

## **ADDENDUM REPORT PLANNING COMMITTEE**

**7<sup>th</sup> January 2010**

**Item: 05**

**Site: Widewell School**

**Ref: 09/01946/PDRE**

**Applicant: James Welsh**

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The consultation response from Legal Services advises that the application has been made under Section 192 of the Town and Country Planning Act 1990, and that if in accordance with Section 192 (2) of the Act the local planning authority are provided with information satisfying them that the use or operations described in the application are lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect ; and in any other case they shall refuse the application.

Legal Services have considered the case and previous case law and raise no objection to the certificate being issued on the basis that the fence is considered to be lawful.

Additional letters of representation have been received since the report was written. Only one of these letters refers to the issue under consideration, which is whether the proposed development is lawful. This letter refers to 2 cases, which support the view that the proposed fence is lawful. The other letters of support (more than 260) and objection (more than 50) refer to planning considerations, which are not relevant to this case.

Two enquiries have been received querying whether the Council will be taking further legal, or other remedial, action against the Widewell School Trust on the basis that whilst the planning enforcement notice issued by the Council on 28 September 2009 required the entire roadside fencing to be dismantled and removed from the site, parts of the pre-existing fence appear to have been utilised in the construction of the new set back fence and two small very low-level gate post sockets from the original fence still appear to remain in situ.

The purpose of the planning enforcement notice was to secure the removal of the roadside fencing that was refused planning permission by the Council on 20 August 2009. This section of unauthorised fencing has subsequently been removed by the Widewell School Trust within the timescale specified for this on the enforcement notice ie by not later than 30 December 2009.

Legal Services have advised that given the purpose of the enforcement notice has now been met with regard to that specific roadside fence, the presence of the two small very low-level gate post sockets from the original fence which appear to remain in situ and the elements of the original fence that appear to have been incorporated in the new set back fence, would not in these circumstances justify any further legal, or other remedial, action against the Widewell School Trust in respect of the planning enforcement notice that was served on it. It should be noted that this does not prejudice the Council's position with regard to any possible action that the Council may consider appropriate with regard to the new set back fence.

In conclusion, however, it is recommended that the application is granted because the proposed development is considered to be lawful.