

Alleged Unauthorised Development

Birling
Downs

05/00468/UNAWKS

569484 160492

Location: Oast Park Golf Club Malling Road Snodland Kent

1. Purpose of Report:

1.1 To advise Members of the current situation with regard to ongoing developments at this site and investigations into alleged breaches of planning control.

2. The Site:

2.1 The site lies on the western side of the A228, south west of Snodland. The entire site falls outside the built confines of Snodland, within the MGB, the Special Landscape Area and the Kent Downs AONB. The land and the surrounding locality in general are open in character interspersed with occasional hedging and tree lines. Much of the site to the south is essentially flat, grassed low lying areas of land with the northern part of the site being elevated and rising towards the scarp slopes of the Downs.

3. History:

3.1 The site has a complex planning history and the relevant decisions are set out below. Amongst these the key planning permission in relation to this report is TM/98/01956/FL.

3.2 TM/00/1796
Single storey extension to existing clubhouse-

3.3 TM/99/00664FL
Extension to mounding, proposed link from club house to driving range & addition of 4 bays to existing driving range.

3.4 TM/98/01956FL
Alterations and improvements to existing 18 hole golf course incorporating land forming and re-modelling and creation of additional water features

3.5 TM/98/01251RD
details of illumination pursuant to condition 14 of TM/97/1602/FL

3.6 TM/98/01240RD
details of materials pursuant to condition 2 of TM/97/01602/FL:

3.7 TM/98/009943RD
Details of construction of proposed wetland areas pursuant to condition 15 of TM/97/01602/FL:

- 3.8 TM/97/01602FL Approved 16.04.98
Closure of direct access to A228, development of 20 bay floodlit, single storey driving range, formation and drainage of range outfield and wetland habitats to its margins, associated Landscaping and earthworks.
- 3.9 TM/97/00262RD Approved 17.04.97
Removal of 13 small poplar trees adjacent to the 10th green.
- 3.10 TM/96/01580RD Refused 23.04.96
Pollard 20 trees to a height of approx. 1 metre.
- 3.11 TM/95/00170 Approved 14.02.95
Extension to existing golf clubhouse and car park and construction and laying out of 20 bay golf driving range and landscaping.
- 3.12 TM/94/01040 .Refused 12.12.94
Extension to existing club house and formation of driving range
- 3.13 TM/91/00089 Approved 03.09.92
Construction of 18 hole public golf course, together with clubhouse and car park.
- 3.14 MK4/56/0206 Approved 19.04.56
Agricultural stone building.
- 3.15 The site and the Council's handling of planning enforcement matters was also the subject of an Ombudsman investigation in 2002 which is referred to below.

4. Factual Matters:

- 4.1 Concern has been expressed for some time by local residents that the alterations and improvements to this existing 18 hole golf course incorporating land forming and remodelling and the creation of additional water features has not been carried out in accordance with the planning permission granted by the Council. The main concerns relate to whether the development is being carried out in accordance with the approved plans, the impacts of the construction works upon neighbouring properties, problems associated with flooding and the acceptability of materials being imported. Local residents and organisations have made representations over recent months and various meetings have taken place on site to understand and see at first hand the issues that have been of most concern.
- 4.2 It is alleged that excessive amounts of earth have been deposited onto the site resulting in a breach of planning control. The planning permission did not contain restrictions on the volume of spoil to be brought to site, or quantify the amount implied by approving the scheme, but rather allowed development in accordance with specified finished levels (AOD).
- 4.3 The Ombudsman investigated a complaint that there had been maladministration with the determination of TM/98/01956. The investigator at the time inspected the

approved plans and interviewed staff. The Ombudsman's report in 2002 found that no maladministration had taken place and also that the Council was carrying out its duties in monitoring the site. The report stated that if the Council established that the approved scheme has been exceeded (if too much spoil had been brought onto the site to carry out the approved development), then it should be expected to properly consider the expediency of enforcement action. To this end the site has been monitored by the Council (and the Environment Agency in respect of its own interests) over time and a comprehensive topographical survey is currently being carried out to establish precisely the amount of material on site and whether any more spoil is required or there are sufficient amounts already on site to finish the works in accordance with the permission granted. The survey will also show if the areas of the site that are claimed to have been finished are at the correct level.

- 4.4 It is anticipated that the results of the detailed survey will be available shortly after this meeting and officers will report back to the November committee with a more detailed report outlining the survey findings and any action that may be required if the survey finds that the scheme is not being completed in accordance with the planning permission. It is my intention to share the survey results with representatives of local residents.
- 4.5 To date, the Council has used its powers appropriately in considering and approving the development at Oast Park. In his findings in 2002 the Ombudsman noted that, with a scheme on this scale, there was bound to be an impact during implementation. The Ombudsman concluded his findings by stating that he expected the agencies to continue to exercise their powers properly as development continues.
- 4.6 Both the Environment Agency and Kent County Council were consulted on application TM/98/01956, in order that the Borough Council could take into account their expert opinions on the particular issues raised by that proposal. Neither of those consultees raised any objection, nor did they make any comment about the issue of the scale of land raising proposed.
- 4.7 The site is periodically monitored by the Borough Council to ensure that the development is being carried out in accordance with the approved plans and the planning conditions. The Council is also in contact with the Environment Agency in the monitoring of operations being carried out on the site and joint site inspections have, on occasions, been carried out.
- 4.8 Concerns have repeatedly been expressed that the levels of imported material on to the site do not accord with the approved plans. However, as a large portion of the site is still yet to have material put on it and the claimed final grading and moulding of the site has only recently taken place as the development moves towards the final phase of completion, it has not been possible until now to determine with any confidence if and to what extent unauthorised development has actually taken place.
- 4.9 A condition of the planning permission requires that only spoil consisting solely of uncontaminated, inert materials shall be used to create the proposed bunding and

land raising. The Environment Agency and the Council have been monitoring the site and recently the Environment Agency has withdrawn the exemption certificate. The certificate allows for the carrying out of an exempt activity under paragraph 19, Level 2 (greater than or equal to 2500 cu. m) (Storage and use of Building Waste of Schedule 3 to the Waste Management Licensing Regulations 1994 (as amended)).

4.10 The Environment Agency has consulted the Council, because the owner of Oast Park Golf Course has reapplied for the exemption certificate. Following consultation with the DHH and Chief Solicitor I have raised objections to the certificate renewal and in doing so have requested clarity about the events leading to the withdrawal of the exemption certificate. I have also asked for information to be provided as to the existence or deposition of any non inert materials at the site to establish if a breach of the planning condition has occurred.

4.11 Additionally, in the last few months Environmental Health and Housing Services have received and responded to complaints relating to :-

- the safety of the haul road adjoining the bridleway to the west of the site;
- noise from site operations early in the morning;
- dust emissions, particularly from a sand stockpile to the north west of the site.

The Health and Safety Executive (HSE) is responsible for enforcing the Health and Safety at Work etc Act on the site and the complaint relating to the safety of the haul road was referred to and dealt with by them.

The other matters were taken up with the operator of the site and have been satisfactorily resolved.

4.12 Conclusion

4.13 Clearly there are still a number of outstanding investigations to be concluded. I am very aware of the concerns held by local residents and I have endeavoured to keep in communication with them so that the best information can be shared at all times. There is no doubt that the works that have taken place have caused disturbance and it is clearly incumbent on the Council to ensure that the activities taking place are in accordance with the planning permission granted. Officers have been working in partnership with the Environment Agency on this case and will continue to do so.

5.0 Recommendation:

5.1 Members will be informed of progress with this matter and are asked, in the meantime, to **note this report**.

Contact: James Wagstaff