

Forest Heath District Council

**DEVELOPMENT
CONTROL COMMITTEE**

2 NOVEMBER 2016

DEV/FH/16/037

Report of the Head of Planning and Growth

PLANNING ENFORCEMENT MATTERS AT SMALL FEN FARM, SMALL FEN LANE, BRANDON

Synopsis:

Update report on ongoing enforcement related matters at the above property in light of recent developments.

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Committee Report

Site: Small Fen Farm, Small Fen Lane, Brandon

Background:

This matter is reported to the Development Control Committee in accordance with a resolution made by the Committee in September 2015 in refusing planning permission for DC/14/1711/FUL.

In refusing that application in accordance with the Officer recommendation the Committee offered a 12 month grace period during which no further enforcement action would be taken as well as requesting that a written update be brought back before the Committee in due course.

In light of the fact that the 12 month period has now expired, and in light of the fact that there have been recent developments in relation to this matter, this report is hereby presented.

There is no recommendation associated with this report.

Background and Officer Comment:

1. The site is located to the north and west of the settlement of Brandon, Suffolk, within the northern part of Forest Heath District, close to the boundary with Norfolk. The site is accessed from Brandon via Chalk Road, a metalled single carriageway road without footpaths or street lighting.
2. The site itself is accessed along an unmade track off Chalk Road and Small Fen Lane. As the crow flies the unauthorised dwelling is approximately 270 metres from the edge of the defined settlement boundary of Brandon and, when accessed along the track, Small Fen Lane and Chalk Road, it is approximately 350 metres. The surrounding countryside is generally flat, open and undeveloped, with sporadic natural vegetation. To the immediate west of the site is a two storey dwelling known as West End House. Chalk Road is a rural lane with scattered and incidental residential properties, and Small Fen Lane is an unmade rural track.
3. The site contains a single 1.5 storey building within the centre of the site. This is the unauthorised dwelling which was subject to the enforcement action. The failure to comply with the terms of the Enforcement Notice mean that the building is presently illegal. A smaller outbuilding located along the northern boundary is lawful due to the length of time that it has existed on site. Concerns were raised previously about the prospect of this northern outbuilding being used residentially and such a use was also alleged in the previously served Enforcement Notices. However, the appeal against this Notice was allowed by the Inspectorate since there was no evidence in 2013 of there being any unauthorised use in this building. The previous appeal determined that this building was not being used residentially.

4. This matter relates to a longstanding planning enforcement investigation into this site. This investigation related to the erection of a dwelling on a site in the rural area where no dwelling was previously in existence. This matter was first investigated by the Authority in 2009 as works took place to erect the new building. After some detailed investigations (including the service, and then subsequent withdrawal on a technicality, of an Enforcement Notice in late 2010 early 2011) a formal Enforcement Notice was served again in 2012 requiring the demolition of the dwelling. This Notice was appealed and a public inquiry was held in April 2013.
5. Members' attention is drawn to the original appeal decision letter included at Working Paper 1 to this report, which offers useful context. It is recommended that Members familiarise themselves with this. The decision of the Inspector, following the public inquiry, was that the Enforcement Notice served by Forest Heath should be upheld and that the terms of the Notice, which are to demolish the unauthorised dwelling, should be maintained. The Notice required demolition by 20th June 2014 but compliance with the terms of the Notice remain outstanding.
6. The Authority had been in the process of securing compliance with the outstanding terms of the Notice. This included procurement for 'direct action' whereby the Authority would appoint contractors to enter the site to effect compliance with its terms. In summary, this includes the demolition of the unauthorised dwelling and the removal of all resultant material from the site.
7. However, as these steps were reaching an advanced stage the application under DC/14/1711/FUL was submitted to the Authority. Planning permission was sought through that application for the retention of the presently illegal dwelling for a temporary period of up to five years. That application therefore had the effect of holding the progression of any direct action in abeyance pending its determination.
8. The applicants presented an argument that they considered material to the Authority's assessment. In his June 2013 appeal decision the appeal Inspector recognised that there may be changes in circumstances that the Council should take into account at the end of the enforcement notice compliance period. The compliance period has expired and the applicant argued that circumstances had changed during this period in that the planning policy position has moved on materially since the time of the service of the Notice and since the time of the decision of the Inspector.
9. That argument related in summary to the possible allocation of land entirely surrounding this appeal site for mixed use development as part of the planned expansion of Brandon. If such an allocation and development came to fruition it might reasonably call in to question whether or not this site would remain 'isolated' with reference to paragraph 55 of the NPPF.
10. In submitting DC/14/1711/FUL the applicant also presented personal circumstances which they considered offered justification for a further delay in the requirement to demolish the dwelling, for a period of up to

five year or until the death of Mrs. Ellen Usher. This included confidentially provided details about the medical condition of Mrs. Ellen Usher who is the mother / mother in law of the applicants, and who resides with the applicants at the site. It was argued by the applicant that the main change in circumstance was that Mrs Ellen Usher's physical and mental health had deteriorated considerably, such that moving her from her home would pose a significant risk to her health.

11. In determining DC/14/17/11/FUL the Committee agreed with the Officer recommendation and the matter was refused on 5th September 2015 for the following reason –

The dwelling proposed for retention remains an isolated dwelling contrary to the provisions of paragraph 55 of the NPPF and those of Policies DM5 and DM27 of the Joint Development Management Policies 2015. It is also the case that the building to be retained is significantly larger, higher and bulkier than the one it replaced and remains visible over a wide public area. In line with the conclusions of the previous appeal Inspector it is thus an obtrusive and uncharacteristic form of development in this setting contrary to the requirements of the NPPF in relation to good design and those of Policy DM2.

Very significant constraints exist in relation to the potential allocation of any sites within and around Brandon. There is presently no indication of when, or even if, these matters will or can be resolved. It is not therefore considered that any material weight can presently be attached to the emerging planning Policy position. In light of this fact, in light of the harm identified, and in light of the generous timeframe for review in relation to this matter that has already now been offered, firstly by the Planning Inspectorate in their appeal decision letter and secondly by the Local Planning Authority in the consideration of this application, it is not considered reasonable to allow a temporary approval for the further retention of this unauthorised dwelling.

In balancing and concluding on this matter it is recognised that weight can be attached to the personal circumstances of the applicant, and to the medical evidence confidentially submitted. The weight to be attached to this however is not considered sufficient to meet the high test set out in paragraph 015 of the NPPG. The weight that must be attached to this personal circumstance is also further limited by the circumstances surrounding the sale of Mrs. Ellen Usher's own property. In this context it is not considered therefore that the personal circumstances presented in the case are sufficient to outweigh the obvious and continuing harm presented by this unauthorised dwelling.

12. In reaching the decision the Committee wanted to respect the applicant's right to challenge this refusal through the appeals process. Accordingly, the following 'informative' was also included on the Decision Notice.

The Local Planning Authority hereby confirms, in accordance with the resolution of the Development Control Committee on Wednesday 2nd September 2015, a moratorium for a period of 12 months from the date

of this decision in relation to any 'direct action' to otherwise resolve this breach of planning control. This moratorium assumes that a timely appeal will be lodged in due course in relation to this refusal. If such an appeal is not lodged then the Authority reserves the right to proceed with direct action within this 12 month time frame. It is also hereby stated that the Authority does not anticipate the use of direct action at any stage while any appeal against this refusal is still with the Planning Inspectorate for determination.

13. This position afforded comfort to the applicant, noting the sensitivity of the personal circumstances, that action would not take place, assuming they exercised their right of appeal against the refusal.
14. This right was exercised and a 'hearing' was held by the Planning Inspectorate on 21st June 2016. This hearing afforded the appellant their opportunity to present their case before the Inspector and to argue why, in light of the wider emerging planning policy situation, and in light of the personal circumstances argument, they considered that the appeal should be allowed and planning permission granted. It was clear through this process that, should the appeal be dismissed, then compliance with the terms of the Enforcement Notice would be expected.
15. The Planning Inspectorate issued their decision on 18th August 2016. This is attached to this report as Working Paper 2. The Inspectorate dismissed the appeal, upholding the decision of the Council to refuse planning permission. In reaching this decision Members will note that the Planning Inspectorate had full regard to the provisions of, and implications arising from, the 1998 Human Rights Act and the 2010 Equality Act. The most pertinent conclusion of the Inspector is set out below. (Note - EU in this passage refers to Ellen Usher, the mother and mother in law of the appellants).

Notwithstanding the mental impact from fear of being forced from her home, and the risk to physical and mental health from an unfamiliar environment, I have not been presented with a compelling reason as to why EU could not relocate to alternative accommodation subject to continuing to be looked after in the close care of her immediate family.

After very careful consideration, and though finely balanced, for the aforementioned reasons I conclude that the correct balance between the public interest and the private interests in the form of the difficult personal circumstances of EU lies in favour of not allowing temporary permission and dismissing the appeal.

16. The 12 month 'moratorium' against enforcement action has passed. Opportunity (in fact extended opportunity) has been given to the owners to argue their case. These arguments, whilst being respected and considered with care, have failed, and the decisions of the Council have been upheld in every case by the Planning Inspectorate. Members will also note that the Planning Inspectorate agreed with the view of Officers that this longstanding and very serious breach of planning control should be treated as 'intentional unauthorised development', noting the self inflicted

nature of matters.

17. Opportunity has been given to the owners to present their case as to why this illegal dwelling should remain. Arguments presented in this regard have been dismissed by the Council and this refusal has been supported in full by the Planning Inspectorate. The ongoing breach of planning control is significant, and has been going on for a considerable period of time. The appeal Inspector has again re-affirmed the position of the earlier Inspector, that the illegal dwelling is visually obtrusive and isolated in this context. Furthermore, the Inspector agreed with the Council that it is important that this matter is resolved in order to ensure faith in the planning process.
18. Officers have written to the agent representing the owners and have specified clearly the steps that they expect to see happen, and over what timescales, in order to secure compliance with the terms of the outstanding Enforcement Notice. It is hoped that the owners will comply finally with the terms of the Notice, and a final deadline of the end of January 2017 has been specified. A failure to meet any of these requirements or timeframes will lead to the Authority considering instigating a prosecution for failure to comply along with the taking of Direct Action to ensure compliance, with a charge placed on the property to enable monies to be recovered.
19. Discussions are continuing with the site owner in relation to other planning matters arising in relation to this site, including the potential for other possible breaches of planning control. Officers are satisfied that these issues can be considered and treated distinct from the failure to comply with the provisions of the outstanding Enforcement Notice and that one does not fetter the other. There is nothing therefore in any wider enforcement investigation or other planning matter in relation to this site that should preclude seeking compliance in full with the terms of the Notice in as reasonable a timeframe as possible.