

PLANNING COMMITTEE

CHAIRMAN: Cllr Dennis Smith

DATE: 24 October 2017
REPORT OF: Business Manager – Strategic Place
ITEM: 6.

ENFORCEMENT REPORT

REFERENCE NO: 10/00266/ENF

DESCRIPTION OF DEVELOPMENT

TEIGNMOUTH: Mistleigh Farm Barns, Doddiscombsleigh

OBSERVATIONS

1. On 19 September 2012 the Council issued an Enforcement Notice for;
 - i. the unauthorised erection of a boundary metal fence exceeding one metre in height adjacent to a highway; and
 - ii. the unauthorised change of use of the land and building from agricultural use to the storage of vehicles, skips, containers and assortment of scrap not associated with agriculture;on land to the South West of Mistleigh Farm, Doddiscombsleigh.
2. Following an appeal that was dismissed on 26 April 2013, to comply with the Enforcement Notice it was necessary by 26 July 2013 to;
 - i. remove the metal fence,
 - ii. remove from the land and building all the vehicles, skips, containers and assortment of scrap not associated with agriculture, and
 - iii. stop using the land and building for the storage of vehicles, skips, containers and assortment of scrap not associated with agriculture.
3. Following the date for compliance, although it was clear the fence had not been removed or reduced to no more than one metre, and there were still items being stored on the land, as there appeared to be no activities being carried out no further action was taken at that time. Furthermore over the next couple of years as the site remained fairly inactive, the requirements of the Enforcement Notice were not pursued despite the fact that the fence had not been removed and some unauthorised storage continued.

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4. In October 2016 the Council received a complaint about activities occurring on the land. From an investigation it was noted that there were numerous items such as skips and vehicles being stored on the land that did not appear to be associated with the permitted agricultural use of the land. It was clear that there had been a recent increase in the level of use of the land. As these items were being stored contrary to the requirements of the Enforcement Notice the Council pursued prosecution proceedings which resulted in the matter being brought before the Courts in July 2017. As a result of the Court's decision the landowner has taken steps to clear the land, but a final resolution of the matter remains outstanding and this is still being pursued.
4. As well as the use of the land for storage the Council also received a complaint that the land was being used for residential purposes. Investigations were carried out and it was noted that a caravan had been sited inside the existing agricultural building. However, it was claimed that it was being used as a restroom and that the landowner stays elsewhere overnight, although evidence seemed to suggest otherwise.
5. To determine whether a residential use was occurring on the land a Planning Contravention Notice was served on the owner in April 2017 requesting clarification on the use of the caravan. In response it was claimed the caravan provides a rest area and is not used for residential purposes.
6. On 5 September 2017 a site visit was carried out to determine what works had been undertaken to comply with the requirements of the Enforcement Notice. At the same time it was noted that there was a caravan sited inside the agricultural building that contained a bed with a duvet on it that appeared to have been used. There was also a portable toilet next to the caravan along with a cooker and other facilities that indicated a residential use is occurring.
7. Although the owner states no residential use is occurring, from the evidence available it appears that a change of use of the land has occurred to include a residential use. As this is contrary to planning policies it is necessary to take enforcement action to ensure the unauthorised use ceases.

The Human Rights Act 1998

8. From the evidence available it seems the owner is using the caravan sited within the existing barn as their home. As such, the courts will view any decision to take enforcement action as engaging the occupiers' rights under Article 8 ECHR (right to respect for private and family life and home) and Protocol 1 Article 1 (peaceful enjoyment of possessions). The service of an Enforcement Notice requiring the unauthorised residential use to cease would represent a serious interference with these rights. However, it is permissible to do so "insofar as is in accordance with the law and necessary in a democratic society for the protection of rights and freedoms of others".
9. The courts have held that provided a balanced and proportionate approach is taken, having regard to all relevant considerations and not giving irrational

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weight to any particular matter, the UK planning system (including the enforcement process) is not incompatible with the Human Rights Act.

10. Tackling breaches of planning control and upholding Local Plan policies is clearly in accordance with the law and protects the District from inappropriate development. There are not believed to be any overriding welfare considerations at this time.
11. Members are therefore advised that enforcement action would be:
 - (i) in accordance with law – s.178 (1) T&CPA 1990
 - (ii) in pursuance of a legitimate aim – the upholding of planning law and in particular policies S1 (Sustainable Development Criteria) and S22 (Countryside) of the Teignbridge Local Plan 2013 - 33
 - (iii) proportionate to the harm and therefore not incompatible with the Human Rights Act.

Conclusion

12. The unauthorised siting of a residential caravan on the land is clearly contrary to development plan policy. The development is also considered contrary to the advice contained in the National Planning Policy Framework. To resolve the matter it is now considered appropriate to secure the cessation of the use of the land and building for residential purposes.

RECOMMENDATION

The Committee is recommended to resolve that an Enforcement Notice be served to cease the unauthorised use of the land and building for residential purposes with a compliance period of one month. In the event of the Notice not being complied with, the Solicitor be authorised to take action as necessary under Sections 178 and 179.

WARD MEMBERS: Cllr Ford, Teign Valley

