

Bath & North East Somerset Council

MEETING: **Development Management Committee**

MEETING DATE: **21st October 2015**

AGENDA
ITEM
NUMBER

RESPONSIBLE OFFICER: Mark Reynolds – Group Manager (Development Management) (Telephone: 01225 477079)

TITLE: **Enforcement Reports**

WARDS: ALL

AN OPEN PUBLIC ITEM

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Item 1

LAND TO WHICH THE ALLEGED BREACH OF PLANNING CONTROL RELATES

REFERENCE: 09/00168/UNAUTH



Rough Ground And Buildings, Queen Charlton Lane, Queen Charlton

MATTERS WHICH APPEAR TO BE BREACHES OF PLANNING CONTROL

Without planning permission the unauthorised use of the land for residential purposes. The use of the land is in breach of planning control.

SITE DESCRIPTION

The site comprises an area of predominantly flat land approximately 300 metres south-east of the village of Queen Charlton and its Conservation Area and approximately one kilometre south-west of the edge of the urban area of Keynsham. The site falls within the Bristol and Bath Green Belt.

The site area is approximately 0.5 hectares and currently contains 2 static caravans, 3 touring caravans, two storage sheds, a toilet block, a stables and a feed store. The residential use of the land is unauthorised.

BACKGROUND AND RELEVANT HISTORY

The site has a long running enforcement history. An enforcement notice was served in 1994 and there have been a number of planning applications and planning appeals since that time. The most recent planning application was refused in September 2015. The following is a summary of the planning history

- Application reference WB.168811 submitted for the stationing of residential caravans. Planning permission refused in 1994.
- An enforcement notice was served in relation to the stationing of caravans on the site on 19th August 1994 requiring the use of the land for residential occupation to cease and the removal of the residential and touring caravans, trailers and lorries together with all materials associated with the unauthorised use.
- Appeals were lodged against refusal of planning permission and enforcement notice. The enforcement notice was upheld, but temporary permission granted for two caravans until May 1998 on the basis that by then other more suitable sites would be available.
- Permanent occupation of the site ceased between 1995 and 2000, but the Council did not withdraw the enforcement notice.
- The Council cleared the site of derelict caravans, van bodies and other materials in August 1998 following the expiry of the temporary planning permission.
- The site was re-occupied in 2000 and a further application for planning permission was submitted (reference 00/01523/FUL). The application was refused in 2000.
- An appeal was lodged, but dismissed at inquiry in 2002. The Inspector's reasoning was based on the lack of the applicant's gypsy status. This dismissed appeal was subsequently successfully challenged at the High Court and the matter was referred back to the Planning Inspectorate for re-determination.
- The appeal was heard again at a further inquiry in 2003 and again dismissed. This was on grounds of harm to the Green Belt, harm to the rural character, harm to the setting of the Queen Charlton Conservation Area and the unsustainable location. This was considered to outweigh the need for gypsy and traveller sites and the personal circumstances of the appellants.
- The site was again vacated in 2002 and not re-occupied until 2009, when a new planning application was submitted (09/03202/FUL). The application was

refused in 2009.

- An appeal against this refusal was determined at a hearing in 2010. The appeal was dismissed on grounds of harm to Green Belt, harm to the rural landscape and harm to the setting of the Queen Charlton Conservation Area. These were considered to outweigh the benefits of the need for gypsy and traveller sites and the personal circumstances of the appellants.
- The appeal decision was unsuccessfully challenged at the High Court in 2012 and was subsequently dismissed in the Court of Appeal in February 2013.
- A further application for planning permission was submitted (Reference 13/02781/FUL). This was refused on 9th September 2013.
- Application for planning permission (Reference 14/01379/FUL) was submitted in 2014 to re-consider 13/02781/FUL. The Development Management Committee resolved to refuse this application and the decision notice was issued on 3rd September 2015.

GYPSY AND TRAVELLER STATUS

The definition of "gypsies and travellers" provided within the Planning Policy for Traveller Sites (PPfTS) published August 2015 is as follows:

'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.'

It was considered by the Council for planning application 14/01379/FUL that the occupiers of the site fell within the definition of gypsies and travellers taken from the Planning Policy for Traveller Sites March 2012 and therefore qualify as gypsies and travellers for the purposes of planning policy.

The PPfTS has been revised and as such Section 2 of Appendix 1 of the updated PPfTS published on 31st August 2015 requires that that in determining whether persons are "gypsies and travellers" for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:

- a) Whether they previously led a nomadic habit of life
- b) The reasons for ceasing their nomadic habit of life
- c) Whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.

The Council is currently in the process of gathering information relevant to the above questions from the occupants of the site which will be issued as an update if the information is received.

PERSONAL CIRCUMSTANCES OF OCCUPANTS

Prior to the determination of planning application 14/01379/FUL, the applicants were invited to complete a personal circumstances questionnaire by the Council to provide information in respect of the personal circumstances of those living on the site.

The questionnaire identified that there are currently 9 people, including two children, occupying the site forming part of the same extended family. Information submitted with the planning application identified that the occupants make their living from a combination of trades, including landscape gardening and tree work. The information submitted does not indicate any particular or strong work links to surrounding area.

The children are not of school age and there are limited links to surrounding nurseries and playgroups. It is therefore considered that there are no strong educational links to the surrounding area.

There are a number of health concerns which affect the occupants including a number of chronic conditions which require regular check-ups with GPs.

The occupants' work, education and health links to the local area is, on the basis of the information received, reasonably limited. However, it is also accepted that the applicants have occupied the site on and off at various times (not consistently) over a period of approximately 20 years. It is considered over this duration the occupants are likely to have built up other ties to the local area.

None of the personal circumstances presented at the application stage demonstrated a need for the occupants to be on the application site. The medical conditions referred to also occur in the settled population. Nevertheless, it is considered likely that access to health and education facilities would suffer if the family members were unable to live on a settled site. This is considered to weigh in favour of enforcement action not being pursued.

The Council has re-issued personal circumstances questionnaires to the occupants of the site to identify whether there have been any changes to the circumstances of the occupants since planning permission was refused in September 2015 for application 14/01379/FUL. Responses have yet to be received but relevant information will be issued as an update if received.

BEST INTERESTS OF CHILDREN

The Council have a duty to consider the best interests of children when considering enforcement action that will have a potential impact upon children. There are two children currently occupying the site. It is considered that the best interests of these children would be to remain on the site. In accordance with the Council's duty and as the starting point, the best interests of the children is given no less weight inherently

than any other consideration and is therefore given substantial weight as the starting point in the Council's consideration of pursuing enforcement action.

The weight given to the consideration of the best interests of the children has been reduced in the final analysis relative to other considerations in the particular circumstances of the case given that neither child is currently of school age or attending school.

DECISION MAKING FRAMEWORK

In preparing this report, due consideration has been given to the following Policies, Guidance and Legislation:

The Core Strategy for Bath and North East Somerset was formally adopted by the Council on 10th July 2014. The Core Strategy now forms part of the statutory Development Plan and will be given full weight in the determination of planning applications. The Council's Development Plan now comprises:

- Bath & North East Somerset Core Strategy (July 2014)
- Saved Policies from the Bath & North East Somerset Local Plan (2007)
- Joint Waste Core Strategy

The following policies of the Core Strategy are relevant to the determination of this issue:

CP2 Sustainable Construction
CP6 Environmental Quality
CP8 Green Belt
CP11 Gypsies, Travellers and Travelling Showpeople

The following saved policies of the Bath and North East Local Plan, including minerals and waste policies, adopted October 2007 are also relevant to the determination of this issue.

D.2 General Design and public realm considerations
D.4 Townscape considerations
GB.2 Visual amenity of the Green Belt
NE.1 Landscape Character
BH.6 Conservation areas
T.1 Overarching access policy
T.24 General development control and access policy

EMERGING POLICY

Gypsies, Travellers and Travelling Showpeople Site Allocations Development Plan Document (DPD).

LEGAL FRAMEWORK

- Town and Country Planning Act 1990 (as amended)

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- Development Management Procedure Order, 2015 (as amended)
- The Human Rights Act 1998
- The Equality Act 2010

SUPPLEMENTARY PLANNING GUIDANCE

- Bath & North East Somerset Local Enforcement Plan, 2013

NATIONAL POLICY

The National Planning Policy Framework (NPPF)
 National Planning Practice Guidance (NPPG)
 Planning Policy for Traveller Sites (PPfTS) August 2015

The following sections of the NPPF are of particular relevance:

- Section 4 Promoting sustainable transport
- Section 7 Requiring good design
- Section 9 Protecting Green Belt land
- Section 12 Conserving and enhancing the historic environment

The following sections of the NPPG are of relevance:

- Section 17b – Ensuring Effective Enforcement
- Para 050 – Injunction
- Para 066 – Unauthorised Encampments

PLANNING POLICY STATEMENTS

Green Belt protection and intentional unauthorised development August 2015

EXPEDIENCY OF ENFORCEMENT ACTION

1. The proposed development is inappropriate development in the Green Belt, which harms openness and is contrary to its purpose of safeguarding the countryside from encroachment. Material considerations in favour of the development do not clearly outweigh the harm to the Green Belt and the other harm identified. It is therefore considered that 'very special circumstances' do not exist to justify the development. The proposal is therefore contrary to policies CP8 and CP11 of the Bath and North East Somerset Core Strategy (2014), the National Planning Policy Framework (2012) and Planning Policy for Traveller Sites (2015).
2. The proposed development is harmful to the open rural character of the area and detrimental to the surrounding rural landscape contrary to policies NE.1 and GB.2 of the Bath and North East Somerset Local Plan (2007).
3. The proposed development is harmful to the setting of the Queen Charlton Conservation Area contrary to policy BH.6 of the Bath and North East

Somerset Local Plan (2007) and the National Planning Policy Framework (2012).

4. The proposed development is in an unsustainable location and results in increased reliance on the use of the private motor vehicle contrary to policy T.1 of the Local Plan and the National Planning Policy Framework (2012).

The use of the site for residential purposes is in breach of planning control. In light of the planning history of the site officers consider it necessary and appropriate to pursue formal action in order to remedy the breach. Consideration has been given to the following available options:

1) ENFORCEMENT NOTICE

An enforcement notice was issued on the land on 19th August 1994. The enforcement notice was appealed, the enforcement notice was upheld and temporary planning permission was granted for two caravans until May 1998. The enforcement notice has not brought about the cessation of the use of land at the site.

2) PROSECUTION

Non-compliance with the requirements of an enforcement notice is an offence under Section 179 of the Town and Country Planning Act 1990 and as such the Council can prosecute owners of land for being in breach of an enforcement notice.

Whilst the Council may secure successful prosecution of a landowner for non-compliance with the requirements of an enforcement notice it will not however necessarily result in the notice being complied with and may require repeated prosecution attempts to resolve the breach.

3) DIRECT ACTION

Where the steps required by an enforcement notice are not taken within the period for compliance within the notice, Section 178 of the Town and Country Planning Act allows the local authority to enter the land and take the steps as set out in the enforcement notice. In addition, the local authority may recover from the land owner any expenses incurred by taking direct action.

The Council has already undertaken direct action at the site in August 1998 following the vacation of the site by the occupants in order to remedy the breach of planning control however the site was re-occupied in spring 2000 and therefore this course of action did not permanently remedy the non-compliance with the enforcement notice or prevent the breach of planning control.

The costs of taking direct action are likely to be considerable and there is the distinct possibility that once the site was cleared the current occupants would return to the land at some stage as the caravans could be moved off-site with relative ease. This would leave the current occupants free to return the caravans to the land unless substantial works were undertaken by the Council to prevent access to the site being re-gained.

It is considered that direct action would only offer a short-term solution to the ongoing breach of planning control. The site could be cleared of ancillary buildings and any abandoned caravans but it is likely that this would not prevent the re-occupation of the site at a future date.

4) APPLICATION FOR INJUNCTION

Section 187B of the Town and Country Planning Act 1990 allows local planning authorities (LPA) to apply to the court for an injunction to restrain any breach of planning control (actual or apprehended) whether or not the LPA has exercised or are proposing to exercise any other powers and where it considers it necessary or expedient for the breach of planning control to be restrained by injunction.

The breach of planning control has been on and off for a period exceeding 21 years, the current breach of control has been occurring for around 6 years. The planning enforcement process has been protracted due to planning applications and planning appeals submitted by the occupiers of the site and legal challenges. Despite the Council taking direct action in 1998 to clear the site when the site was temporarily vacated the occupation of the site re-commenced and it is considered that unless the LPA seeks injunctive relief the unauthorised occupation of the site will continue.

Case law (*South Bucks DC v Porter and another* [2003] UKHL 26) identifies that if conventional enforcement measures have failed over a prolonged period of time to remedy the breach then courts are more likely to agree to use its own more coercive powers and issue an injunction.

The Council has previously sought injunctive action for an unauthorised gypsy site at Hartley Farm, Charmy Down in 2005. The injunction was granted and led to the breach of planning control being remedied.

It is considered that if an injunction is granted by the court that the breach of planning control is more likely to be remedied because of the nature of the injunction and the penalties associated with breaching an injunction. Other lesser options have been considered however these are not likely to arrest the breach of planning control for the reasons set out above. It is therefore considered that it is expedient for the Council to seek an injunction.

HUMAN RIGHTS and EQUALITIES

HUMAN RIGHTS

The granting of an injunction means that the occupiers would have to vacate the site without any suitable alternative accommodation being readily available to them. This would represent a substantial interference with their rights in respect of private and family life, their home and their traditional way of life. However, the harm caused by the unauthorised use of the land for residential purposes in terms of its effect on the economic well-being of the country, which includes the preservation of the environment, is considerable. After taking into account all material considerations, particularly in light of the protracted history of this site, it is considered that these

legitimate aims can only be adequately safeguarded by taking formal enforcement action by way of a section 187B application. The protection of the public interest cannot be achieved by means that are less interfering with the occupants' rights. They are proportionate and necessary in the circumstances and would not, therefore, result in violation of the occupants' rights under Article 8 of the European Convention on Human Rights or any other Convention article even when the best interests of the children are taken into account.

EQUALITY ACT 2010

Duties are placed upon the Council by the legislation including in relation to the section 149 public sector equality duty. In particular, it is considered that a return to a roadside existence could have a negative impact in this context and this has been fully recognised in the recommendation made.

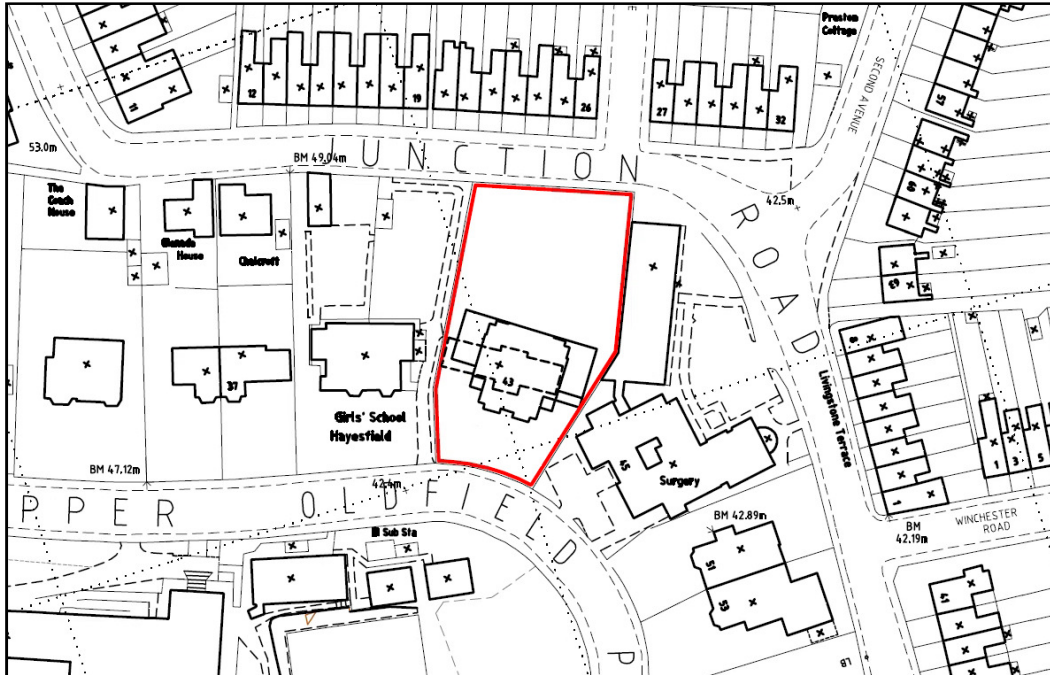
CONCLUSION

In light of the above report, having considered the relevant enforcement options available it is recommended that the Local Planning Authority should seek an injunction from the Court, under Section 187B of the 1990 Act, to restrain the breach of planning control and that it is expedient to do so.

Item 2

REFERENCE:

14/00681/UNDEV



LAND TO WHICH THE ALLEGED BREACH OF PLANNING CONTROL RELATES

43 Upper Oldfield Park, Bath, BA2 3LB

INTRODUCTION

Members will be familiar with the background to this matter and will recall that at its last meeting committee resolved to grant planning permission for an amended scheme. This report considers the position regarding the extant enforcement notice in the light of that decision.

CURRENT ENFORCEMENT NOTICE

Following the refusal of retrospective planning permission for the building as constructed, on the 29th April 2015 Members resolved to issue an Enforcement Notice. A notice was duly issued on the 8th May 2015 requiring the demolition of the building and removal of all resultant material within 180 days of the Notice taking effect.

The Notice would have taken effect on the 8th June 2015, however, the developer lodged an appeal against the notice which is scheduled to be heard at a Public Inquiry in March 2016.

Where an appeal is made against an enforcement notice, the notice is of no effect pending the “final determination” or the withdrawal of the appeal.

In summary, whilst a Notice has been served requiring the demolition of the building, it is currently in abeyance pending the outcome of the appeal.

PLANNING PERMISSION

Following refusal of full retrospective planning permission in April 2015 (application ref: 14/04547/FUL) – which is subject to a current planning appeal - a revised application was submitted to the Council on the 29th June 2015 (application ref: 15/02931/FUL).

The application sought retrospective permission for the development as built with proposed modifications to the roof of the building to overcome the reasons for refusal set out in application 14/04547/FUL. In summary, the works of modification comprised:

- at roof level - the lowering in height of a number of chimneys, flues and aerials along with the removal of the solar panels on the South East pitched roof slope; and
- at fourth floor level - the projections to the side being reduced in width by 0.5m resulting in an overall reduction in width at that level of 1m across the building. The windows at the front and rear of the projection would also be changed to feature 'wrap around' windows.

Members resolved to approve the officer recommendation to delegate to permit subject to completion of a S.106 agreement relating to car club parking spaces.

At the time of writing this report the Council is waiting for the developer to complete and return the S.106 after which planning permission will be issued. It is understood that the developer has signed the S.106 agreement however are awaiting the signature of the bank who have a mortgage interest in the land. It is anticipated that the S.106 is likely to be completed before the committee meeting on the 21st October 2015 and the rest of this report is written on the basis that the planning permission will be granted. If by the date of the committee that proves not to be the case then an update report will be presented to members.

LEGAL CONSEQUENCES OF GRANTING PLANNING PERMISSION

S.180(1) of the Town and Country Planning Act 1990 ("TCPA 1990") states (so far as relevant):

Where, after the service of a copy of an enforcement notice... planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission (officer emphasis)

At the time the Notice was issued the Council were of the view that the original permission relating to the site (ref: 07/02461/FUL) had not been implemented and had expired and that the whole building was unauthorised. The Notice therefore required that the building be demolished.

Once the above planning permission has been granted, the effect of S.180 will be that the majority of the enforcement notice will cease to have effect because it is inconsistent with the planning permission. This means that the notice will only 'bite' in respect of the fourth floor and the roof because those are the only remaining elements of the Notice which are consistent with the permission. Clearly under the circumstances an Enforcement Notice requiring demolition of the building will no longer be appropriate and the Council must therefore review the Enforcement Notice and its position in the enforcement appeal. Where, as here, the requirements of an Enforcement Notice have been overridden, it is possible for costs to be awarded against the Council if the Council continues to resist an appeal against the Notice.

Officers therefore advise that, for the above reasons, the Enforcement Notice should be withdrawn. This would mean that the enforcement appeal would then fall away, leaving the appeal against the refusal of application 14/04547/FUL (which was an application for full retrospective planning permission) to run its course. That appeal should hopefully be dealt with by way of written representations (as was the Inspectorate's original intention) rather than by public inquiry. If the 14/04547/FUL planning appeal is allowed then the building as constructed will have full planning permission and no further enforcement action would be necessary. On the other hand, if the planning appeal were to be dismissed then S.173A(4) TCPA 1990 states that:

(4) The withdrawal of an enforcement notice does not affect the power of the local planning authority to issue a further enforcement notice.

This means that, if the developer did not implement the recently granted permission and make the required changes to the building within a reasonable period of time then further enforcement action could be taken against those unauthorised elements of the building (essentially the fourth floor and the roof) which remain.

Officers have considered whether there is any danger of the development acquiring

immunity if the Enforcement Notice were to be withdrawn. Members will be aware that in the case of unauthorised building operations enforcement action may be taken after the end of four years beginning with the date on which the operations were substantially completed. In this case the Temporary Stop Notice was served on 12 September 2014 and it is well documented that the building was not substantially complete at that point. It is therefore not necessary to reach a concluded view on what date the building was substantially completed (if indeed it is now – officers are not making a finding of fact on that issue in this report) because it is clear that the four years will not expire until a date after 12 September 2018. Furthermore, as the Council has already served an enforcement notice, the ‘second bite’ provisions in S.171B TCPA 1990 apply. These state, so far as relevant, that:

(4) The preceding subsections [*concerning immunity*] do not prevent—

.....

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

Officers will continue to closely monitor the site and it is therefore considered that the possibility of immunity is not a barrier to withdrawing the enforcement notice.

CONCLUSION

Once planning permission is granted, for the majority of the building the Notice will cease to have effect so far as it is inconsistent with the permission. The Council is therefore obliged to review the Enforcement Notice and its position in the enforcement appeal.

It is clear that a Notice requiring total demolition of the building is no longer appropriate and officers therefore recommend that, once planning permission has been granted and S.180 is engaged, the Notice is withdrawn.

If the developer should fail to obtain full retrospective permission at appeal, the Council would expect the building to be modified in accordance with the recently granted planning permission within a reasonable timescale. If the developer should fail to do that then further enforcement action could be taken.

RECOMMENDATION

That, after planning permission has been granted, the Enforcement Notice dated 8th May 2015 is withdrawn.

