

**Item Number:** 10  
**Application No:** 15/00601/FUL  
**Parish:** Sheriff Hutton Parish Council  
**Appn. Type:** Full Application  
**Applicant:** Ms Lena Banks  
**Proposal:** Retention of timber cabin for use as an office, staff facilities, storage area and incubator area  
**Location:** Land At Cornborough Road Sheriff Hutton Malton YO60 6QL

**Registration Date:**  
**8/13 Wk Expiry Date:** 3 August 2015  
**Overall Expiry Date:**  
**Case Officer:** Gary Housden **Ext:** 307

-----

## 1. INTRODUCTION

This application is a retrospective planning application for the retention of a timber cabin for use as an office/WC/store room.

Members will appreciate that the timber cabin the subject of the retrospective planning application was also the subject of an Enforcement Notice which was served on 18 June 2014 alleging the unauthorised erection of a two bedroom timber cabin. This planning application seeks to retain the timber cabin and therefore regularise the unauthorised operational development. The enforcement notice was upheld on appeal with variations. Details of the planning history of the site are supplied below.

Members are advised that the District Council has the power to decline to determine a retrospective planning application under Section 70C of the Town and Country Planning Act 1990 as amended and which provides as follows:

### ***Power to decline to determine retrospective application***

*"70C.-*

*(1) A local planning authority in England may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.*

*(2) For the purpose of the operation of this section in relation to any particular application for planning permission, a "pre-existing enforcement notice" is an enforcement notice issued before the application was received by the local planning authority"*

Members are also advised that the Planning Practice Guidance gives the following guidance under the heading of 'Ensuring Effective Enforcement':

### ***Are there any restrictions on retrospective applications ?***

*"A person who has undertaken unauthorised development has only one opportunity to obtain planning permission after the event. This can either be by means of a retrospective planning application (under section 73A of the Town and Country Planning Act 1990) or by means of an appeal against an enforcement notice on ground that planning permission ought to be granted or the condition or limitation concerned ought to be discharged - this is referred to as a ground (a) appeal.*

*The local planning authority can decline to determine a retrospective planning application if an enforcement notice has previously been issued (Section 70C of the Town and Country Planning Act 1990). No appeal under ground (a) may be made if an enforcement notice is issued within the time allowed for determination of a retrospective planning application".*

Members are advised that legal advice has been obtained on the contents of this report and the approach recommended in this report has due regard to recent case law on the proper exercise of discretion under section 70C in the High Court case of *R on the Application of Wingrove v Stratford Upon Avon District Council* (2015).

## **2. SITE:**

The application site is located approximately 800m west of Sheriff Hutton to the south of Cornborough Road. It is situated within the open countryside, as identified by the Ryedale Local Plan.

Members will note that a public footpath runs to the south of the site.

## **3. PROPOSAL:**

This application is a retrospective planning application for the retention of a timber cabin for use as an office/WC/store room.

## **4. POLICY:**

(i) The following policies would need to be considered for the structures to be there, and to be used for office development. For an open countryside location the justification for allowing the structure to be located there is important:

SP1 – General Location of Development and Settlement Hierarchy, where development in the open countryside is restricted to that which is necessary to support a sustainable and vibrant and healthy rural economy and communities;

SP6 – Wider open countryside- provision of new buildings to support appropriate rural economic activity in line with SP9

SP9 - Support for new buildings that are necessary to support land-based activity and a working countryside including equine purposes

(ii) However, the structure and its use would also need to comply with the below policies which are concerned with assessing whether the structure's, siting, scale etc is appropriate to the context of the site, and other generic development management matters such as access etc are also considered.

SP13 - Landscapes

SP16 - Design

SP20 - Generic development management issues

## **5. PLANNING HISTORY:**

The relevant planning history for the application site can be summarised as follows:-

**13/00803/FUL** - Erection of an agricultural building for the storage of produce and housing of livestock Land At Cornborough Road Sheriff Hutton Malton - Approval on 30 October 2013.

**13/01461/FUL** - Siting of two bedroom timber cabin for use as a temporary rural workers dwelling to include formation of access track and hardstanding, and provision of a domestic curtilage (retrospective application) - Refused at the Planning Committee meeting on 8 April 2014. Section 78 Planning appeal dismissed by Planning Inspectors decision letter dated 5 March 2015.

**14/00041/BC** -Enforcement action to secure compliance with the previously approved plans in respect of the agricultural building constructed under ref. 13/00803/FUL approved by Planning Committee meeting on 8 April 2014. Enforcement Notice issued on 18 June 2014. Appeal dismissed by Planning Inspectors decision letter dated 5 March 2015 with variation of notice. The time period for compliance is six months.

**14/0001/UD** - Enforcement action to secure the removal of the timber cabin, access track, hardstanding, bunding and existing building and stables approved by Planning Committee meeting on 8 April 2014. Enforcement Notice issued on 18 June 2014. Appeal dismissed by Planning Inspectors decision letter dated 5 March 2015 with variation of notice. The confirmed enforcement requires inter alia the removal of the timber cabin from the site. The time period for compliance is six months.

**14/00042/CU** - Enforcement action to secure the discontinuance of the use of the site as a mixed use for agriculture, residential and the breeding of horses for recreational purposes was approved. Enforcement Notice issued on 18 June 2014. Appeal allowed in part by Planning Inspectors decision letter dated 5 March 2015 with variation of notice . The appeal on ground (a) succeeded insofar as it related to the agricultural and horse related aspects of the mixed use. The enforcement notice requires the residential use to cease. The time period for compliance is six months.

**15/00601/FUL** - Retrospective planning application validated from 08 June 2015.

## **6. APPRAISAL**

Section 70C of the Town and Country Planning Act was inserted by Section 123(2) of the Localism Act 2011 and came into force on 6 April 2012. It provides that a Council may decline to determine an application for planning permission if granting planning permission for the development would involve granting permission:

- (i) In relation to the whole or any part of land to which a pre-existing enforcement notice relates; and
- (ii) For the whole or any part of the matters specified in the enforcement notice as constituting the breach of planning control.

Section 70C is designed to prevent a retrospective planning application being made just to delay enforcement by prohibiting the situation where a developer appeals an enforcement notice and applies for retrospective permission which, if refused, can also be appealed.

The power under Section 70C is discretionary and in considering whether to use this power, the following two-stage process has been considered:

- (i) Whether the power under Section 70C is engaged.
- (ii) Whether the discretion to decline to determine should be exercised.

Each of these issues will be considered in turn below.

## **6.1 WHETHER THE POWER UNDER SECTION 70C IS ENGAGED**

Firstly, it is necessary to consider whether there is a pre-existing enforcement notice in respect of the whole or any part of the land for which the planning application relates. The site location plan submitted shows an area edged in red, which encompasses the timber cabin the building the subject of the enforcement notice. The enforcement notice applies to a more extensive area of land and I am satisfied that all of the land edged in red on the application is covered by the enforcement notice in its entirety

I have secondly considered the date on which the notice was served. The provisions of Section 70C came into force on 6th April 2012 and the notice was served on 18 June 2015. I am therefore satisfied that Section 70C applies in this regard.

Finally, I have considered whether planning permission is being sought for "the whole or any part of the matters specified in the enforcement notice as constituting the breach of planning control". The enforcement notice alleges the breach to be the erection of a two bedroom timber cabin. The application is for the retention of a timber cabin for use as office/WC/store room required to serve the needs of the equestrian enterprise at the stables, Comborough Road, Sheriff Hutton.

Both the enforcement notice and the retrospective planning application relate to the operational development comprising the erection/retention of a timber cabin.

Having carefully considered the retrospective planning application it is also apparent that the retained timber cabin building would have the external appearance of a two bedroom timber cabin if planning permission were granted and implemented.

This description falls squarely within the breach alleged, which is the operational development comprising the erection of a timber cabin and I am therefore satisfied permission is being sought for the matters specified in the enforcement notice relating to the timber cabin.

In conclusion it is clear that a pre-existing enforcement notice exists in relation to the whole of the land in the application; that the notice was served after 6 April 2012 when Section 70C came into force; and that permission is sought for the matters specified in the enforcement notice. For these reasons I am satisfied that the power under Section 70C of the 1990 Act is engaged.

## **6.2 WHETHER THE DISCRETION TO DECLINE TO DETERMINE SHOULD BE EXERCISED**

In considering whether to exercise its discretion, the Council is subject to general public law duties to exercise the power reasonably and to take into account all relevant considerations, whilst ignoring all irrelevant ones.

The applicant has already taken up the opportunity to have the merits of the timber cabin development assessed by appealing the notice after it was served and asking to have the appeal considered under Ground (a). If the applicant had wanted the planning merits of the proposal in the current retrospective planning application to be considered, she could and should have followed this course of action. No reasons have been given as to why she chose not to do this.

There has been no pre-application discussion on the merits of the development ahead of submitting the planning application. It is therefore hard to judge the applicant's motivation for making it; however, given that the notice will need to be complied with in order to avoid criminal proceedings, it is likely that a strong motivation will be the applicant's desire to retain the timber cabin while avoiding further proceedings. The applicant may believe that submitting a planning application is likely to persuade the Council to put any further proceedings on hold whilst the planning merits are considered.

In relation to the applicants proposal for the timber cabin for storage purposes, the Planning Inspector made the following finding in paragraph 16 of his decision letter dated 5 March 2015 in relation to the need for storage on the enforcement appeal site :-

*"The approved agricultural building is of sufficient size to allow for any storage associated with the agricultural and horse related uses"*

The nature of the development applied for is largely the same as the matters specified in the enforcement notice, namely the retention of a timber cabin. The only difference is that the applicant proposes that the timber cabin should be used for use as an office/WC/store room instead for residential purposes. This change does not materially alter the operational development nature of the timber cabin and, as stated above, the development applied for forms part of the matters specified in the enforcement notice.

The proposal has been considered against the following provisions of the Ryedale Local Plan Strategy:

- (i) The unauthorised development by reason of its lack of justification, prominent position and design would be alien to its surroundings and would fail to respect the character of the area resulting in an unacceptable level of harm to the visual amenity of the open countryside. The unauthorised development would therefore be contrary to the requirements of the NPPF and contrary to Policies SP13, SP16, and SP20 of the Ryedale Local Plan Strategy.
- (ii) The development is contrary to the following development plan policies;
  - (a) Policy SP20 (Generic Development Management Issues) states that 'New development will respect the character and context of the immediate locality and the wider landscape/townscape character in terms of physical features and the type and variety of existing uses. Proposed uses and activity will be comparable with the existing ambience of the immediate locality and the surrounding area and with the neighbouring land uses and would not prejudice the continued operation of existing neighbouring land uses'.
  - (b) Policy SP1 In all other villages, hamlets and in the open countryside development will be restricted to that:
    - Which is necessary to support a sustainable, vibrant and healthy rural economy and communities.
  - (c) Policy SP13 The quality, character and value of Ryedale's diverse landscape will be protected and enhanced by:
    - Encouraging new development and land management practices which reinforce the distinctive elements of landscape character within the District's broad landscape character areas of:
    - North York Moors and Cleveland Hills
    - Vale of Pickering
    - Yorkshire Wolds
    - Howardian Hills
    - Vale of York
  - (d) Policy SP16 Development proposals will be expected to create high quality durable places that are accessible, well integrated with their surroundings and which:
    - Reinforce local distinctiveness
    - Provide a well-connected public realm which is accessible and usable by all, safe and easily navigated
    - Protect amenity and promote well-being

(e) Policy SP19 When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

For all these reasons I consider that the breach does not constitute a sustainable form of development, contrary to the provisions of the Ryedale Local Plan Strategy and provision of Para.14 of NPPF.

Taking all of these factors into account, I conclude that it would be appropriate for the Council to exercise its discretion to decline to determine the planning application.

**RECOMMENDATION:**

That the Council declines to determine the retrospective planning application (received 20 May 2015) for the retention of a timber cabin for use as office/WC/store room under Section 70C of the Town and Country Planning Act 1990 (the 1990 Act).