

PLANNING COMMITTEE

20 JULY 2017

REPORT TITLE	UPDATE TO MEMBERS IN CONNECTION WITH ERECTION OF THREE MARQUEES AT THORNOTN MANOR, THORNTON HOUGH, WIRRAL
REPORT OF	DAVID BALL ASSISTANT DIRECTOR ENVIRONMENTAL SERVICES

1.0 REPORT SUMMARY

- 1.1 This report updates and advises Members on the present position in connection with the erection of three marquees at Thornton Manor. The Planning Permission reference APP/10/0045 has, in error, been issued without planning conditions. This development can therefore legally continue on site and is not subject to a condition that the development is for five years only.
- 1.2 It has been impossible to identify whether this incident was a system error, human error or a combination of both. Steps to reduce the potential for a system error to reoccur have been explored and implemented and a number of key manual procedural changes have been introduced.
- 1.3 The Planning Authority will monitor and work with Thornton Manor to ensure that all development on the site is compliant with planning legislation. The current breaches of the s106 planning obligations will be actively pursued and, if necessary, appropriate legal proceedings will be taken to seek to ensure compliance

2.0 BACKGROUND

- 2.1 Planning application APP/10/00445 was received by the Council on 9 April 2010 seeking permission for the erection/retention of 3 marquees within Thornton Manor Estate (at The Dell, The Walled Garden and the Lake) to be used for private functions and conferences.
- 2.2 The proposed development constituted inappropriate development which is by definition harmful to the openness of the green belt. A case was presented that set out how the generation of an income stream would enable the restoration of the registered historic park and gardens and the lake which were at the time the application was made at risk and this was considered to constitute very special circumstances necessary to overcome the presumption against inappropriate development. The limiting of the consent to a period of five years would enable realistic monitoring and review of the financial situation and prevent the establishment of inappropriate structures in the green belt for longer than

necessary. The grade II* registered landscape is considered nationally significant and the original intentions of using the landscape to entertain and host events (when the Manor was first built) was another material consideration when determining this application.

- 2.3 The application was first reported to Planning Committee on 21 July 2010 but was deferred to allow for a formal Members Site Visit to take place. The application was considered by Members of the Planning Committee on 7 September 2010 and was approved by a vote of 7:5 subject to no direction being made to the contrary by the Secretary of State, the completion of a Section 106 Legal Agreement and the following conditions:
1. This permission shall be for a limited period of five years only expiring five years from the date of issue of the decision notice.
 2. Prior to the marquee at the Dell being brought into use, details of a 3 metre high noise barrier to be erected within the perimeter of the marquee shall be submitted to and agreed in writing with the Local Planning Authority. The screen shall be erected in accordance with the approved details before the marquee is used and retained as such thereafter
 3. Within one month of the date of approval details of a 3 metre high noise barrier to be erected within the perimeter of the Lake marquee shall be submitted to and agreed in writing with the Local Planning Authority. The screen shall be erected in accordance with the approved details within one month of the approval of details by the Local Planning Authority and retained as such thereafter
 4. Prior to the marquee at the Dell being brought into use details of a noise limiter to be used within the marquee shall be submitted to and agreed in writing with the Local Planning Authority. The noise limiter shall be installed and always used whenever amplified voices or music are played at the marquee in accordance with the approved details.
 5. Within one month of the date of approval, details of a noise limiter to be used within the Lake marquee shall be submitted to and agreed in writing with the Local Planning Authority. The noise limiter shall be installed and always used whenever amplified voices or music are played at the marquee in accordance with the approved details.
 6. Prior to the commencement of development, details of event access and direction signing shall be submitted to and agreed in writing with the Local Planning Authority. The signage shall be erected in accordance with the approved details before the marquees are brought into use.
 7. Details of internal road widening and parking areas for coaches shall be submitted to and agreed in writing with the Local Planning Authority before development commences. The development shall be carried out in accordance with the agreed details before the marquees are brought into use and retained as such.
 8. The proposed car parking areas shall be laid out in accordance with the details of the application before the marquees are brought into use.
 9. No external lighting to the marquees and car parking areas shall be erected until full details, including position and intensity of lighting has been

submitted to and agreed in writing with the Local Planning Authority .The lighting shall be carried out in accordance with the approved details.

10. No fireworks shall be used between January and July, inclusive.
 11. Full details of a landscaping scheme for the screening of the marquee and parking area at the Dell shall be submitted to and agreed in writing with the local planning authority before the marquee at the dell is erected. The landscaping shall be carried out in accordance with the approved details prior to the erection of the marquee and laying out of the car parking area at the Dell and retained as such thereafter.
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- 2.4 Following the Planning Committee decision, negotiations were begun about the detail of the Section 106 Agreement. Until the 106 Agreement was finalised, no Decision Notice could be issued.
 - 2.5 On 27 May 2011, a draft Decision Notice was prepared to be appended to the Section 106 Agreement that was sent to the applicant's agents for signing. At this point, it appears this draft notice was also uploaded to the Council's web.
 - 2.6 A further (draft) Notice was prepared in September 2011. That Notice also was published to the web. This Notice, however, was not dated but did list all the relevant conditions.
 - 2.7 The Section 106 Agreement was finally agreed and signed by all parties with the final Agreement being sealed and issued on 11 November 2011. This is the date that the Decision Notice should have been dated and issued to the applicant releasing the grant of Planning Permission. However, for reasons that is has just not been possible to understand, a decision notice was not produced or issued on 11 November 2011. A Decision Notice was produced on 20 December 2011 that was also published to the Council's web and issued to the applicant's agents at that time. This Decision Notice was issued to the applicant without any conditions listed on the document
 - 2.8 On or around 17 May 2012, when the Section 106 Agreement came to be plotted against the land register, it was noted that 3 versions of a decision notice were on the web. Three versions were also available on the planning application file. At this point, it appears that these three notices were taken down from the web and a new notice, dated 11 November 2011 (the date the Section 106 Agreement was signed) was produced, uploaded to the web and placed on the relevant application file.
 - 2.9 On 11 March 2013, an application was received to apply to discharge the relevant conditions attached to the planning permission (the Notice dated 11.11.2011). The Council accepted the application and worked with the applicant to secure details relating to those conditions and to discharge them as the Council became satisfied that the details were sufficient.

3.0 PRESENT POSITION

- 3.1 As the permission given by Committee was only for 5 years, the permission was due to lapse on 11 November 2016. Up until this point, both parties (the Council and the applicants) had continued to work together on the understanding that the Decision Notice dated 11.11.2011 was the Notice upon which all parties sought reliance.
- 3.2 As the permission “lapsed” on 11.11.2016, the Council sought to clarify this position with the applicants and advised them that a new application would be required to continue the use of the marquees. At a meeting on 5th May 2017 with the applicant, his agent and legal representative, the Decision Notice dated 20 December 2011 was produced which had no conditions on it. The Council were informed that this was the first and only decision notice that had been issued to them and that they were seeking to rely upon this Notice as being the lawfully issued decision. This, in effect, granted a completely uncontrolled grant of planning permission subject to no conditions. The Section 106 Agreement, signed on 11 November 2011, however, was still valid and in place.

4.0 ENFORCEABILITY OF CONDITIONS

- 4.1 The Council sought Counsel’s advice and held a conference with Counsel on 11 May 2017. The Council at this point still sought to rely on the Decision Notice dated 11 November 2011 which contained the conditions that had been set out in the Committee Report presented to Members in September 2010 and which had been annexed to the Section 106 Agreement the applicant’s had entered into. The Council also sought some reliance that an application to discharge conditions had also been made by the applicant’s with regards to that Notice.
- 4.2 Despite extensive manipulation of the Information Management System which produces Decision Notices, it has not been possible to provide any collaborative evidence that can show without any reasonable doubt that a Decision Notice was produced on 11 November 2011 and more particularly, that such a Notice was issued to and received by the applicants. It appears that the first time a Notice with the decision date of 11 November 2011 was produced was on 17 May 2012 when three versions of the Notice were discovered on the web.
- 4.3 In the meantime, the applicants have been able to demonstrate that they received a Decision Notice dated 20 December 2011 which granted planning permission without any conditions being listed. The applicant’s agent has produced a copy of the Notice (stamped received on 21 December 2011) and also proof of forward posting to the applicants at Thornton Manor by way of recorded delivery.

- 4.4 Ultimately, what constitutes the grant of permission is the actual written notification of the decision to the applicant. Counsel has confirmed that what matters in this case is which version of the decision notice was first provided to the applicant, Thornton Manor, rather than what was agreed by Planning Committee or which version was published on the Council's website at any particular time.
- 4.5 It has been concluded that the prospect of taking any enforcement action against the continued presence of the marquees would have to start from the initial premise that the grant of permission was via a document (the decision notice of 20th December 2011) which did not set out any conditions.
- 4.6 It is considered that it would not, in the circumstances, be reasonable to take enforcement proceedings to require removal of the marquees on the basis that they have exceeded the length of time they were permitted to be on the land at Thornton Manor. The applicants have a planning permission which is unconditioned and does not limit the existence and use of the marquees on site to a five year period.. There are possible arguments that the wording in the Decision Notice served on the applicants dated 20 December 2011 was ambiguous, that recourse could be had to extrinsic evidence, such as the Draft Notice (which included the conditions) attached to the S106 Agreement which could establish that the permission was conditional and that, of these conditions, one implicitly required the removal of the marquees after five years. However, such arguments cannot by any stretch of the imagination be described as strong and any success on appeal, were an enforcement notice to be issued and appealed, would be unlikely.

5.0 ENFORCEABILITY OF SECTION 106 AGREEMENT

- 5.1 The purpose of the s106 Agreement which the applicant entered into on 11 November 2011 was to ensure that an agreed Works Programme of refurbishment to the lake, lakeside and woodland landscape forming part of the Grade II Historic Park and Garden at the site was completed. Profits from the use of the marquees was to be utilised to fund this Works Programme.
- 5.2 As a matter of private law the Council is entitled to enforce the contractual obligations which it has obtained from Thornton Holdings Limited by way of the s106 Agreement
- 5.3 The s106 Agreement sets out the following contractual obligations with which Thornton Holdings must comply:

to account to the Council for the event income by the production of all related invoices, receipts and bank records on a quarterly basis to enable the Council to monitor the event profit and the proper application of the event profit to the work programme as required by the planning permission;

to ensure that any event profit which is not needed within a particular year to secure compliance with the works programme in that year is carried forward to future years in order to ensure the completion of the works programme; and

to inform the Council of any change to the event income (on a pro rata basis), event cost (on a pro rata basis) or event profit (on a pro rata basis) in any year which may affect the completion of the works programme for that year or future years and in that event to agree to any reasonable variation to this Agreement deemed necessary by the Council to secure the completion of the works programme

- 5.4 Notwithstanding the fact that the permission is not time-limited by conditions (as set out above) the outstanding obligations under the section 106 agreement continue in effect. Thornton Holdings Limited have to date not complied with the obligations. The Council is actively pursuing remedy of the contractual breaches and will, if necessary, issue appropriate legal proceedings to ensure compliance. Members will be updated on progress with compliance at the next meeting of the Committee in August 2017.

6.0 SYSTEM IMPROVEMENTS

- 6.1 As a result of this incident of the issuing of an erroneous Decision Notice an extensive internal investigation of both the Development Management Information System (ACOLAID) and administrative procedures has been undertaken. It has been impossible to identify whether this incident was a system error, human error or a combination of both. Steps to reduce the potential for a system error to reoccur have been explored and implemented and a number of key manual procedural changes have been introduced. Key amongst these deals with the production of Decision Notices and procedures for applications where Section 106 Agreements are agreed for example, Decision Notices will in future only be produced by either the Development Management Manager or one of the Principal Planning Officers/Team Leaders

7.0 CONCLUSION

- 7.1 It is undoubtedly of both concern and regret that planning application APP/10/00445 for the erection/retention of 3 marquees within Thornton Manor Estate (at The Dell, The Walled Garden and the Lake) to be used for private functions and conferences has been issued without planning conditions. This development can therefore legally continue on site. The Planning Authority will however monitor and work with Thornton Manor to ensure that all development on the site is compliant with planning legislation. The current breaches of the s106 planning obligations will be actively pursued and, if necessary, appropriate legal proceedings will be taken to seek to ensure compliance

8.0 RECOMMENDATIONS

The Planning Committee is requested to:

- 8.1 Note that Planning Permission reference APP/10/0045 has, in error, been issued without planning conditions and that therefore this development can legally continue on site and is not subject to a condition that the development is for five years only.
- 8.2 Note that steps have been taken to implement changes to the system to reduce the potential for such a system error to reoccur and a number of key manual procedural changes have been introduced
- 8.3 Note that the current breaches of the s106 planning obligations are being actively pursued and, if necessary, appropriate legal proceedings will be taken to seek to ensure compliance and that an update on this will be brought to the next meeting of the Planning Committee.