

Bath & North East Somerset Council		
MEETING/ DECISION MAKER:	Development Management Committee	
MEETING/ DECISION DATE:	11 April 2018	
TITLE:	PLANNING ENFORCEMENT REPORT - “QUARRY LODGE” (PARCEL 8593), WOOLLARD LANE, PUBLOW BS14 0QS	
WARD:	Publow and Whitchurch	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
None		

1 THE ISSUE

Failure to comply with a planning enforcement notice requiring the dismantling and removal of a wooden chalet (the “**Breach**”) on land at “Quarry Lodge” (Parcel 8593), Woollard Lane, Whitchurch, Bristol BS14 0QS (the “**Land**”). The wooden chalet is being used as a family dwelling.

2 RECOMMENDATION

The Committee is asked to authorise the seeking of an injunction from the County Court or High Court, under Section 187B of the Town and Country Planning Act 1990 (the “**1990 Act**”) to restrain the Breach on the Land.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 The seeking of an injunction will have resource implications. The Council is primarily responsible for its officer costs, but if involved in litigation and successful, it may be able to recover some of its legal costs from the other party.
- 3.2 The Court has discretion as to whether legal costs are payable by one party to another and the amount of those costs. If the Court decides to make an order about legal costs the general rule is that the unsuccessful party will be ordered to pay the legal costs of the successful party.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Council as the Local Planning Authority in issuing a planning enforcement notice considered it was expedient to issue the notice having regard to the development plan and other material considerations (section 172, 1990 Act).
- 4.2 The Council has discretion whether or not to take further enforcement action if a planning enforcement notice has not been complied with.
- 4.3 One option for further enforcement action is that the Council may apply to the Court for an injunction to restrain an actual breach of planning control, if it considers it "necessary or expedient" (section 187B, 1990 Act).
- 4.4 In deciding whether or not to take further enforcement action, the Council must pay due regard to the Human Rights Act and it will also need to have regard to its Equality Act and Children's Act duties.
- 4.5 The Court has the power to grant such an injunction as it thinks is appropriate, for the purpose of restraining a breach of planning control. The decision whether to grant an injunction is always subject to the court's absolute discretion.

- 4.6 The National Planning Policy Framework (**NPPF**) at Paragraph 207 states:

Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

- 4.7 The Planning Practice Guidance (**NPPG**) states:

In deciding whether it is necessary or expedient to seek an injunction, local planning authorities may find it helpful to consider whether:

- they have taken account of what appear to be relevant considerations, including the personal circumstances of those concerned;
- there is clear evidence that a breach of planning control has already occurred, or is likely to occur;
- injunctive relief is a proportionate remedy in the circumstances of the particular case;
- a local planning authority can apply for an injunction whether or not it has exercised, or proposes to exercise, any of their other powers to enforce planning control. However, proceedings for an injunction are the most serious enforcement action that a local planning authority can take because if a person fails to comply with an injunction they can be committed to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a significant change of circumstances since the order was made. In these circumstances a local planning authority should generally only apply for an injunction as a last

resort and only if there have been persistent breaches of planning control over long period and/or other enforcement options have been, or would be, ineffective. The Court is likely to expect the local planning authority to explain its reasons on this issue.

5 THE REPORT

SITE DESCRIPTION

- 5.1 The Land is situated to the north of Woollard Lane, 0.5km east of the junction with Charlton Road. Access to the land is via a field gate in the south-west corner of the site opposite a property known as “Hillcrest”.
- 5.2 The Land is bounded by a well-established mature hedgerow to the east, west and south. To the north is a broken hedgerow affording glimpses of the development from Charlton Road.
- 5.3 The Land is located within the green belt and a designated Site of Nature Conservation Interest (SNCI) and is outside a housing development boundary.

BACKGROUND AND RELEVANT HISTORY

- 5.4 The Council received complaints in 2009 and 2010 regarding the erection of a wooden cabin on the Land.
- 5.5 In 2011, the Council served a planning contravention notice on the owner of the land to find out more information to determine whether planning enforcement action should be taken. The owner’s response asserted that the breach of planning control was long standing i.e. immune from planning enforcement and used on occasions as a residence by the owner’s daughter and granddaughter. The Council’s own evidence contradicted the assertions made by the owner and the evidence gathered on the whole concluded that the breach of control had occurred within the preceding four years and was not therefore immune from enforcement action.
- 5.6 Officers considered that a planning application, if made, could not be supported to permit the retention of the wooden chalet as it would clearly be contrary to the Council’s development plan i.e. it was inappropriate development in the green belt, harmful to rural character and openness and located in an unsustainable location. Furthermore, as no ecological surveys had been conducted the impact on the ecological and amenity value of the site could not be assessed.
- 5.7 Officers under delegated powers accordingly considered it expedient to pursue formal enforcement action against the unauthorised erection of the wooden chalet having regard to the development plan and other material considerations.
- 5.8 An Enforcement Notice was therefore issued on 24 May 2012 (the “**Notice**”) requiring the dismantling of the wooden chalet and the removal of all resulting materials from the Land. The Notice was served on the owner of the Land and the occupier of the wooden chalet. The period for compliance with the requirements of the Notice was 6 months.

- 5.9 The owner made an appeal to the Planning Inspectorate against the Notice on three grounds, brief details of which were the Breach had not occurred, there had not been a Breach in planning control terms; and that at the time the Notice was issued it was too late to take planning enforcement action (the “**Appeal**”).
- 5.10 On 5 March 2013, the Appeal was dismissed by a Planning Inspector and the Council’s Notice upheld. The Planning Inspector appraised the evidence provided at the Appeal and considered that the substantial completion of the wooden chalet was within the four year period for the Council to have issued the Notice.
- 5.11 As the Appeal was unsuccessful the effective date for compliance with the Notice to dismantle the Wooden Chalet and remove it from the Land was revised to 6 months from the date of the Appeal decision i.e. by 4 September 2013.
- 5.12 In October 2013, the occupier submitted a part retrospective planning application for the erection of a single storey 2 no. bedroom dwelling and stable block on the Land to attempt to overcome the Breach. The planning application was declined to be determined by the Council under its discretionary power in the 1990 Act where such a planning application would be for development that is (in part or whole) the subject of a planning enforcement notice.
- 5.13 In January 2014, Officers visited the site to assess whether the Notice had been complied with. It was observed that the Breach was continuing.
- 5.14 A land registry ownership check by the Council identified that the original owner of the land had transferred ownership of the Land to his daughter who was occupying the wooden chalet (the “**Owner/Occupier**”). It appears that the ownership changed in July 2012 after the Notice was served.
- 5.15 The original owner and Owner/Occupier were invited to attend a formal meeting/interview with Officers in February 2014 concerning the Breach. The original occupier declined to attend the formal meeting/interview stating that he no longer had any interest in the land. The Owner/Occupier did not contact Officers nor attended the requested formal meeting/interview.
- 5.16 In June 2014, Officers issued a letter under caution to the Owner/Occupier advising that the Breach was a criminal offence under section 179 of the 1990 Act and that the Council was now considering further enforcement action. The letter asked specific questions about the circumstances of the continuing Breach. The Owner/Occupier responded providing information but stating that she was unaware of the Notice.
- 5.17 In March and May 2015, Officers noted after site inspections of the Land that the Breach was still continuing. Despite attempts by Officers to achieve compliance, the Breach is continuing to date with the wooden chalet being used as a family dwelling for the Owner/Occupier.
- 5.18 Officers attempted to visit the owner of the land in August 2015 but received no response.
- 5.19 During 2016 the matter was discussed with the Council’s legal team with a view as to how best to proceed against the continuing breach.

- 5.20 In June 2017 a further site visit was undertaken confirming that there was still no compliance with the Notice. Children's toys, domestic paraphernalia and 2no touring caravans were noted on the site indicating an increase in activity.
- 5.21 In July 2017 officers wrote to the occupier of the site advising that the matter would be referred to Committee with a recommendation to seek an injunction. Before presenting the matter to committee and in order to understand the personal circumstances of the occupier it was considered necessary to prepare a Personal Circumstances Questionnaire ("**PCQ**") to understand the personal circumstance, children and any relevant health considerations anyone on site may have. The PCQ was returned in August 2017.
- 5.22 In September 2017 the matter was referred to the Council's legal adviser for consideration of the answers provided to the PCQ in light of the duties required by the Human Rights Act, Equality Act and Children's Act. The matter was then passed to external Counsel for consideration and comment.
- 5.23 The Council's external legal adviser provided detailed comment in November 2017 on the issues raised in the PCQ and made various recommendations regarding the draft committee report. Whilst the report was considered acceptable in its current form it was recommended that further information was obtained from the owner specifically with regard to the best interest of the children and health considerations of the owner.
- 5.24 In January 2018 the Council wrote to the owner reminding them of the non-compliance with the Enforcement Notice and asking further questions as suggested by counsel. The letter was not collected and subsequently returned to sender in February 2018.
- 5.25 In March 2018 the Council wrote again to advise that the matter would be presented to committee at the April 2018 meeting and that this was the final opportunity to provide information that the owner may consider relevant to the case. At the time of writing this report the letter remains unanswered. In the event answers are provided before the Committee meeting these will be presented as an update to Members.
- 5.26 Having regard to Counsel advice, whilst it is acknowledged that further information regarding personal circumstances could be beneficial to this case, the Council is nevertheless satisfied that it has sufficient information on which to make an informed decision in light of its relevant duties.

PERSONAL CIRCUMSTANCES OF THE OWNER/OCCUPIER

- 5.27 In June 2014, the Council issued a formal letter to the Owner/Occupier to establish background information relating to the Breach and the use of the wooden chalet. The Owner/Occupier's response stated that the wooden chalet was occupied by the Owner/Occupier and her daughter whose age was stated as 16 years old at the time of the letter. It was also stated that the Owner/Occupier's granddaughter was due to move to the wooden chalet "within the next 3 months" but no further details were provided.
- 5.28 In April 2017, the Council issued another formal letter to the Owner/Occupier to establish the current personal circumstances of the persons residing in the wooden chalet however no response was provided.

- 5.29 In June 2017, Officers visited the Land but no one was present although it was noted that there was children's play equipment on the Land.
- 5.30 In July 2017 a copy of the April 2017 letter and enclosed questionnaire was sent to the owner/occupier however this was returned to sender.
- 5.31 In August 2017, an Officer visited the Land and met with the Owner/Occupier. A copy of the previous formal letter referred to in paragraph 5.30 above was left with the Owner/Occupier to complete and return to the Council.
- 5.32 The Owner/Occupier returned the questionnaire in August 2017. The responses to the letter are summarised as follows:
- The cabin has two bedrooms.
 - She has some health concerns and is supported by her daughter of 19 years age who lives with her in the wooden chalet together with her 18 month old granddaughter.
 - Her granddaughter is hoping to attend a local nursery (no details of the location, days of attendance etc. provided).
 - Her father the original owner of the Land has passed away.
 - She previously lived in Kingswood [Bristol]
 - She has family members living elsewhere in the local area.
- 5.33 With regard to the health considerations of the owner/occupier these are clearly a relevant consideration however for reasons of disclosure and data protection it is not possible to discuss these in a public document. Notwithstanding, the Council has had regard to the personal circumstances of the owner/occupier and is satisfied that she has long standing connections with the immediate and wider area. Access to medical facilities and health care professionals would not be impeded if she were required to vacate the site. Whilst there may be a personal benefit to residing on this site – although it should be noted it is in a rural location, remote from direct access to services – this benefit does not outweigh the wider planning harm resulting from this unauthorised development and does not override the requirement to comply with the Enforcement Notice. The pursuance of an injunction in this regard is still considered proportionate.
- 5.34 Officers understand from other planning applications in the vicinity of Woollard Lane and from previous dealings with the owner/occupiers late father that the cabin owner's family own/reside in other dwellings along Woollard Lane within 250m of the Land. Additional questions have been asked as to the nature of relationship with other family members and the ability of those family members to assist in the event the owner/occupiers were required to move from the Land as a result of enforcement action however to date no response has been provided.
- 5.35 With regard to the declaration that there is a child residing at the site, the Council has a duty to consider the potential impact upon children when pursuing enforcement action. In accordance with the Council's duty, the child's

best interests are a primary consideration in this matter but this is not determinative.

- 5.36 Despite attempts to establish further information concerning the child, this has not been forthcoming. It was understood at the time of the August 2017 PCQ response that the young child was not currently in nursery or other education however it was stated that she intended to start at a nursery. No details as to the location of the nursery were provided or otherwise obtained. Whilst it is accepted that the child may now be attending a nursery, this is not formal education and in the event the Council decided to pursue further enforcement action achieving the requirements of the Notice it is considered that the interests of the young child would not be adversely affected as such action will not disrupt the educational prospects of the child.
- 5.37 The granting of an injunction would inevitably mean that the residential use of the Land could no longer continue. This would represent a substantial interference with the Owner/Occupiers and her daughter's human rights in respect of private and family life and their home. However, the harm caused by the Breach, which includes harm to the green belt, is considerable. Whilst the Owner has used the Chalet as her home for a number of years, she has also known since at least June 2014, and most likely before this, that this use was in breach of planning law. It is also a material consideration that there is a familial connection to the wider area meaning the occupiers would not necessarily be displaced from the immediate vicinity.
- 5.38 The Council must have regard to its Public Sector Equality Duty under section 149 of the Equalities Act. The duty is to have regard to the need (in discharging its functions) to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics are age, disability, gender, reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Officers do not consider that the recommendation in this report would have a disproportionate impact on any protected characteristic and having obtained legal advice on the matter are satisfied that the Public Sector Equality Duty is complied with.
- 5.39 Having taken into account all material considerations, particularly in light of the persistent breach of control over a long period and the protracted residential occupation of the Land, it is considered that these legitimate aims can only be adequately safeguarded by taking formal enforcement action by way of an injunction. It is the opinion of Officers, having regard to the above considerations that the taking of further enforcement action by the seeking of an injunction is proportionate in the circumstances of the case to remedying the Breach.
- 5.40 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.

5.41 With regard to this case there has been a persistent breach of planning control over a long period, previous enforcement options have been ineffective, other alternative enforcement options would be ineffective (these are considered below at paras 7.2 – 7.11) and the environmental harm is significant. The Government places great weight on the protection and preservation of the green belt from inappropriate development and the siting of a dwelling, without planning permission, is contrary to both local and national planning policy. Any adverse impact on the Owner and her family, and any interference with the Owner's rights, by pursuing an Injunction is proportionate.

5.42 Having regard to the relevant enforcement options set out below at part 7 of this report and the personal circumstances discussed above, Officers consider it appropriate to recommend that it is expedient to seek an injunction.

6 RATIONALE

6.1 Effective enforcement is important to tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area, maintain the integrity of the decision-making process and help ensure that public acceptance of the decision-making process is maintained.

6.2 The Council decided to take enforcement action against the breach of planning control and that decision was upheld after an Appeal. The Breach is continuing and the decision being recommended is that it is considered expedient for the Council to pursue legal proceedings to remedy the Breach.

7 OTHER OPTIONS CONSIDERED

7.1 Consideration has been given to the following available options:

ENFORCEMENT NOTICE

7.2 As there is currently a Notice in force against the erection of the chalet, it is not considered necessary to serve a further planning enforcement notice. The owner/occupier has persistently failed to comply with the existing Notice and it is therefore considered a further Notice would be ineffective.

PROSECUTION

7.3 Non-compliance with the requirements of a planning enforcement notice is a criminal offence under Section 179 of the 1990 Act and as such the Council could prosecute the owner of land for being in breach of a planning enforcement notice.

7.4 Whilst the Council may secure successful prosecution of the landowner for non-compliance with the requirements of the planning enforcement notice it will not necessarily result in the notice being complied with and may require repeated prosecution attempts to resolve the breach. This process would be both costly and time consuming with little prospect of successfully remedying the Breach.

DIRECT ACTION

7.5 Where the steps required by an planning enforcement notice are not taken within the period for compliance within the notice, Section 178 of the 1990 Act allows

the Council to enter the land and take the steps as set out in the enforcement notice.

7.6 Whilst the Council may recover from the land owner any expenses incurred by taking direct action the upfront cost of taking direct action is likely to be considerable with the practical difficulty that the unlawful wooden chalet is also in residential occupation.

7.7 Direct action would clear the Land of the Breach however would not stop future unauthorised development.

TAKE NO ACTION

7.8 Enforcement action should be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.

7.9 The Council issued the Notice because it was satisfied that there was a breach of planning control and it was expedient to issue the Notice, taking into account the provisions of the development plan and any other material considerations. The Notice was upheld on appeal.

7.10 The planning harm has not changed since the issue of the Notice. Without further enforcement action the integrity of the decision-making process and planning system may be open to criticism.

7.11 A decision to take no further enforcement action would not affect the Notice as it would continue in force against the Land and bind successors in ownership.

8 CONSULTATION

[Give details of all parties consulted in preparing this report.]

8.1 In preparing this report, external legal advice was obtained from Landmark Chambers and the recommendations and advice provided by Counsel have been taken into account and incorporated into this report.

8.2 No further consultation was required in preparing this recommendation.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.