

PLANNING COMMITTEE

CHAIRMAN: Cllr Dennis Smith

DATE: Tuesday 18 December 2018

REPORT OF: Business Manager – Strategic Place

ENFORCEMENT REPORT

REFERENCE NO: 12/00192/ENF

DESCRIPTION OF DEVELOPMENT

CHUDLEIGH: Land at Graeden Park, Milestone Cross, Chudleigh

OBSERVATIONS

1. On 10 January 2008 planning permission (reference 07/04869/FUL) was granted for the temporary stationing of an agricultural worker's dwelling for a period of 3 years. As part of the permission a condition was attached that required the temporary dwelling to be removed and the land restored to its former condition on or before 10 January 2011.
2. Following an investigation, it was apparent works had been carried out to commence the construction of the temporary dwelling but had clearly not been removed by 10 January 2011. As such, the Council issued a Breach of Condition Notice on 13 July 2012 for an unauthorised temporary agricultural workers dwelling which was required, by condition 1, to be removed on or before 10 January 2011. As there is no right of appeal against a Breach of Condition Notice, this Notice came in to effect immediately with six months given to comply by removing the unauthorised temporary agricultural workers dwelling.
3. As it was clear that the requirements of the Breach of Condition Notice had not been complied with the Council instigated prosecution proceedings. However, when the matter was brought before the Courts in 2014 it became apparent that the person who was believed to be in control of the land was not, so the case had to be withdrawn.
4. Since the Court case was withdrawn the Council has been in continued correspondence with the landowner to try and resolve the matter. As it was clear that the matter was not going to be resolved further, Court proceedings

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were instigated in 2017. At that time the Council were advised that the planning permission for which the Breach of Condition Notice was based on was not actually implemented. The reasons to support this were that the building was not temporary, but permanent, and was in a different location to the one approved. Furthermore, the conditions attached to the planning permission had not been discharged.

5. Having taken legal advice in this instance it was agreed that no further action should be taken over the non-compliance with the Breach of Condition Notice. It was determined that further action should be taken by issuing an Enforcement Notice for the construction of an unauthorised dwelling. To help with the investigation the Council served a Planning Contravention Notice on the landowner. In response, we were told that the dwelling was completed and occupied in 2013, which would make it immune from enforcement action as it would have been in place for more than four years.
6. Although it was claimed the dwelling may be immune from enforcement action being taken it is considered that from various site visits by Officers in 2013, 2015, 2016 and 2017 the dwelling was not substantially completed and occupied until 2016 at the very earliest and possibly later. As such, it is considered the dwelling constructed has not been substantially completed for the necessary four years to be immune from enforcement action being taken.
7. From ongoing investigations it is noted that as well as the new dwelling that has been constructed the owner has been living in the existing barn. Since 2007, the owner has been living in mobile homes that have been joined together to form a dwelling in one of the agricultural buildings. Although no planning permission has been granted for the residential use, it was noted from a Planning Contravention Notice that was served in March 2012 that the mobile home had been incorporated into the building, so that it was no longer moveable. However, although the residential use of the structure within the barn may be immune from enforcement action being taken this has never been definitively established through the submission of a Certificate of Lawfulness.
8. Having determined that the BCN that was issued could not be enforced and the new dwelling has not been substantially completed long enough to be immune from enforcement action, the Council has met with the owner's agent and it was envisaged that a planning application would be submitted to determine whether the building could be retained. However, to date no application has been submitted.
9. Following recent correspondence with the owner's agent it is proposed to submit a Certificate of Lawfulness to establish the dwelling within the agricultural building. Once this has been approved a planning application will be submitted for the retention of the new dwelling.
10. In this instance it appears that both structures are currently being used in conjunction with one another for residential purposes. However, as the matter has been ongoing for a considerable time and there is no guarantee any

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applications will be submitted, the Council must consider enforcement action for the unauthorised dwelling that has been built.

11. The new dwelling is located in the Countryside outside the settlement limits of Chudleigh. Furthermore, no agricultural or forestry reasons have been submitted to support the need to have the dwelling on the land for those purposes. For these reasons the new dwelling is contrary to Policies S1A (Presumption in favour of Sustainable Development), S1 (Sustainable Development Criteria), S22 (Countryside) and WE9 (Rural Worker's Dwellings) of the Teignbridge Local Plan 2013 – 2033.
12. Although the matter should be brought to a conclusion in this instance it is considered that to progress the case the owner should be allowed to submit the Certificate of Lawfulness to establish the dwelling that exists within the existing agricultural building. If this is submitted and approved then providing a planning application is submitted shortly afterwards to determine whether the new dwelling can be retained and the original dwelling is removed then this should be allowed. However, if this does not occur then formal action should be taken.

13. HUMAN RIGHTS

“ARTICLE 1 - Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

As can be seen from the second paragraph above the use of land may be regulated and enforced by the local planning authority provided it acts within its statutory powers.

The sections of the Town & Country Planning Act 1990 outlined above are the statutory powers for planning enforcement. Therefore there is no breach of human rights under the First Protocol Article 1.

RECOMMENDATION

The Committee is recommended to defer any further action for a period of two months as a Certificate of Lawfulness is expected to be submitted and determined. If the Certificate is approved but no planning application is submitted within one month of the

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decision to determine whether the new dwelling can be retained then an Enforcement Notice should be served. The Notice should ensure the unauthorised dwelling is removed from the land within six months. If a Notice is served but not complied with, the Solicitor be authorised to take action as necessary under Sections 178 and 179 of the Town and Country Planning Act 1990.

WARD MEMBERS: Cllrs Keeling & Evans

