

Bath & North East Somerset Council

Development Management

Enforcement Report



REFERENCE:

Enforcement file – 17/00076/UNAUTH

LAND TO WHICH THE ALLEGED BREACH OF PLANNING CONTROL RELATES

Parcel 2300, Marsh Lane, Clutton

Roberts Yard, Marsh Lane, Clutton

WARD

Clutton

MATTERS WHICH APPEAR TO BE BREACHES OF PLANNING CONTROL

Without planning permission, the change of use of land from an agriculture use to a mixed use of agriculture and open storage including the storage of skips, metal

containers, plastic containers, bins, vehicles, trailers and building materials, the parking of vehicles unconnected with the agricultural use of the land and provision of a hard surface, boundary fencing and metal entrance gate.

Breach of Condition 2 of planning permission 08/03492/FUL.

SITE DESCRIPTION

The land is situated at the end of an agricultural field and comprises a piece of land roughly triangular in shape located adjacent to the road. The land is accessed from Marsh Lane through a large metal clad gate. The land is currently being used for the storage of skips, metal containers and vehicles in association with a business that operates from a nearby industrial unit. A hard surface has been laid over the part of the field subject of the enforcement notice.

Recent changes to the land since the enforcement notice was issued include the erection of a timber boundary fence and changes to the existing vehicle access following the removal of a tree.

Roberts Yard is located on Marsh Lane and is one of a number of business premises located along this stretch of road. An open yard area is positioned to the rear of the boundary wall, between that and the building at the site.

BACKGROUND AND RELEVANT HISTORY

10th May 2013 – Enforcement Notice issued on land in relation to storage of skips and metal containers and provision of a hard surface.

5th September 2014 - Enforcement Notice complied with except for removal of hard surface.

13th February 2017 – New complaint received that land again being used for storage of skips, containers and vehicles.

24th February 2017 – Site visit by Enforcement Officer (EO). A number of stacked skips and metal containers, vans and equipment was visible on the land.

4th April 2017 – Section 16 Notice issued to M C Roberts (Roberts Metals Ltd) requesting ownership information. Response not received.

20th July 2017 – Revisit by EO. Numerous skips, metal containers, vehicles are stored on land. Site is fenced with Heras metal fencing and a new metal gate has been installed.

28th July 2017 – Enforcement Notice issued with the following requirements attached:

Requirement 1: Stop using the land for open storage, the storage of skips, metal containers, plastic containers, bins, vehicles, trailers and building materials and the parking of vehicles unconnected with the agricultural use of the land.

Requirement 2: Permanently remove all skips, metal containers, plastic containers, bins, vehicles, trailers, building materials and vehicles unconnected with the agricultural use of the land from the land hatched in bold on the attached plan.

Requirement 3: Remove the hard surface, all metal heras boundary fencing and the green metal sheeting from the entrance gate from the land hatched in bold on the attached plan.

Requirement 4: Restore the land hatched in bold on the attached plan to its original condition as undeveloped agricultural land using the topsoil previously removed and re-seed the restored land with grass seed.

Compliance periods for the above requirements were set as follows:

Requirement 1 and 2: Two months from the date on which this Notice takes effect.

Requirement 3 and 4: Three months from the date on which this Notice takes effect.

26th October 2017 – Re-visit to site by EO, land still in use for storage of skips and vehicles etc. The enforcement notice had not been complied with.

19th January 2018 – Interview under caution undertaken with then land owner Mr David Withers. Mr Withers identifies that he is not in day to day control of land and that the land is used by Mr Roberts in return for waste removal from farm.

9th February 2018 – Letter sent by solicitor acting for Mr D Withers to Mr Roberts terminating the licence to occupy the land and requiring the land to be vacated and all materials to be removed by 15th May 2018.

13th November 2018 – Letter sent by EO to Mr Roberts in relation to a breach of condition 2 of planning permission 08/03492/FUL following a site visit on 25th October 2018. Condition 2 states that:

2. There shall be no recycling waste stored or processed outside of the building at any time.

This letter required the outside storage of materials to stop and all recycling waste to be removed by 22nd November 2018.

15th March 2019 – Visit to M C Roberts yard, recycling material continuing to be stored in outside yard area.

1st May 2019 – Section 16 Notice sent to Mr Roberts as the yard area remained in use for the storage of recycling waste. The Section 16 Notice was not returned.

24th June 2019 – Information received that wooden fencing was being erected around the land.

5th September 2019 – Site visit by EO to land subject of enforcement notice. Timber fence erected to boundary, metal skips still stored on land, hard surface still present,

7th October 2019 – Letter received from solicitor acting for Mr David Withers informing the EO of a transfer of the land from Mr David Withers and Mr Colin Withers to Matthew Charles Roberts dated 27th August 2019.

14th October 2019 – Letter sent to Mr Roberts from Council solicitor requiring Mr Roberts to provide a signed undertaking to fully comply with the requirements of the enforcement notice by 8th November 2019. No response was received.

12th March 2020 – Site visit by EO to land. Land still being used in contravention of the enforcement notice.

The site does not benefit from any historic or extant planning permissions.

PERSONAL CIRCUMSTANCES

The Council is unaware of the personal circumstances of the current landowner. Formal requests to the owner for information have not been returned. The landowner operates two businesses from Roberts Yard, Marsh Lane, Clutton; Roberts Skip Hire Ltd and Roberts Metals Limited and it is understood that the owner may also rent land at the former Bidwells Site, Chapel Road, Clandown, near Radstock for the storage of skips and other equipment.

DECISION MAKING FRAMEWORK

The Development Plan comprises the Bath and North East Somerset Core Strategy adopted July 2014 and the Placemaking Plan adopted July 2017. Of particular relevance are Policies:

Core Strategy:

CP6 Environmental Quality

Placemaking Plan:

NE2 Conserving And Enhancing The Landscape And Landscape Character

D2 Local Character & Distinctiveness

ST7 Transport Requirements For Managing Development

The Clutton Neighbourhood Plan can be attributed significant weight. Policies relevant to this decision are:

CP12 – Loss of Agricultural Land

CNP10 – Traffic Impacts of Non-residential Development

The National Planning Policy Framework (“NPPF”) is a material consideration. Due consideration has been given to the provisions of the National Planning Practice Guidance (NPPG) with section 17b – (Ensuring Effective Enforcement) relevant.

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

REASON FOR ISSUE OF ENFORCEMENT NOTICE

- a) It appears that the breach of planning control has occurred within the last ten years.
- b) The change of use of the land from agriculture to a mixed use of agriculture and open storage including the storage of skips, metal containers, plastic containers, vehicles, and building materials fails to conserve or enhance the local landscape character. The unauthorised use has resulted in the storage of items and the parking of vehicles which are visually alien and intrusive to the rural landscape in this location and to the agricultural use of the land. The use of industrial style fencing and the green metal sheeting attached to the gate at the site further accentuates the visual harm caused to the landscape character by the change of use. This is contrary to Policy NE2 of the Bath and North East Somerset Placemaking Plan 2017.
- c) The access to the land is considered to be sub-standard due to its position parallel to the road. This horizontal alignment is likely to result in conflict with other road users due to the lack of visibility for vehicles exiting the site either

in a forward or reverse gear. The sub-standard access together with the generation of additional traffic movements of large vehicles in this constrained location is considered to be contrary to Policy ST7 of the Bath and North East Somerset Placemaking Plan 2017.

FURTHER ENFORCEMENT OPTIONS CONSIDERED

The continued use of the land for a mixed use of agriculture and open storage is in breach of planning control and constitutes non-compliance with an enforcement notice. Consideration has been given to the following options in this instance:

Enforcement Notice

An initial enforcement notice was issued on 10th May 2013 in relation to a change of use of land to a mixed use of agriculture and the storage of skips and metal containers and provision of a hard surface. This enforcement notice was not fully complied with and following a period when the land was used minimally the unauthorised use re-started with additional items being stored on the land. This enforcement notice remains in effect.

The second enforcement notice that was issued on 28th July 2017 is in effect. This notice was not appealed and the unauthorised use has continued along with sporadic development of the land. The notice remains in effect; there is no requirement to serve an additional enforcement notice.

Stop Notice

Section 183 of the Town and Country Planning Act 1990 states that “*where the local planning authority consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, they may, when they serve the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a “stop notice”) prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice*”.

In this section and sections 184 and 186 “relevant activity” means any activity specified in the enforcement notice as an activity which the local planning authority

require to cease and any activity carried out as part of that activity or associated with that activity.

Section (3) identifies that a stop notice may not be served where the enforcement notice has taken effect.

In this instance, the enforcement notice is already in effect and therefore a Stop Notice cannot be used.

Prosecution

The offence

Non-compliance with the requirements of an enforcement notice by the owner of land to which the notice relates is an offence under Section 179(1) 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. It is also an offence under Section 179(4) for a person who has control of or an interest in the land to carry out activities which are required to cease by the notice. Consequently the Council can prosecute any person who is operating from the site, and who has control over it, for their breaches of the enforcement notice.

The Full Code Test

Prosecutions should only commence whereby the case has passed both stages of the Full Code Test as set out within the Code for Crown Prosecutors. The first stage is the Evidential Test, which requires that prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. The second stage is the Public Interest Stage, which requires that where the Evidential Test is passed prosecutors must go on to consider whether a prosecution is required in the public interest.

In most cases, prosecutors should only consider whether a prosecution is in the public interest after considering whether there is sufficient evidence to prosecute. There are cases where it is clear prior to reviewing all the evidence that the public interest does not require a prosecution. In these instances, prosecutors can decide that the case should not proceed further.

The Evidential Test

Prior to commencing prosecution proceedings, the Council would need to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against a suspect. The test is whether the prosecutor concludes, following an objective assessment of the evidence, that a court is more likely than not to determine that it is beyond reasonable doubt that the suspect committed the offence.

In this instance, the Council has numerous photographic evidence and officer notes from inspections of the land which identify that the property continues to be used for a mixed use of agriculture and open storage.

With regard to the evidential test it is considered that there is sufficient evidence available to the Council which indicates that the enforcement notice has not been complied with and the land remains in a mixed use of agriculture and open storage. Further evidence could be from further visits to the land to assess its use.

The Public Interest Test

The Code for Crown Prosecutors identifies that where there is sufficient evidence to justify a prosecution or to offer an out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest.

A prosecution will not automatically take place if the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In reaching its decision, the Council has considered the questions set out in the Code for Crown Prosecutors at paragraph 4.14. The most relevant of those in these circumstances are discussed below.

The Enforcement Notice remains in effect on the building and the lawful use of the land remains agricultural. The use of the land as a mixed use of agriculture and open storage cannot become lawful.

Other Considerations

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. This is because under section 179 those found guilty of an offence are only liable to a fine. The court cannot in response to a finding of guilt order that the mixed use of the land cease.

Any penalty issued by the Courts could be nominal and a successful prosecution would not guarantee that the land would return to an agricultural use. Whilst prosecution in this instance could act as a deterrent for similar situations this is not sufficient justification alone.

Prosecutors should consider the costs of bringing a prosecution where relevant, especially where it could be regarded as excessive when weighted against any likely penalty. Prosecutors should not decide the public interest on the basis of this factor alone, but cost can be a relevant factor when making an overall assessment of the public interest.

In the Council's experience, bringing a prosecution is likely to have a substantial impact on the Council's ability to resource other priorities whilst carrying out the prosecution and to give rise to considerable costs. These costs must be weighed against the likely penalty of a fine that would not guarantee that the land would return to an agricultural use.

In addition to the above considerations, the land owner has shown no willingness to engage with the Council to resolve the breach of planning control and has failed to respond to various correspondences sent to them including formal requests for information and both previous and current enforcement notices. It is considered that even if a successful prosecution was achieved that this would be unlikely to bring about compliance with the enforcement notice resulting in repeated prosecutions which would have resource implications for the Council.

For the reasons outlined above it is not considered that prosecution of the owner of the land for non-compliance with the enforcement notice would be within the public

interest at this point in time though this remains an option that could be considered in the future.

Injunction

Section 187B of the Town and Country Planning Act 1990 allows local planning authorities (LPAs) 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.

In assessing whether it is necessary or expedient for the breach of planning control to be restrained by injunction, the LPA should examine considerations such as any urgency in restraining a breach or anticipated breach of planning control, health and safety, the planning history of the site and proportionality of such a course of action prior to determining whether an injunction is the most appropriate route to pursue.

It is considered that if an injunction was sought and then granted that the breach of planning control may be more likely to be remedied because of the nature of the injunction and the penalties associated with breaching an injunction. Obtaining an injunction to restrain the breach of planning control would support public confidence in the planning enforcement process and demonstrate the importance of complying with the criminal law. This is a strong reason in favour of seeking an injunction.

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 courts would be strongly disposed to grant an injunction where it appeared that a breach or apprehended breach would continue or occur unless and until effectively restrained by law and that nothing short of an injunction would provide effective restraint.

The Enforcement Team are dealing with two complaints related to the continued mixed use of the land in breach of the enforcement notice as well as the use of the outside yard area at Robert's Yard Marsh Lane for storage of material which is a breach of condition 2 of planning permission 08/03492/FUL.

Parcel 2300

The land was first occupied for a mixed use purpose in autumn 2012 without planning permission, a period of over eight years. The latest enforcement notice should have been complied with by 29th November 2017, a period of approximately two and half years. The planning enforcement process has been protracted due to the unwillingness of the occupant (now land owner) to engage with the Local Planning Authority and work continues to be undertaken on the site. In these circumstances it is deemed that it is more likely that a court would exercise its discretion to grant an injunction. The continued mixed use of the land results in continued harm to the local landscape character which in this location is distinctly rural and the land acts as a visual break between the activities of the existing businesses on Marsh Lane and the agricultural land beyond. This use disrupts the rural character by extending commercial activities to the west of the road and the continued use of the sub-standard access into the land by continues to put the safe operation of the highway network at risk. In addition to this, the land has now been purchased by the owner of the business using the land which is likely to mean that the land will continue to be used for a mixed use as there is now no option of the original owner requiring the business use to cease and taking their own legal action should this request not be complied with.

This decision to seek an injunction must be weighed against other relevant considerations, including those outlined above in order to arrive at a conclusion on whether seeking an injunction is necessary or expedient at this time.

Any such decision should consider what effect such a course of action would have on the personal circumstances of the person(s) named within the injunction. If granted, an injunction could subject the business in occupation of the land to inconvenience and expense from having to re-locate items that are stored on the land and as such any action should be considered to be necessary and proportionate.

Whilst the Council accepts that requiring the removal of the various items from the land could cause some short-term disruption to the operation of the business, this is weighed against the on-going planning harms already identified from the unauthorised use of the land. The action required by an injunction would be proportionate as it would be seeking to secure compliance with the enforcement notice. An injunction seeking a cessation of use of the agricultural land would not

stop the business from operating from its lawful business premise. There is no evidence to suggest that the items stored on the land could not be kept at another site as is currently believed to be the case for some of the equipment used by the business.

Robert's Yard, Marsh Lane

The decision to seek an injunction could also allow the Council at the same time to control the use of the outside yard area at Roberts Yard, Marsh Lane as set out by condition 2 of planning permission 08/03492/FUL. The yard area is used to store recycling waste and despite numerous requests to cease the use of the yard area for such a purpose the use continues. Requiring the cessation of storage of recycling waste in the yard area at the business premise would mean compliance with the terms of the planning permission that was granted was secured and would therefore remove harm to the amenity of nearby residential properties from noise generated by use of the yard and the visual impact of stockpiled recycling waste. Previous informal requests seeking compliance with this permission have been ignored and it is considered that the issue would not be resolved through the issuing of a formal breach of condition notice given the non-compliance with other formal notices issued by the Council.

Whilst it is accepted that action taken by the Council to ensure no outside storage takes place at the premises may cause some short-term disruption to the operation of the business it is considered to be proportionate action to ensure that the conditions of the planning permission are adhered to and will preserve the amenities of nearby residents.

Other action

There are various options outlined above as to how the Local Planning Authority could taking further action to resolve the outstanding breaches of planning control however consideration needs to be given to the option of taking no further action. The use of the land is controlled by the enforcement notice and the use for a mixed use of storage will never become lawful. The mixed use of the land may cease if the company relocates or the business changes.

In considering whether or not to take no further action it must be noted that both the land and yard continue to attract complaints regarding their on-going use and non-

compliance with the enforcement notice and planning permission. It is considered therefore that doing nothing is not in the public interest.

Assessment

Whilst an enforcement notice is in effect on the land which will prevent the mixed use of the land from becoming immune from enforcement action or from becoming lawful it is not considered that there are any suitable alternative methods to control the breach of planning control as explored above.

Taking into account all of the particular circumstances of this case, the LPA considers it necessary and expedient to pursue an injunction to address the breaches of planning control on the land subject to the enforcement notice and the land at M C Roberts Yard, Marsh Lane Clutton.

Human Rights and Equalities Issues

It appears that Mr Roberts owns Parcel 2300, and there is therefore a possibility that his A1P1 rights would be engaged by an injunction. The Local Planning Committee must consider whether any interference with his right to peaceful enjoyment of their possessions has struck the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights, or whether it imposed a disproportionate and excessive burden on him (*Cusack v. London Borough of Harrow* [2013] UKSC, 19). It is the Officer's view that (i) there would be no interference, but (ii) in any event, the demands of the general interest of the public, are legitimately protected by seeking an injunction, and any interference is proportionate.]

With regards to equalities issues, the Council is not aware that Mr Roberts has any protected characteristics.

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 breaches of planning control on the land subject of the enforcement notice and for a

breach of condition 2 of planning application 08/03492/FUL and that it is expedient to do so.