



Ryedale District Council

REPORT TO: PLANNING COMMITTEE

DATE: 30 August 2017

REPORTING OFFICER: Gary Housden – Head of Planning

TITLE OF REPORT: Land at Pasture Lane Hovingham North Yorkshire

1 PURPOSE OF REPORT

1.1 The purpose of this report is to bring to Members' attention the requirement to consider taking direct planning enforcement action as a way of carrying out works in default to remedy a breach of planning control and a failure to comply with an Enforcement Notice.

2 OFFICER RECOMMENDATION

2.1 To delegate to the Head of Planning the authority to take direct planning enforcement action under section 178 of the Town and Country Planning Act 1990 as amended and all relevant regulations and to make arrangements for the laying of a wearing course to secure compliance with the requirements which are set out in the Enforcement Notice dated 18 August 2016 and that a legal charge be placed on the property to recover the Council's expenses.

2.2 To authorise legal action for the recovery of expenses and overheads incurred in taking direct action to secure compliance with the requirements which are set out in the Enforcement Notice dated 18 August 2016 from the land owner and any other liable person .

3 BACKGROUND

3.1 This has been an ongoing enforcement case since 2015 for the breach of condition. The Enforcement Notice relates to a breach of a planning condition.

3.2 Under section 179 of the Town and Country Planning Act 1990 as amended it is an offence for a person who is the owner, or has control of or an interest in the land to which an enforcement notice relates to fail to comply with the enforcement notice.

3.3 Prosecution proceedings have been considered because the notice has not been complied with. However, this in itself would not remedy the breach of planning control.

4 THE BREACH OF PLANNING CONTROL

4.1 Planning permission was granted on 25th April 2008 (ref: 07/00607/MFUL) for the following development:

Erection of 5 five-bed dwellings, 4 four-bed dwellings, 9 three-bed dwellings, 2 two-bed dwellings and four two-bed apartments together with associated garages, parking and amenity areas, access road and landscaping

4.2 This permission was granted a time extension on 20th February 2012 (ref: 11/00107/EXTM) under the following description:

" Extension of time limit to application 07/00607/MFUL for Erection of 5 five-bed dwellings, 4 four-bed dwellings, 9 three-bed dwellings, 2 two-bed dwellings and four two-bed apartments together with associated garages, parking and amenity areas, access road and landscaping."

4.3 The breach of planning control relates to the non compliance with the following condition :

Condition 14:

No dwelling to which this planning permission relates shall be occupied unless or until the carriageway and any footway/footpath from which it gains access is constructed to basecourse macadam level and/or block paved and kerb and connected to the existing highway network with street lighting installed and in operation.

The carriageway and footway/footpath wearing courses (and street lighting) shall be completed within three months of the date of commencement of construction of the penultimate dwelling of the development or within two years of the laying of the basecourse whichever is sooner, unless otherwise agreed in writing with the Local Planning Authority.

Reason:- To ensure safe and appropriate access and egress to the properties, in the interests of highway safety and the convenience of prospective residents.

4.4 The carriageway and footway/footpath wearing courses have not been completed within three months of the date of commencement of construction of the penultimate dwelling of the development or within two years of the laying of the basecourse.

5 ENFORCEMENT NOTICE

5.1 An enforcement notice was issued on 18 August 2016 . No appeal was lodged before the enforcement notice took effect on 26 September 2016 . The notice therefore has taken effect. A copy of the enforcement notice is attached to this report.

5.2 The enforcement notice required the following steps to be taken within 30 days of the notice taking effect:

"Completion of the carriageway and footpath/footway wearing courses as required by condition 14 of planning permission 07/00607/MFUL (duplicated as Condition 14 of Planning Permission 11/00107/EXTM)"

5.3 The freehold of the land is currently owned by an offshore Guernsey registered company called Stirling Mortimer No 8 Fund UK Land Limited.

6.0 OPTIONS FOR REMEDYING THE BREACH OF PLANNING CONTROL

6.1 Option 1 – Prosecution

6.2 Section 179 of the 1990 Act provides that if any owner or occupier of land on whom a notice was served fails to take steps required by the notice within the period specified in it for compliance with it, she shall be guilty of an offence.

6.3 A person guilty of an offence under section 179 shall be liable –

-On summary conviction, to a fine not exceeding £20,000; and

-On conviction on indictment, to an unlimited fine Section 179(8)

6.4 On the basis of the information currently held, it is considered that pursuing a prosecution against an offshore Guernsey registered company is a challenging option. The Magistrates court has no power to order compliance with the terms of the notice. The proposal to pursue direct action is without prejudice to the option of pursuing a prosecution in the future .

6.5 Option 2 – Injunction

6.6 Section 187B(1) of the 1990 Act provides that where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the high court or the county court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under Part VII (Enforcement) of the 1990 Act.

6.7 Whilst an application may be made to the court in respect of the above breach of planning control, the court would need to be satisfied that the granting of an order to force compliance will achieve the required aim and that intervention is as a last resort. This is because the court would also need to be satisfied that if the owner fails to obey the order they would be prepared to commit the owner to prison for contempt of court.

6.8 On the basis of the information currently held, it is considered that pursuing an injunction against an offshore Guernsey registered company is a challenging option. The proposal to pursue direct action is without prejudice to the option of pursuing an injunction in the future .

6.9 Option 3 – Direct Action (Section 178 of the 1990 TCPA)

6.10 Section 178(1) of the Act provides that where any steps required by an enforcement notice required by the notice to be taken have not been taken within the period for compliance , the local planning authority who served the notice may:

- (a) enter the land and take those steps, and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

6.11 Enforcement action taken must be proportionate, necessary, reasonable, appropriate and justifiable, and commensurate to the breach of planning control. Some incidents or breaches of regulatory requirements have the potential to cause serious risks to the public, environmental damage or loss of public or residential amenity. One of the Council's responsibilities is to protect the public and prevent harm to the environment from occurring or continuing.

6.12 In this particular case, it is considered that direct action pursuant to Section 219 of the Act is justifiably, reasonable, appropriate, proportionate and necessary and the

best option open to Members to remedy the breach of planning control, to ensure safe and appropriate access and egress to the properties, in the interests of highway safety and the convenience of prospective residents.

6.13 Option 4 – Take No Further Action

6.14 The Enforcement Notice will remain extant indefinitely and therefore a decision to take formal enforcement action could be reconsidered at a later date. However Members must consider that whilst the Local Planning Authority has a general discretion to take enforcement action, the continued failure to resolve the breach of planning control may affect public perception and confidence in the planning system. In addition, owners of other parts of the estate have access to an adoptable highway, and there is an issue of fairness and equality in dealing with the case. Therefore, in this particular case, taking no further action is not considered the most appropriate and proportionate response to the continued breach of planning control.

7 CONSIDERATIONS

7.1 The taking of steps specified in the enforcement notice to secure the laying down of the wearing course on the road at Pasture Lane Hovingham would resolve an outstanding issue should Members agree to take direct action.

7.2 Should Members agree not to take action then the road would remain as it is.

8 FINANCIAL IMPLICATIONS

8.1 Members should note that the costs of taking direct action, including the establishment costs are recoverable. Court action is usually taken in the County Court or High Court on these circumstances. Therefore the costs associated with the taking of direct action must be reasonable and justifiable. In this respect, direct action will be carried out in accordance with the law, best practice and guidance, and the Council's own procedures.

8.2 It is anticipated that the likely cost would be approximately £28,000 to secure the laying down of the wearing course on the road at Pasture Lane Hovingham. This estimate does not include the District Council's overheads such as legal and other establishment costs which would be recoverable section 36 of the Local Government Act 1972.

8.3 North Yorkshire County Council have agreed to share the initial cost of laying the wearing course.

9 ACTION

9.1 It is requested of Members to note the contents of this report and approve the Officer recommendation as set out in section 2 above.

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Head of Planning

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Background Papers:

Enforcement File : 15/00078/BC