

5 BOGGS COTTAGE, KEELE, reference 14/00036/207C3

The purpose of this report is to provide Members with an update of the progress in relation to the taking of enforcement action against a breach of planning control at this location in accordance with the resolution of Planning Committee at its meeting of 6th November 2018.

RECOMMENDATION

That the information be received.

Background Information

A personal planning permission (reference N14847) was granted for the siting of a mobile home on this Green Belt site due to the personal circumstances of the applicant at that time. The same restrictions were imposed on a subsequent planning permission (reference N21428) for a larger mobile home. Subsequent attempts by the original applicant to vary or remove the conditions were unsuccessful.

It was established that the occupation of the mobile home as a dwellinghouse ceased and on 5th January 2016 Planning Committee resolved that enforcement action should be taken. An Enforcement Notice (EN) was subsequently served which, because no appeal was lodged, came into force on 13th July 2016.

The breach of planning control referred to in the EN was “without planning permission the material change of use of the Land for the storage of a mobile home” and the Notice requires the following to be carried out:-

1. Cease the use of the land for storage of a mobile home by removing the mobile home from the land;
2. Remove from the land all materials associated with the unauthorised use of the land for the storage of a mobile home.

The period within which the steps out within the EN had to be complied with ended 13th January 2017. Subsequent visits to the site established that the Notice had not been complied with.

On 4th January 2017 Planning Committee refused an application (16/00969/FUL) to vary the condition on permission N21428 so that it could be occupied by others. A subsequent appeal was dismissed on 5th January 2018. Shortly afterwards the applicant/appellant took ownership of the site.

In light of the continued non-compliance with the EN and the anticipated occupation of the mobile home by the current owner, a report was brought to the Planning Committee on 27th March 2018 when Committee resolved/noted a number of points with regard to securing compliance with the EN.

A Planning Contravention Notice was served and a belated response was received on 17th September 2018 which indicated that the mobile home had been occupied for residential purposes since April 2018. In addition it indicated that the breach of planning control that was alleged in the EN was not occurring. The same position had been indicated at a site meeting with the owner and his agent in July.

In light of the changed circumstances legal advice was sought. Having considered that advice your Officers' view has been that as a new breach of planning control is taking place (non-compliance with the occupancy condition attached to the mobile home) that has “overtaken” the breach set out in the extant EN. As such no prosecution can be brought or direct/default action taken regarding the breach of planning control identified in that notice (the storage of the mobile home on the site) as that breach is no longer taking place.

Consideration was then given as to the expediency of taking enforcement action in respect of that new breach and the conclusion reached that it is expedient to take enforcement action.

Latest Information

An Enforcement Notice (EN) was served, dated 9th November 2018, regarding the occupation of the mobile home in breach of condition 1 of planning permission N21248. The EN requires the following, all within 4 months after the date this notice takes effect;

- a) Cease the residential occupation of the mobile home on the land.
- b) Remove the mobile home from the land.
- c) Remove from the land all material associated with the residential use of the land.

The EN was due to take effect on 10th December 2018. On 8th December notification was received that an appeal against the EN had been made to the Planning Inspectorate and as such the EN has not yet taken effect.

As yet the Planning Inspectorate has not confirmed that the appeal is valid and has not set out the appeal timetable. The appellant has requested that the procedure that the appeal follows is a hearing. The Planning Inspectorate if they confirm that the appeal is valid will determine the appeal procedure to be followed.

There are seven difference grounds, in section 174(2) of the Town and Country Planning Act, on which an appellant can make an appeal against an Enforcement Notice.

The grounds of appeal advanced to date by the appellant in this case are as follows:

Ground (a) – that planning permission should be granted for what is alleged in the notice, or the “deemed planning application”

Ground (f) – that the steps required to comply with the requirements of the notice exceed what is necessary to remedy any breach of planning control referred to in the notice, and lesser steps would overcome the objections.

Ground (g) – the time given to comply with the notice is too short.

The appellant has yet to expand upon why they consider planning permission should be granted, although they have submitted in support of this ground of appeal various documentation that was provided in connection with the previous dismissed appeal.

With respect to the ground (f) appeal the appellant summarises their case as being that the condition being enforced does not require removal of the caravan or of all materials associated with the residential use of the land. They state that operational development carried out in connection with the use was not authorised by the permission, which was for “use of mobile home as dwellinghouse”, it was carried out more than 10 years ago and is immune from enforcement action. Their position is that the enforcement notice can only require cessation of the use of the mobile home for residential purposes.

With respect to the ground (g) appeal - that the time (4 months) given to comply with the notice is too short – it is submitted that the mobile home is the appellant’s home together with that of his partner and children and the time period for compliance would make this family homeless and disrupt the children’s health care and education. It is disproportionate to the harm being caused by them staying on in a mobile home which has been on the appeal site since 1991. The appellant concludes that a period of at least 18 months should be allowed before they are required to cease the residential use of the mobile home, in order to allow a reasonable amount of time for alternative lawful accommodation to be found.

Date report prepared: 11th December 2018