

CARLISLE CITY COUNCIL

Report to:- **Development Control Committee**

Date of Meeting:- 19thh November 2004

Agenda Item No:-

A4

Public

Operational

Delegated: Yes

Accompanying Comments and Statements

Required

Included

Environmental Impact Statement:

No

No

Corporate Management Team Comments:

No

No

Financial Comments:

No

No

Legal Comments:

No

No

Personnel Comments:

No

No

Impact on Customers:

No

No

Title:-

**KINGSWOOD EDUCATIONAL STUDY CENTRE,
GREENSYKE, CUMDIVOCK, DALSTON**

Report of:-

Head of Planning Services

Report reference:-

P.56/04

Summary:-

This report has been prepared to provide Members with an update on the current situation; and, a) to consider extending the period for compliance with the confirmed enforcement notices, and, b) whether the Committee would be willing for a suggested Local Liaison Committee to be chaired by and/or have a representative from the City Council.

Recommendation:-

In relation to a) Members only agree that if permission is refused for application no. 04/1203 not to proceed with enforcement action until any subsequent appeal has been determined. In the case of b) Members need to make a political judgement, without prejudice to the consideration of 04/1203.

A Eales

Head of Planning Services

Contact Officer: Angus Hutchinson

Ext: 7173

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

1.0 Introduction

1.1 Members will be familiar with this site and its recent planning history. Suffice to say that between the 9th-11th March 2004 a Public Inquiry was held concerning the following:

- a) Application ref. No 03/0843 – refusal of permission for the use of the land and buildings as an educational study centre;
- b) Application ref. No. 03/0844 – refusal to grant a lawful development certificate for the use of the premises for the provision of short residential courses for groups of school children;
- c) Application ref. no. 01/1013 – enforcement notice issued seeking the cessation of the use of the site as an educational activity centre;
- d) Application ref. no. 03/0024 – enforcement notice issued requiring the removal from the land of the dining/function hall, kitchens and teachers' retreat;
- e) Application ref. no. 03/0025 – enforcement notice issued requiring the removal from the land of the above ground caving system;
- f) Application ref. no. 03/0026 – enforcement notice requiring the removal from the land of the challenge course;
- g) Application ref.no 03/0027 – enforcement notice requiring the removal from the land of the quad bike track;
- h) Application ref. no. 03/0028 – enforcement notice requiring the removal of the "low ropes" and "nightline" challenge courses;
- i) Application ref.no. 03/0029 – enforcement notice requiring the removal of a mechanical generator;
- j) Application ref.no. 03/0030 – enforcement notice requiring the removal from the land of the climbing wall and shelter;

- k) Application ref. no. 03/0031 – enforcement notice requiring the discontinuance of use of a barn for the purposes of “laser tag”;
 - l) Application ref.no. 03/0032 – enforcement notice requiring the discontinuance of the use of dormitory accommodation;
 - m) Application ref.no. 03/0033 – enforcement notice requiring the discontinuance of the former dining room as student accommodation.
- 1.2 In relation to items a), d), e), f), g), h), i), and j) the appeals were dismissed but the remainder allowed. In effect the use of the land and previously authorised buildings for residential courses for groups of school children was certified as lawful. The Inspector, nevertheless, dismissed those appeals relating to the various buildings and structures that had been constructed without planning permission and which enabled the site to be used in a more intensive manner than when it was a boarding school.
- 1.3 In reaching this decision the Inspector considered that the development has the potential to cause unacceptable harm to the living conditions of nearby residents through noise and disturbance, but that this harm could be overcome through effective management measures (para.37). The Inspector, nevertheless, concluded that the Management Code proposed by the applicant/appellants would not prevent the developments having an unacceptable impact on the living conditions of near neighbours through noise and disturbance. In the absence of a satisfactory Management Code the Inspector concluded that the developments were unacceptable (para 43).
- 1.4 In paragraph 44 of the Decision Letter the Inspector, however, states that:
- “It will be apparent from my decision that, had there been a satisfactory Management Code, I would have come to a different conclusion on these appeals. That being so, I propose to extend the period for compliance with the enforcement notices to 12 months to give the appellants the opportunity of revising the code and re-applying for planning permission should they choose to do so”.**

2.0 Present Position

- 2.1 On the 1st September the applicants submitted a further application (ref. no 04/1203) seeking permission for operational development comprising the retention of existing facilities such as the dining/function hall, the relocation and provision of new facilities, and, external lighting.
- 2.2 Following receipt of the current application two meetings have been held attended by the Applicants' and their representatives, representatives of the Parish Council, local residents and their representative. The discussions have generally been productive and there is a degree of expectation that they will eventually lead to a satisfactory solution. The intention is to report application no 04/1203 at the next Meeting of the Committee on the 7th January 2005.
- 2.3 On the 1st November the Applicants' agent (Mr Geoffrey Searle) wrote to the Council explaining that:
- a) His clients face a dilemma because the enforcement notices which were confirmed by the Inspector are due to be complied with by the 10th June 2005.
 - b) The Inspector is likely to have set this date in order to allow sufficient time for an appeal to be lodged and determined before this date if the parties failed to agree on the way forward.
 - c) However, the subsequent periods for determination of appeals have substantially increased. Even if an appeal was to be loaded immediately the result of, which would be unlikely before the end of next year.
 - d) Given the current state of negotiations his clients see little purpose by now appealing the current application and replacing it with a replica.
 - e) As a result Mr Searle has suggested:
 - that his clients agree to an extension of the period for determination of the current application until 8th January 2005; and,

- that the Council agree to an extension of the period for compliance with the confirmed enforcement notices until 3 months after the final determination of any appeal against deemed or actual refusal of the current application lodged within 6 weeks of the 8th January 2005.
- 2.4 In response the solicitor acting on behalf of the Cumdivock Group (Mr Peter Wilbraham) has confirmed that, in his clients view, the discussions with the Applicants and the Council have been constructive and that there is optimism that there will be a successful outcome. Mr Wilbraham goes on to say that: "It would be extremely unfortunate if the administrative requirements for making an appeal and complying with the enforcement notice were to inhibit the discussions, setting the parties on a confrontational rather than the co-operative course we are seeking to pursue. Accordingly, my clients support the extension of time requested...."
- 2.5 A second issue that has arisen during the course of the aforementioned meeting relates to the suggestion of establishing a Local Liaison Committee. Under the draft provisions of the Management Code the City Council would not only be entitled to nominate a representative but also chair the subsequent meetings. – see attached copy of draft Management Code riders.
- 3.0 **Assessment**
- 3.1 When considering application no 04/1203 at the Meeting on the 7th January 2005 Members will obviously be in the position of either granting, or, refusing planning permission. How the Council would subsequently deal with the compliance of the confirmed enforcement notices, and without prejudice to any final decision on the application would be dependent upon whether permission has been granted or refused.
- 3.2 If permission was to be granted this is likely to be subject to a S.106 Agreement with any decision notice including a series of conditions concerning the implementation of required works. In such a scenario it may thus be better to wait and not pre-judge the situation until the relevant conditions have been formulated and the decision made at the Meeting on the 7th January 2005.

- 3.3 Conversely, if permission was to be refused it is this Council's experience that currently the Planning Inspectorate are taking 5-8 months from the date of lodging an appeal to the relevant inquiry and/or site visit. In effect the suggestion of extending the period of compliance with the confirmed enforcement notices, specified by Mr Searle, could lead to that date being increased from the 10th June 2005 until March 2006. However, the Council is in a situation where, if the applicants were to lodge an appeal, it is unlikely to take enforcement action until the appeal has been determined.
- 3.4 When considering the suggested Local Liaison Committee, it is felt that the Council should have a representative. Members, nevertheless, need to make a political judgement whether that representative should be an officer or elected Member, and, the role that the representative should play.
- 4.0 **Conclusion**
- 4.1 In relation to the matter of extending the period for compliance with the confirmed enforcement notices, it is recommended that members only agree, if application no 04/1203 is refused permission, not to proceed with enforcement action until any subsequent appeal has been determined. This is on the basis that the appeal is lodged within 6 weeks of the Committee Meeting on the 7th January 2005.
- 4.2 In regard to the suggested Local Liaison Committee Members need to make a political judgement, without prejudice, to the consideration of application 04/1203, on whether the Council should have a representative, who that representative should be, and, the role that the representative should play at any subsequent meetings.

A Eales
Head of Planning Services

Contact Officer: Angus Hutchinson

Ext: 7173

Rider A-Local Liaison Committee

**KINGSWOOD EDUCATIONAL STUDY CENTRE
AT THE FORMER LIME HOUSE SCHOOL, CUMDIVOCK,
DALSTON, CARLISLE CA5 7JW**

DRAFT MANAGEMENT CODE – RIDERS

RIDER A- LOCAL LIAISON COMMITTEE

1. A Local Liaison Committee will be established within one month of the grant of planning permission. The following will be entitled to nominate a representative to sit on the Liaison Committee:-
 - a) Kingswood
 - b) Dalston Parish Council
 - c) Permanent residents of houses within a radius of 880 yards of the Kingswood site
 - d) Carlisle City Council
2. The secretary to the Committee will be provided by Kingswood at its expense.
3. The names of the individuals nominated will be recorded by the secretary, together with the name of an alternate.
4. Meetings will be called at the frequency and on the dates agreed by the Committee but not less than once per quarter. Seven days notice in writing shall be given unless the meeting is a short notice meeting required under the complaints procedure.
5. Any two members of the Liaison Committee may require a meeting to be held.
6. Short notice meetings may be demanded in accordance with the provisions of the Complaints Procedure.
- ~~5.7. A quorum shall be 3, save that Kingswood representative shall be required for a quorum.~~
- ~~6.8. Meetings will be chaired by the Carlisle City Council representative but in the absence of any representative of the the City Council, the meeting shall elect its own chairman.~~
- ~~7.9. The terms of reference of the LLC will include~~
 - considering any complaints which have not been resolved to the satisfaction of the complainant
 - considering any proposals by Kingswood which might involve the need to change any of the Activity Standards or an application for planning permission any consent from Carlisle City Council.
 - considering any proposals by Kingswood for a variation to or replacement of the Management Code
 - providing a forum for discussion of topics of mutual interest

RIDER B- COMPLAINTS PROCEDURE

The following Complaints Procedure will be established. The purpose of the procedure is to monitor and ensure compliance with the terms of the planning permission, planning obligation and this management code. For the avoidance of doubt, this procedure does not limit in any respect the right of any of the person or

organisation to take action to enforce compliance with the terms of the planning permission or planning obligation.

- upon receipt of a complaint it is to be logged by Kingswood's Centre Manager in a register, recording the essence of the complaint and the time and date of the complaint- a copy of that log entry is to be provided to the complainant at the time it is entered

☐most complaints will be dealt with on the spot by the Centre Manager;

he/she will respond to the complaint immediately and either take action to secure that the cause of the complaint is removed or as soon as possible and in any event within 24 hours

- ~~if the interim response is that he has had to refer the complaint to Head Office (it is anticipated this will apply to a small minority of cases) and he will so inform the complainant within the 24 hour timeframe~~ at the time of the complaint
- the Centre Manager shall enter into the log the identified cause for the complaint; the action (if any) taken to remedy the cause; and the name of the school responsible for the complaint.
- Head Office must give its substantive response to the complaint within 72-24 hours
- If the complainant is dissatisfied with the response either in respect of the particular complaint or, if that complaint is one of a series of complaints, he/she may will have the opportunity of referring the this complaint(s) to a meeting of the Local Liaison Committee ('LLC') for their ruling. The complainant will have the opportunity of appearing in person at the relevant LLC meeting. For this purpose, any member of the LLC (including one who may be a complainant) may call a short notice meeting of the LLC for the purpose of considering the complaint and the response. Such meeting will take place within 48 hours of the request for the meeting. Unless otherwise unanimously agreed, the only business for such a special meeting will be the issues raised by the complaint. [For sanctions available to the LLC, see the section entitled 'Independent Scrutiny and Sanctions']
- For the avoidance of doubt, both Kingswood and the complainant shall be entitled to attend any meeting where a complaint is considered and Kingswood and the complainant (if a member of the LCC) shall be entitled to vote on any matter put to the meeting for decision.
- If either Kingswood or the complainant is are dissatisfied with the LLC decisionruling they may refer the matter to an arbitrator for binding arbitration. But save in exceptional circumstances, Kingswood will give effect to the sanction as imposed by the LLC pending the outcome of the arbitration.
- The arbitration shall be completed within two weeks of the reference. In the event that it is not so completed, the sanction imposed by the LCC (if in force at the time of the reference) shall be continued until the arbitration is completed.

RIDER C- INDEPENDENT SCRUTINY AND SANCTIONS FOR NON-COMPLIANCE

1. Sanctions available to the LLC will include the following:

- Banning of up to 2 Activities (determined by the LLC) for up to 2 weeks
 - Banning a school or other customer of Kingswood for up to 2 years
2. In the event of any disagreement between Kingswood and a complainant not resolved by the LLC to the satisfaction of either party the matter may be referred to an arbitrator to be appointed by the President of the Chartered Institute of Arbitrators.
 3. The sanctions available to the arbitrator in the event that he finds in favour of the complainant will be at his discretion commensurate with his ruling as to the level of non-compliance with the Management Code including (without limitation):
 - a) An order to cease one or more Activities pending a modification to the operating procedures or physical changes to the Activity. Any such modifications to either the activity delivery instructions, the activity standards and/or the physical location or layout of the activity must be authorised in accordance with the planning obligation and/or the management code before the activity in question is brought back into use, with a view to the activity being reactivated once the modifications have been made
 - b) A financial penalty on Kingswood or one or more of its directors of up to ~~£2000~~10,000, such penalty to be donated to a children's charity
 - c) A ban for up to 2 years on any customer of Kingswood who is found to have responsibility for the breach of the Management Code concerned
 4. Kingswood will underwrite all costs of the arbitrator for a period of ~~one year~~ five years from the grant of planning permission. Thereafter the costs of the arbitrator shall be borne as decided by the arbitrator.

GS draft- 20.08.04

PNW amendment 25.10.04