

Bath & North East Somerset Council

MEETING: **Development Management Committee**

MEETING DATE: **16th November 2016**

AGENDA
ITEM
NUMBER

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

TITLE: **ENFORCEMENT REPORTS**

WARDS: ALL

BACKGROUND PAPERS:

AN OPEN PUBLIC ITEM

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01	09/00168/UNAUTH	Rough Ground And Buildings, Queen Charlton Lane, Queen Charlton. Without planning permission the unauthorised use of the land for residential purposes. The use of the land is in breach of planning control.	Farmborough	Martin Almond	Continue injunction proceedings
02	06/00009/UNDEV 21 September 2005	Stowey Nursery, Folly Lane, Stowey, BS39 4DW Unauthorised building.	Chew Valley South	Martin Almond	Direct action

Item 1

REFERENCE: 09/00168/UNAUTH



Rough Ground And Buildings, Queen Charlton Lane, Queen Charlton.

ENFORCEMENT UPDATE REPORT

INTRODUCTION

On 21st October 2015, Development Management Committee determined that the Local Planning Authority should seek an injunction under Section 187B of the Town and Country Planning Act 1990 to restrain the breach of planning control at the site.

During service of the injunction proceedings, the Local Planning Authority were made aware of a change in the personal circumstances of the occupants of the site.

This report is intended to provide an update to Members of Development Management Committee on the changed personal circumstances of the occupants and give a recommendation as to how the matter should be dealt with.

REFERENCE:

09/00168/UNAUTH

LAND TO WHICH THE ALLEGED BREACH OF PLANNING CONTROL RELATES

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 stable 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. A Planning Inquiry was held on 4th – 6th October 2016; a decision from the Planning Inspectorate is expected on or before 5th December 2016.

- Injunction proceedings were served on 31st August 2016. A preliminary hearing took place on 30th September 2016. The substantive hearing has been listed at Bristol Civil Justice Centre for 21st March 2017.

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. It was not disputed at the recent inquiry that the defendants fall within the definition of "gypsies and travellers".

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 were 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 did not indicate any particular or strong work links to the surrounding area.

The children were not of school age and they had limited links to surrounding nurseries and playgroups. It was therefore considered that there were 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 was considered likely that access to health and education facilities would suffer if the family members were unable to live on a settled site. This was considered to weigh in favour of enforcement action not being pursued.

The Council re-issued personal circumstances questionnaires to the occupants of the site to identify whether there had been any changes to the circumstances of the occupants since planning permission was refused in September 2015 for application 14/01379/FUL. The responses received identified changes to the employment status and medical needs of one of the occupants and additional health visitor and outreach worker support. There were no changes to the educational status of the children.

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 three 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 the child currently of school age has only been attending school since September 2016.

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

At the Council's Cabinet meeting on 2nd December 2015 the draft Placemaking Plan was approved for consultation purposes and also approved for Development Management purposes. However, currently the Plan has limited weight in the determination of planning applications. The following policies are relevant to this application:

GB1 – Visual amenities of the Green Belt
ST1 – Promoting sustainable travel
ST7 – transport requirements for managing development
NE2 – Conserving and enhancing the landscape and landscape character
NE2A – Landscapes setting of settlements
H1 – Historic Environment
D.1 – General Urban Design Principles
D.2 – Local character and distinctiveness

EMERGING POLICY

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

LEGAL FRAMEWORK

- Town and Country Planning Act 1990 (as amended)
- 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

RE-CONSIDERATION OF DECISION TO SEEK INJUNCTION

An enforcement report was presented to Development Management Committee on 21st October 2015 with a recommendation for the Council to seek an injunction under Section 187B of the Town and Country Planning Act 1990 to resolve the breach of planning control. This recommendation was supported by Development Management Committee at the same meeting.

The injunction was served on 31st August 2016 and a preliminary hearing was held at Cardiff Civil Justice Centre on 30th September 2016. The substantive hearing has been listed at Bristol Civil Justice Centre for 21st March 2017.

During service of the injunction the Local Planning Authority were made aware of a change in the personal circumstances of the occupants of the site since the decision

by Development Management Committee on 21st October 2015. These changes are:

- One child is now of school age and began attending St Keyna Primary School, Keynsham in September 2016.
- One child is due to attend nursery from December 2016
- One child was born in August 2016; there are now a total of three children at the site.

In addition, a Public Inquiry in relation to refused planning application 14/01379/FUL was held on 4th - 6th October 2016. A decision from the Planning Inspectorate is due on or before 5th December 2016. Kathleen O'Connor and her planning consultant (Dr Murdoch) have produced witness statements since the preliminary injunction hearing on 30 September 2016, and these are available for committee members together with a copy of the signed Statement of Common Ground from the recent inquiry upon request. Members can of course request copies of any of the inquiry documents.

RECOMMENDATION

The changes in the educational status of one of the children at the site is not considered to require the injunction proceedings to cease. Given the short length of time that the child has been attending school it is not considered that strong educational links with the school have been established and therefore limited weight can be given in this regard in the final analysis relative to other considerations in the particular circumstances of the case.

The pending planning appeal decision is not considered to require the Council to halt the injunction proceedings; if the appeal is allowed and planning permission granted then the injunction proceedings are very likely to fall away.

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 and having considered the changes to the personal circumstances of the occupants of the 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

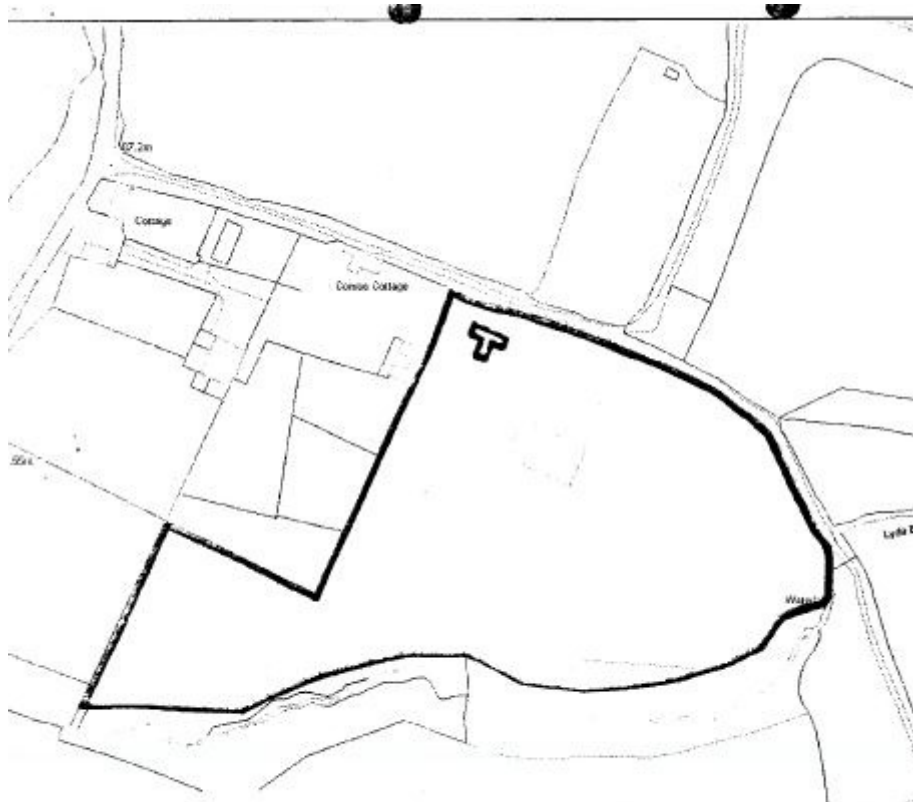
Duties are placed upon the Council by the legislation including in relation to the section 149 public sector equality duty. In particular, it is considered that a return to a roadside existence could have a negative impact in this context and this has been fully recognised in the recommendation made.

CONCLUSION

In light of the above report, having identified the changes in circumstance at the site it is recommended that the Local Planning Authority continue to pursue the injunction as resolved by Development Management Committee on 21st October 2015 under Section 187B of the 1990 Act, to restrain the breach of planning control.

Item 2

REFERENCE: 06/00009/UNDEV



Land at Folly Lane, Stowey, near Bishop Sutton, Bristol, BS39 4DW

Bath & North East Somerset Council, Planning Services,
Trincliffe House, Trin-Street, Bath BA1 2CP



ENFORCEMENT REPORT

REFERENCE:

06/00009/UNDEV

LAND TO WHICH THE BREACH OF PLANNING CONTROL RELATES

Land at Folly Lane, Stowey, near Bishop Sutton, Bristol BS39 4DW ("Land")

BREACH OF PLANNING CONTROL

Failure to comply with a Planning Enforcement Notice dated 10th December 2008 ("Notice") requiring the demolition of the unauthorised building situated on the Land ("Building"), the removal of the resultant materials and the restoration of the Land to its agricultural condition.

SITE DESCRIPTION

The Land comprises an area of predominantly flat land approximately 200 metres east of the A368 between Moorledge Road and The Street and is accessed via Folly Lane. The Land falls within the Bristol and Bath Green Belt.

The Land currently contains the two storey Building the subject of the Notice, a static caravan, a large glasshouse and a small outbuilding.

RELEVANT HISTORY

DC - 02/01831/AGRN - 11 January 2005 - Erection of a glasshouse and a storage/workshop Invalid application. Withdrawn

DC - 04/01501/FUL - 23 June 2004 - Erection of a horticultural glasshouse Permit

DC - 04/03629/FUL - 18 January 2005 - Construction of horticultural store and workshop Refused

DC - 05/03751/AGRN - Provision of underground water storage tank Permitted Development

EN - 06/00009/UNDEV – Enforcement Notice Issued – 10th December 2008

AP - 09/00017/ENFAPL - 26 August 2009 - Unauthorised Erection of a Two Storey Building – Appeal against the Notice dismissed.

DC - 09/04632/AGRN - 30 December 2009 - Erection of agricultural/horticultural two storey building. Not permitted development.

DC - 15/05573/AGRN - 5 January 2016 - Erection of galvanised metal feed silo. Not permitted development.

DC - 15/05574/AGRN - 5 January 2016 - Erection of agricultural building. Not permitted development.

DC - 16/00086/AGRN - 4 February 2016 - Erection of agricultural building Not permitted development.

DC - 16/01001/AGRA - 3 March 2016 - Erection of agricultural building (following application 16/00086/AGRN) Refused. Appeal currently pending.

LEGAL FRAMEWORK

Town and Country Planning Act 1990 (as amended). Of particular relevance is section 178 which provides a power to local planning authorities to secure compliance with an enforcement notice by entering the land and taking the steps required by the notice in default of the owner/occupier. The power is exercisable

summarily, meaning that there is no legal requirement to give notice to the owner/occupier, however, it is generally considered to be good practice to do so.

DECISION MAKING FRAMEWORK

In preparing this report, 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
- Various Neighbourhood Plans

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

CP6 Environmental Quality
CP8 Green Belt

The following saved policies of the Bath and North East Somerset 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

Stowey Sutton Neighbourhood Plan ("SSNP")

The SSNP was 'made' on the 9th September 2015 by B&NES and is now a part of the Council's development plan.

Full consideration has been given to the SSNP however there are no relevant policies therein to this development.

EMERGING POLICY

At the Council's Cabinet meeting on 2nd December 2015 the draft Placemaking Plan was approved for consultation purposes and also approved for Development Management purposes. The PMP has been examined in public but at this stage does not form part of the Statutory Development Plan. Whilst the policies contained therein are a material consideration for the determination of any application, at this stage they can only be afforded limited weight. The following policies are relevant to this application:

D1 General urban design principles

D2 Local character and distinctiveness

NE2 Conserving and enhancing the landscape and landscape character

GB1 Visual amenities of the Green Belt

SUPPLEMENTARY PLANNING GUIDANCE

- Bath & North East Somerset Local Enforcement Plan, 2013

NATIONAL POLICY

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

The following sections of the NPPF are of particular relevance:

Section 7 Requiring good design

Section 9 Protecting Green Belt land

Para 207 Enforcement

The following section of the NPPG is of relevance:

Section 17b – Ensuring Effective Enforcement

PLANNING POLICY STATEMENTS

Green Belt protection and intentional unauthorised development, August 2015.

BACKGROUND

On 10 December 2008, having received complaints and carried out an investigation, the Council issued the Notice in respect of the unauthorised two storey Building which had been constructed on agricultural Land at Folly Lane, Stowey, near Bishop Sutton, Bristol BS39 4DW. The Land is situated within the green belt.

The Notice required the Building to be demolished and all materials associated with the Building to be removed from the Land. In addition, the Notice also required the Land upon which the Building is situated to be restored to its original condition as undeveloped agricultural land. The time for compliance with both requirements was six months from date the Notice took effect.

The Notice was appealed and the appeal was dismissed on 26th August 2009. The Inspector refused to grant planning permission, however she varied the period for compliance from six months to twelve months in respect of both requirements of the Notice. The Notice therefore took effect on 26th August 2009, meaning that the Building had to be demolished, the materials removed from the Land and the Land restored by 26th August 2010.

A site visit was undertaken in July 2015 to check compliance with the Notice. The Building had not been demolished.

The Council prosecuted for breach of the Notice and, following a trial at Bath Magistrates' Court on 13th July 2016, the company which owned the Land and its Director ("Owners") were convicted of failing to comply with the Notice. The company received a conditional discharge for 12 months and the Director received a fine of £1500 and was ordered to pay a contribution towards the costs of the prosecution in the sum of £2000.

On 1 August 2016, the Council received a letter from the Owners' solicitors stating that the Owners recognised the need to "resolve matters as quickly as possible" and would be meeting with their lawyers and planning consultant to discuss the matter; and that the Owners were "looking to remedy the situation as quickly as possible in view of the continuing breach". The letter stated that the solicitors would be in touch as soon as that meeting had taken place. The Council replied on 12 August 2016, observing that the letter suggested that the Owners were not intending to comply with the Notice pending discussions with their advisors, in which case they did so at their own risk, all enforcement options remained open and the Council reserved the right to take enforcement action without further notice. No reply was received to the Council's letter.

The Building has remained on the Land in breach of the criminal law since 26th August 2010.

THE PLANNING MERITS OF THE UNAUTHORISED BUILDING

The Council's reasons for issuing the enforcement notice were (in summary):

- a) that planning permission for the erection on the Land of a building of a similar scale and proportion to the Building was refused on 18 January 2005;
- b) the Building is a new building in the green belt which looks like, and has the appearance of a dwelling house;
- c) the Building is a prominent and incongruous feature which is visually detrimental to the green belt; and
- d) the Building is an incongruous feature in the rural landscape.

As stated above, the appeal against the enforcement notice was dealt with at a hearing before a planning Inspector on 4 August 2009. The appeal was dismissed on 26th August 2009 and the Inspector refused to grant planning permission. The Inspector found that:

“In views from the lane and the private road, because of the building's size, height and design and because of its location relatively close to the lane, it stands out as a highly incongruous structure in these countryside surroundings, detracting from the appearance of the landscape and this part of the green belt.”

“...the provision of landscaping would not overcome the harm that I have identified.”

“For the above reasons I conclude that the building has a seriously harmful effect on the character and appearance of the surrounding area.”

There would appear to be limited agricultural activity being undertaken on the Land. On visits to the Land, the Building appears not to be in use. The glasshouse that is on the Land also appears not to be in use. The Land has the appearance of not being in a productive agricultural state.

Having regard to current planning policy, it is considered that the Building is still contrary to national and local planning policy. The size, bulk and mass of the Building are not acceptable and the Building has a harmful impact upon the openness and visual appearance of the Green Belt.

The Council's Local Enforcement Plan states:

“The use of formal enforcement action will be as a last resort and shall not be used without first seeking a solution through negotiations. Whilst the Council will endeavour to overcome any harm caused by unauthorised development by negotiation wherever possible, the enforcement system rapidly loses credibility if unacceptable developments are perpetuated by prolonged or

protracted enforcement discussions. Therefore a time limit for concluding negotiations will be considered in every case. This will have regard to statutory time scales (for an application and/or appeal).”

The recent prosecution was preceded by extensive discussions and negotiations with the Owners and their representatives, but these failed to resolve the breach. Given that the breach of the Notice has been ongoing for more than six years, and in light of the harm identified above, officers are of the view that further action needs to be taken to secure compliance with the Notice. An assessment of the available options is set out below.

OPTIONS FOR FURTHER ENFORCEMENT ACTION

There are three options for further enforcement action: prosecution, injunction or direct action. All of these options stand alone and may be exercised independently of each other.

The Council’s Local Enforcement Policy states:

“The Council will consider prosecuting individuals or organisations who do not comply with any formal notice served on them, and will consider taking direct action, where necessary, having regard to degree of harm and public safety. “

As there is no risk to public safety in this case, the three enforcement options have been evaluated having regard to the degree of planning harm.

1) **PROSECUTION**

Non-compliance with the requirements of an enforcement notice is a continuing offence under Section 179 of the Town and Country Planning Act 1990 and, as such, the Council could prosecute again.

However, whilst a successful second prosecution would be likely to result in further financial penalties, it would not directly secure the demolition of the unauthorised

Building and, for that reason, officers do not recommend a second prosecution at this time.

2) 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. Injunctions are enforced by way of proceedings for committal for contempt of court and a person found in contempt of court is liable to be fined or imprisoned. The main disadvantage of seeking an injunction in this case is that it will involve the Council in further legal proceedings, which could potentially be protracted, and there is a risk that, even if successful in obtaining an injunction order, the Council may not recover its legal costs.

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 1990 allows the LPA to enter the land and take the steps as set out in the enforcement notice. In addition, the LPA may recover from the person who is then the owner of the land any expenses reasonably incurred by the LPA in doing so.

Paragraph 023 of section 17b of the NPPG states:

“These default powers should be used when other methods have failed to persuade the owner or occupier of land to carry out, to the local planning authority’s satisfaction, any steps required by an enforcement notice”.

The main advantages in taking direct action are that it is a relatively quick procedure which directly remedies the breach of planning control; and the LPA can attempt to

recover its costs, for example, through a charge on the Land. The principal risk is that the LPA may not recover some or all of its costs.

Having regard to the three enforcement options, it is considered that direct action is the most appropriate option because it should lead to a timely and conclusive resolution of this long running breach of planning control in the Green Belt.

OTHER MATTERS

An appeal is being considered by the Planning Inspectorate in respect of Prior Approval application 16/01001/AGRA for the erection of an agricultural building (following application 16/00086/AGRN). This is for an alternative building to the one which is the subject of the Enforcement Notice. Prior Approval was refused for the following reasons:

1. Due to the size and location of the proposed building it would detract from the openness of this part of the Green Belt. The building by virtue of its siting, scale and design would be visually detrimental to the appearance of the Green Belt and to the surrounding landscape and the proposal would therefore be contrary to policies CP8 of the Bath and North East Somerset Core Strategy and Saved Policy GB.2, D.2, ET.6 and NE.1 of the Bath and North East Somerset Local Plan including minerals and waste policies adopted 2007 and the provisions of the National Planning Policy Framework 2012.
2. The application has not been made in compliance with the requirements of the Prior Approval process as set out in Schedule 2, Part 6, Class A, A.2, 2, (iv), (aa) in regard of the display of a site notice.

Taking action to demolish the unauthorised Building would not prejudice the current appeal because the Building which is the subject of the Enforcement Notice is on a different part of the Land to the proposed building which is the subject of this appeal.

HUMAN RIGHTS and EQUALITIES

HUMAN RIGHTS

The demolition of the unauthorised Building would mean that the Owners would no longer have the use of the Building available to them and this may have a detrimental impact upon any agricultural business that is run from the Land. Demolition would also result in the Owners losing what is presumably a valuable asset. This could represent an interference with their right to the peaceful enjoyment of their possessions under Article 1 of Protocol 1 of the European Convention on Human Rights. However, weighing against that right is the harm caused to the Green Belt and the rural landscape by the unauthorised Building; and the public interest in protecting the environment from unauthorised development. After taking into account all material considerations, particularly in light of the protracted history of this site, it is considered that the public interest weighs in favour of taking formal enforcement action by way of direct action. The protection of the public interest cannot be achieved by means that are less interfering with the Owners' rights. The action would not, therefore, result in violation of the Owners' rights under Article 1 of Protocol 1 of the European Convention on Human Rights, or any other Convention article.

EQUALITY ACT 2010

Duties are placed upon the Council by the legislation including in relation to the section 149 public sector equality duty. This has been fully recognised in the recommendation made.

CONCLUSION

Taking direct action by demolishing the Building would ensure that the Notice is complied with and the harm to the Green Belt is remedied. It is considered that taking direct action would offer a swift and permanent solution to the ongoing breach of planning control.

RECOMMENDATION

That authority is delegated to the Group Manager – Development Management, in consultation with the Head of Legal and Democratic Services, to:

- a) exercise the powers of the authority under s178 of the Town and Country Planning Act 1990 to enter the Land and take the steps required by the Notice; and
- b) exercise any powers of the authority to recover the expenses of doing so.