Status:	Public

### **Section 1: Summary**

- 1.1 This report updates the Committee in respect of the recently-granted planning permission (**P/1306/05/CFU**) and seeks agreement on the 'overflow' car parking that occurred on Sunday 21 May 2006.
- 1.2 The report also updates Committee in respect of a number of conditions on the planning permission that remain to be addressed.

### **Decision Required**

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| <ol style="list-style-type: none"><li>1. Development Control Committee agree that the overflow parking that occurred on Sunday 21 May 2006 be recorded as the first of the 6 occasions per year that such parking is allowed under the terms of the Section 106 agreement attached to planning permission <b>P/1306/05/CFU</b>.</li><li>2. Development Control Committee agree the approach adopted by the Officers in advising the applicants about the outstanding planning conditions in planning</li></ol> |
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permission **P/1306/05/CFU** and the use of the site.

3. The applicants be advised accordingly.

### **Reason for report**

To clarify the position in respect of the use of the site, following the recent completion of the Section 106 agreement and the grant of planning permission **P1306/05/CFU**.

### **Benefits**

To enhance the environment of the Borough and to safeguard the amenity of neighbouring residents.

### **Cost of Proposals**

None at this stage

### **Risks**

The applicants need to take urgent action to regularise the position in respect of the use of the site. Failure to do so will jeopardise the planning permission and in effect leave the use without a valid planning permission

### **Implications if recommendations rejected**

If the Committee does not accept that Sunday 21 May 2006 was the first occasion for overflow parking then there would still remain six possible instances for such parking within the first year.

## **Section 2: Report**

### **2.1 Brief History**

2.1.1 Planning application, reference **P/1306/05/CFU**, was received on 24 May 2005 for:

*Change of use: leisure to religious uses (Class D2 to D1) including conversion of garages to caretakers house, increase height of squash / functions building by 1 metre, external alterations, additional car park*

- 2.1.2 The application was reported to Development Control Committee on 9 November 2005, following lengthy negotiations on the proposed heads of terms for a Section 106 agreement.
- 2.1.3 In the meantime building works on site had already commenced on, inter alia, the construction of the 1 metre high extension to the former squash / fitness building. The applicants had been advised by Officers that any works undertaken in advance of planning permission were undertaken at their own risk, and Committee was fully aware of this position.
- 2.1.4 The planning application was deferred from the November meeting:
- 1) to enable an independent traffic impact assessment to be commissioned; and
  - 2) for officers to notify a wider area, in respect of which 359 additional addresses were notified and responses reported at the meeting.
- 2.1.5 In respect of 1) Members received a copy of the independent traffic impact assessment which was published in November 2005 and included an appraisal of the application.
- 2.1.6 The traffic impact section of the report to the Committee on 9 November 2005 was expanded in the Officers' report to Committee to discuss the issue in more detail.
- 2.1.7 Development Control Committee on 11 January 2006 resolved to grant planning permission for application **P/754/05/CFU** (*for provision of new gates across entrance in Wood Lane*). This application had been deferred previously for consideration at the same time as the change of use application.
- 2.1.8 At the same meeting Committee also granted planning permission (unanimously) for application **P/1306/05/CFU**, subject to a Section 106 agreement. The addendum to the Officers' report (published prior to the meeting in the usual way) included an additional Informative, advising on the timing of functions or events in relation to neighbouring uses.
- 2.1.9 In resolving to grant planning permission Committee made a number of amendments to the heads of terms of the legal agreement, and the formal decision was minuted as follows:
- (1) the proposal is acceptable subject to the completion of a legal agreement within one year (or such period as the Council may determine) of the date of the Committee decision on this application relating to:
    - (i) prior approval by the Local Planning Authority's Development Control Committee and implementation by the occupier of the development of a Travel Plan (to include an annual review) prior to commencement of use.
    - (ii) the occupier of the development shall fund all costs on public consultation, analysis, reporting and implementation of local on-street waiting restrictions, at any time within 5 years of the commencement of the use, if in the Council's opinion, a monitoring period shows unacceptable local on street parking, up to a maximum amount of £20,000 index linked.

- (iii) parking within the site but outside the defined car parks shown on drawing SP/854c shall not be permitted without the prior approval of the Local Planning Authority's Development Control Committee and on no more than 6 occasions per year.
- (2) a formal decision notice, subject to the planning conditions and informatives reported and as amended on the Addendum, will be issued only upon completion by the applicant of the aforementioned legal agreement. For the avoidance of doubt the submission and approval of the Travel Plan must precede the completion of the aforementioned legal agreement.

[Notes:

- (i) Prior to discussing the above application, the Committee received representations from an objector, and the applicant's representative, which were noted;
- (ii) during discussion on the above application, the Committee agreed amendments to the recommendation set out in the officer's report;
- (iii) the decision to grant the application subject to completion of the legal agreement was unanimous.]

2.1.10 Following the Committee resolution negotiations on the agreement continued.

2.1.11 On 15 March 2006 Development Control Committee agreed the applicants' revised Travel Plan, following consideration of an Officers' report.

2.1.12 Officers became aware in early May that the applicants were planning to hold a ceremony at the end of May or early June involving moving of the idols from their temple in Buckingham Road, Edgware to the Wood Lane site. This was alleged to involve the attendance of a substantial number of devotees from all over the country.

2.1.13 A press release from the Harrow Times on 16 May subsequently confirmed that the ceremony, commencing with a procession, was to be held on Sunday 22 May and that celebrations were to continue through the following week.

2.1.14 Officers dispatched a letter on Thursday 18 May to the applicant's representative, Mr Varsani, advising him of the legal position:

- the legal agreement was not yet completed and signed,
- planning permission had obviously not been issued,
- when the permission was issued it would include a number of conditions that required submission and agreement of details before any use commenced, and
- any use that commenced in this context would be in breach of planning control.

2.1.15 Meanwhile, on the same evening of 18 May 2006 the Mayor signed the Section 106 agreement. This then allowed the issue of the planning permission on 19 May.

## 2.2 Planning Considerations – Car Parking Outside of Defined Areas

2.2.1 The Section 106 agreement includes a third head of term:

*“...parking within the site but outside the defined car parks shown on drawing SP/854c shall not be permitted without the prior approval of the Local Planning Authority's Development Control Committee and on no more than 6 occasions per year...”*

- 2.2.2 The ceremony held on Sunday 21 May 2006 involved the attendance of thousands of devotees and the Officers' view is that this is likely to be a one-off event. Nevertheless, the event did involve the parking of vehicles outside of the three defined car parking areas. In particular this involved the use of the field adjacent to the third car park (car park 3) as an overflow parking area. Evidence of this was seen when Officers visited the site on Monday afternoon.
- 2.2.3 Although no prior agreement was sought this was obviously somewhat difficult as the legal agreement was not signed until 18 May, nor the subsequent planning permission issued until 19 May. In these circumstances Officers consider it reasonable that this event should nevertheless be recorded as the first of the six possible occasions (in any one year) referred to in the agreement.
- 2.2.4 Committee is therefore asked in Recommendation 1 to endorse this view so that Officers can advise the applicants accordingly.
- 2.3 Planning Considerations – Non-Compliance with Conditions Imposed on Planning Permission P/1306/05/CFU
- 2.3.1 The Planning permission included five 'conditions precedent'. These are conditions that require the submission and agreement by the Local Planning Authority of certain details before, for example, the start of the development or the commencement of the use. The five conditions precedent are:
3. The use hereby permitted shall not be commenced until all the works detailed in the application have been completed in accordance with the permission granted, unless otherwise agreed in writing by the local planning authority.  
REASON: To ensure a satisfactory form of development.
  4. The development hereby permitted shall not commence until details indicating adequate access to, and egress from, the building(s) have been submitted to, and approved in writing by, the local planning authority. The development shall not be occupied or used until the works have been completed in accordance with the approved details and shall thereafter be retained.  
REASON: To ensure that the development will be accessible to people with disabilities.
  5. A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to, and approved in writing by, the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.  
REASON: To safeguard the appearance and character of the area, and to enhance the appearance of the development.
  6. The uses hereby permitted shall not commence until the car parking, turning and loading area(s) show on the approved plans have been constructed and surfaced with impervious materials, and drained in accordance with details submitted to, and approved in writing by, the local planning authority. The car parking spaces shall be permanently marked out (with the exception of car park 3) and used for no other purpose, at any time, without the written permission of the local planning authority.  
REASON: To ensure the satisfactory provision of parking areas, to safeguard the appearance of the locality and in the interests of highway safety.
  7. Details of fencing around car park 3 shall be submitted to and approved by the Local Planning Authority, and implemented in accordance with the approved details before commencement of the uses hereby approved. The fencing shall be retained thereafter unless agreed beforehand in writing by the Local Planning Authority.

REASON: To prevent the provision of parking outside the defined parking area, and to protect the characters of the Green Belt, Little Common Conservation Area, Area of Special Character and the setting of adjacent Listed Buildings.

- 2.3.2 Each of these conditions requires that details be submitted before the uses commence.
- 2.3.3 The Officers' view is that it is clear from the activities during the week commencing Sunday 21 May that the use has commenced.
- 2.3.4 The Officers also confirm that no formal details have been submitted to address the requirements of the five conditions. Obviously this could only have been done since the issue of the decision notice on 19 May, and would have been impractical before the start of the ceremony on 21 May.
- 2.3.5 The position in law is that applicants will be in breach of planning permission if they start development without complying with a condition requiring them to do something before they start - for example, that a scheme or details of the development must first be approved by the Local Planning Authority.
- 2.3.6 Development Control Committee has already accepted that the building works were commenced many months ago and have proceeded throughout the period. Technically, therefore, there is already a breach of planning control.
- 2.3.7 The issue of non-compliance with planning conditions complicates that position. Case law over recent years confirms that beginning development in breach of a planning condition will invalidate a planning permission, in effect removing the permission. The applicants are therefore not now able to remedy this situation by simply submitting the required details because the date has effectively past (i.e. the commencement of the use).
- 2.3.8 That said, there is a remedy for the applicants to resolve this problem, namely by seeking to regularise the situation by submitting a new planning application, under Section 73 of the Town & Country Planning Act 1990, to vary the 5 conditions. Such an application would involve submission of all the outstanding details, and seeking agreement for a timeframe in which to implement them.
- 2.3.9 An application to regularise the situation under Section 73 could technically be submitted at any time within the five year life of the planning permission. However, in the circumstances of this use it is clearly in everyone's interests to secure such an application as a matter of urgency.
- 2.3.10 Committee is therefore asked in Recommendation 2 to endorse the Officers' approach in urging the speedy submission of a Section 73 application in order that these matters can be resolved.

## 2.4 Consultation

### 2.4.1 None

2.5 Financial Implications

2.5.1 None at this stage.

2.6 Legal Implications

2.6.1 Contained in the body of the report.

2.7 Equalities Impact

2.7.1 None

2.8 Section 17 Crime and Disorder Act 1998 Considerations

2.8.1 None

**Section 3: Supporting Information/Background Documents**

Background Documents:

Planning permission P/1306/05/CFU

Planning permission P/754/05/CFU