

Chichester District Council

Planning Committee

Wednesday 11 November 2015

Land North West of Decoy Farm House Decoy Lane Oving West Sussex

03/00173/CONMHC

Non-Compliance with Two Enforcement Notices Issued under Section 172 of the Town and Country Planning Act 1990

1. Contacts

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2. Recommendation

- 2.1. That direct action be taken under section 219 of the *Town and Country Planning Act 1990* to secure compliance with two enforcement notices as set out at paragraphs 4.6 and 4.7 below; and**
- 2.2 That the Planning Committee recommends to the Cabinet that contractor (ii) is instructed to undertake the specified actions in the enforcement notices and that a budget of £20,000 be approved to fund this work**

3. Background

- 3.1. This matter relates to non-compliance with the requirements of two formal notices that have been issued under s 172 of the *Town and Country Planning Act 1990*, regarding unauthorised developments at the above property.
- 3.2. The investigation arose following an enquiry made to the Council in April 2003 with respect to the stationing of a mobile home, building materials, scrap vehicles, waste timber and the construction of buildings on the land.
- 3.3. A Planning Contravention Notice (PCN) was served under s 171C of the *Town and Country Planning Act 1990* on 8 October 2003 on Mr M J Smith of Decoy Farm Decoy Lane Aldingbourne Chichester PO20 3TR with respect to the suspected breach of planning control of, "Unauthorised storage of vehicles and sundry (*sic*) materials and the stationing of a mobile home". The PCN response confirmed that the owners of the land were M J Smith and C A Smith of 14 Tatchells Forest Road Midhurst.

- 3.4. The investigation concluded that the following development had taken place upon the land without the benefit of planning permission:
- i) The (partial) construction of a brick and flint building measuring approximately 6m x 20m.
 - ii) The change of use of the land to use for the storage of motor vehicles, vehicle parts, building materials, wood, and metal including, wheels, scaffolding, lorry/van bodies, a freezer, plastic piping, wire caging, tyres, plastic crates and buckets, trailer bodies, dismantled wooden structures, a forklift truck, a flatbed lorry, a horse box, a skip, rubble/hardcore, metal angle posts and the stationing of a caravan for use as a rest room."
- 3.5. The matter was reported to the Area Development Control Committee (South) on April 27 2005, requesting authority to take enforcement action.
- 3.6. Following committee authorisation the Council served Enforcement Notices (References: O/11 and O/12) with respect to the above developments at the land on the landowners on 1 July 2005. The requirements of the notices were to:
- EN O/11** "Demolish the partially complete building and remove the resulting rubble and debris from the land,"
- EN O/12** "i) Discontinue the use of the land for the storage of motor vehicles, vehicle parts, building materials, wood, metal, wheels, scaffolding, lorry/van bodies, a freezer, plastic piping, wire caging, tyres, plastic crates and buckets, trailer bodies, dismantled wooden structures, a forklift truck, a flat bed lorry, a horse box, a skip, rubble/hardcore, metal angle posts and the stationing of a caravan for use as a rest room.
- ii) Remove all of the items listed in (i) above."
- The time given for compliance with the above requirements was 6 months from the date the notices came into effect.
- 3.7. Mr and Ms Smith lodged appeals on 14 September 2005 with respect to the enforcement notices. The appeals were made under Ground (d) of s174(2) of the *Town and Country Planning Act 1990*; *'that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by (the matters stated in the notice)'*
- 3.8. The appeal was heard at a public inquiry held on 24 to 25 January and 9 March 2006. The appeal against enforcement notice O/11 was dismissed and the appeal against enforcement notice O/12 was dismissed with minor corrections and variations made to the text of the notice, by way of written decision dated 22 May 2006.
- 3.9. The notices therefore came into effect on 22 May 2006 and were due for compliance on 23 November 2006.
- 3.10. Throughout the investigation, Council officers have regularly visited the site to monitor and seek compliance with the notices. It is notable from these inspections that little has materially changed on the land. The vast majority of

the items listed in the change of use enforcement notice [O/12] have remained insitu and on many occasions have been added to with additional items such as wooden pallets, plastic barrels, buckets, and various building materials.

- 3.11. Due to the continued failure of the owners to comply with the requirements of the enforcement notices, the matter has been referred to the courts for prosecution of the offence of failure to comply with an enforcement notice as stated in s 179 of the *Town and Country Planning Act 1990*.
- 3.12. The first trial was held on 10 December 2008 and resulted in a conviction with conditional discharge where the magistrate required that Mr and Ms Smith agree with the Council which items on the land were neither ancillary nor incidental to the lawful use of the land for agriculture.
- 3.13. Discussions and meetings failed to achieve any significant removal of items as required by the enforcement notices and Mr Smith has been unable to agree that any items were unnecessary for the agricultural use of the land. Additionally, more items and material had been imported to the land. The matter was therefore referred back to the courts for a second prosecution.
- 3.14. The second trial was held on 13 March 2015 and resulted in a conviction and fine of £7,240 plus £2,342.09 in costs awarded to the Council. It was agreed that the fine and costs would be paid at £100 per month and to date £750 has been paid.
- 3.15. Subsequent to the second conviction, a letter was sent to Mr and Ms Smith requesting a timetable for compliance with the requirements of the notice. The letter also stated that the Council would consider undertaking works in default/direct action should the notices not be complied with within a reasonable period of time. A subsequent visit to the site on 25 June 2015 established that no significant progress had been made to comply with the notices and further visits carried out in August 2015 show that more items have been brought onto the land.

4. Option for future Enforcement Action

- 4.1. Both enforcement notices are now overdue for compliance by a significant period with only extremely limited steps taken to comply in the intervening 9 years. Furthermore, following successful court action on 2 occasions, Mr Smith has failed to carry out meaningful compliance.
- 4.2. Options now available to the Council are:

- i. Further prosecution for continued failure to comply with the notices

In light of the failure of the previous prosecution to either encourage compliance with the notices, or settle the court costs, it is considered unlikely that an additional conviction in this matter would be any more successful in achieving compliance.

- ii. Injunction – The Council could petition the Courts for an injunction under s 187B of the *Town and Country Planning Act 1990*. This could specify a requirement for the land to be cleared as per the requirements of the two enforcement notices. This would specify a further period for compliance

and failure to comply would be considered contempt of court with a potential custodial sentence.

It is considered that the pursuance of an injunction would not result in the achievement of the Council's objective of securing full compliance with the enforcement notices. The courts may consider that an injunction adds no further to the enforceability of the notices, and the sanction of a custodial sentence would be unlikely to encourage the land owner to comply and may well reduce their financial resources and ability to comply.

- iii. Third prosecution. Apply to the Crown Court for an indictment for the failure to comply with the enforcement notices. This can incur an unlimited fine rather than the £20,000 maximum under summary conviction in the Magistrates Court.

An indictment may result in a substantial fine, reduce the land owner's financial resources and incur significant legal costs to the Council, as well as the time taken to undertake such proceedings.

- iv. Do nothing – it may be considered that further formal action and the associated costs to the Council, are not in the public interest and therefore the committee may conclude that no further action should be taken. This would not discharge the requirements of the notices and they would remain enforceable in the future.

Choosing to cease or postpone the formal enforcement of the notices would save the Council the expenditure associated with the options for further action but would carry the risk of undermining public confidence in the planning system. Also, in the context of the longevity of the investigation, this may send a message that perpetrators of breaches of planning control can benefit from carrying out works without permission; it would also make seeking compliance with the notices more difficult to justify in the future.

- v. Undertake works in default (direct action) under powers granted by s 219 of the Act,

This is considered to be the most appropriate option as it enables the local planning authority to:

- (a) enter the land and take the steps required by the notice, and.
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

The *Public Health Act 1936* (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale) is also applicable in relation to any steps required to be taken by a notice under section 215.

- 4.3. Where direct action is to be taken, the Council will appoint contractors to carry out the work required by the Notice(s) having regard to their expertise and costs for undertaking that work. The Council will carry out a risk assessment and will have regard to the contractors own risk assessment for undertaking such works on site. Access to the site will have to be secured which may require the

removal of overhanging tree branches to enable heavy plant and machinery to pass over the access way. In addition, the Police will be notified in case of a breach of the peace.

- 4.4. Prior notice of such action will be given to the landowners so that they may finally carry out the works of compliance before the Council proceeds. Execution of the work by an approved contractor on behalf of the Council will secure compliance and overcome the harm to the character of the countryside and the amenities of the neighbouring property as identified in the notice(s). On balance therefore, having taken all other matters into consideration, this option is favoured by officers.

Works to achieve compliance

- 4.5. These will involve undertaking the remaining works as follows:

- 4.6. **The 1st Notice EN O/11:**

- i) "Demolish the partially complete building and remove the resulting rubble and debris from the land,"

- 4.7. **The 2nd Notice EN O/12:**

- i) "i) Discontinue the use of the land for the storage of motor vehicles, vehicle parts, building materials, wood, metal, wheels, scaffolding, lorry/van bodies, a freezer, plastic piping, wire caging, tyres, plastic crates and buckets, trailer bodies, dismantled wooden structures, a forklift truck, a flatbed lorry, a horse box, a skip, rubble/hardcore, metal angle posts and the stationing of a caravan for use as a rest room.

- 4.8. Upon completion of the above, the authority is then entitled to recover all reasonable costs of so doing from the owner of the property. This may be achieved by placing a charge on the land or via an agreed payment schedule.

5. Update on the Planning Considerations

- 5.1. The Council has considered all the relevant planning issues in relation to this matter. It remains the view of officers that the part built barn and the use of the land for the storage of the significant number and amount of items listed above, results in significant harm to the character of the local area and has a detrimental impact the amenity of the neighbouring dwelling and the nearby holiday accommodation. It therefore remains expedient to pursue this matter to achieve the matters required in the enforcement notices.

6. Quotes received

- 6.1. Quotes, to secure compliance with the requirements of the notices in default, have been obtained from 3 contractors approved for use by the Council having regard to the type of business that they operate and their experience in the clearance and disposal of waste.
- 6.2. Each contractor was provided with a copy of the enforcement notices and visited the site with an officer to appraise the current state of the land and to assess

what works are necessary to secure compliance with the requirements of the enforcement notices.

7. Proportionality, Human Rights and Equalities Impact

Human Rights

- 7.1. The human rights issues with respect to this matter were considered in the assessment made for issuing the original enforcement notices and again for the prosecutions for failure to comply with those notices.
- 7.2. To reiterate, it is noted that, in assessing the implications of the *Human Rights Act 1998* (HRA 1998) on proposed enforcement action, the HRA does not impair the right of the state or local authorities to enforce laws in the public interest. While the works required by the notice relate to privately owned property and therefore may invoke Article 1 of the 1st Protocol ("Protection of property including a right"), the requirements of the notices require the removal of a substantial amount of material owned by the land owners and the demolition of their part constructed building. This will clearly invoke their human rights under the 1st Protocol. However, it is considered that compliance with the requirements of the enforcement notices, which have been tested and upheld at appeal and in the courts is in the public interest and that the protection of property under the 1st Protocol is insufficient to override this.

Proportionality

- 7.3. In applying the test of proportionality, it is clear from the planning considerations outlined above that serious harm to amenity has occurred and continues to be a problem that if not apprehended will lead to further harm via the importation of further materials to the site. It is also recognised that prosecutions have failed to secure compliance and so enforcement has not succeeded in its aims to date. In undertaking direct action, rather than leaving the land to further deteriorate, the Council would be taking responsibility to achieve the steps that have been identified in the service of the notices as necessary to address these matters. It is noted however that actions to date have shown that the owners of the land have neither the ability, means or willingness to carry out works of compliance or the funds to pay the fines imposed.
- 7.4. Taking all matters into consideration, officers are of the opinion that the actions to be taken, are not in conflict with the requirements of the HRA and that the recommended action is proportionate to the breach and offence identified.

8. Conclusion

- 8.1. The authority has taken action under section 172 (issued enforcement notices) and section 179 (prosecutions) of the *Town and Country Planning Act 1990* but these actions have not secured the cessation of the breach of planning control. In addition, attempts to negotiate with the owner and identify items that can be removed from the land have failed to result in any meaningful discussion or improvement in the condition of the land. The owner considers that all of the goods are necessary and will one day be used as part of a viable agricultural undertaking. However, there is no evidence that this will ever happen and there

is no demonstrable justification for the amount and type of goods kept on the land or for the retention of the partial constructed building.

- 8.2. There is no prospect of compliance being achieved or of works being carried out to improve the amenities of the locality and so the future of the land and its long term upkeep remains uncertain.
- 8.3. The recommended action is therefore considered to be a proportionate response to the breach of planning control and the offence identified.

9. Recommendation

- 9.1 On the basis of the considerations above, it is considered to be both necessary and expedient that the authority undertakes direct action through the appointment of a contractor to carry out the requirements of the notices referred to in section 4, above and to seek to recover the costs incurred in executing the powers set out in s219 of the Act.
- 9.2 Given the information made available to the contractors, the variation between them in the cost of the work is notable. It is nevertheless recommended that following the appropriate procedures, that a contractor be appointed to carry out the required work but that to allow some flexibility in relation to unquantified costs at this stage, that a budget of £20,000 is made available. This amount can be met from reserves.

10. Appendix

- 10.1 Exempt financial information

11. Background Papers

- 11.1 Enforcement notices O/11 and O/12