

# PLANNING ENFORCEMENT REPORT

## PLANNING COMMITTEE

8 May 2017

Report of the Executive Director of Environment and Planning,  
pursuant to the Scheme of Delegation

Parish:	Pentney
Purpose of report:	TO UPDATE MEMBERS IN RESPECT OF A CONTINUING BREACH OF PLANNING CONTROL AND TO SEEK A RESOLUTION IN RESPECT OF WHAT FURTHER ENFORCEMENT ACTION IS REQUIRED, IF ANY, TO REMEDY THE BREACH OF PLANNING CONTROL.
Location:	Land at 11 Church Close, Pentney, King's Lynn, Norfolk, PE32 1JJ
<b>Recommendation – That Members of the Planning Committee:</b> <ul style="list-style-type: none"><li>a) Note the update in respect of the continuing breach of planning control; and</li><li>b) Grant authority to the Executive Director of Environment and Planning for the implementation and execution of direct action under Section 178 of The Town and Country Planning Act 1990 (as amended) to comply with the requirements set out in Paragraph 5 of the Enforcement Notice dated 12<sup>th</sup> December 2014, (Appeal Decision).</li></ul>	

### 1.0. INTRODUCTION

1.1. This report is brought to the Planning Committee so that Members can note the continuing breach of planning control and for a resolution to remedy the breach of planning control following non-compliance with a Planning Enforcement Notice. A copy of the Enforcement Notice (Appeal Decision) is attached at **Appendix 1**.

### 2.0 THE LAND

2.1 The Land is located entirely within the curtilage of the residential dwellinghouse at 11 Church Close, Pentney, King's Lynn, Norfolk, PE32 1JJ (the Land). The Land is registered to the owner named above and a plan of the Land can be found attached to the Enforcement Notice at **Appendix 1**.

2.2 It is apparent that a large number of vehicles are being kept on the Land that the Local Planning Authority considers requires planning permission as it is well above what could be normally considered to be incidental to the enjoyment of the dwellinghouse.

2.3 Photographs showing the condition of the Land are attached at **Appendix 2**.

### **3.0 RELEVANT LEGISLATION**

3.1 The following legislation is relevant:

- Town and Country Planning Act 1990 (as amended) (the 1990 Act), Sections 172 to 179, 187B and 191.
- Law of Property Act 1925 (the 1925 Act), Section 103
- Public Health Act 1936 (the 1936 Act), Sections 276, 289 and 294.

### **4.0 PLANNING CONSIDERATIONS**

4.1 The following planning considerations are relevant:

- National Planning Policy Framework
- Planning Practice Guidance – Ensuring effective enforcement

### **5.0 PLANNING HISTORY**

5.1 There is no specific planning history relevant to this matter.

### **6.0 THE BREACH OF PLANNING CONTROL**

6.1 The breach of planning control is set out at Paragraph 3 of the enforcement notice as:

*The material change of use for the Land from dwellinghouse to a mixed use of dwellinghouse and the storage of vehicles for a purpose not incidental to the enjoyment of the dwellinghouse as such.*

### **7.0 ENFORCEMENT HISTORY**

7.1 The condition of the property was brought to the attention of the Planning Department in July 2013.

7.2 As a result of failed negotiations with the owner of the Land to remedy the breach of planning control, a planning enforcement notice was served on 14<sup>th</sup> March 2014 (the 1<sup>st</sup> Enforcement Notice).

7.3 An appeal to the Planning Inspector against the Enforcement Notice was subsequently made, with the Planning Inspectorate's decision being made on 20<sup>th</sup> October 2014 to quash the 1<sup>st</sup> Enforcement Notice.

7.4 On 12<sup>th</sup> December 2014 a second Enforcement Notice (the Enforcement Notice) was served. Again this notice was appealed against and the Planning Inspectorate's decision being made on 7<sup>th</sup> August 2015.

The decision being:

*The appeal is dismissed and the enforcement notice is upheld with a variation.*

7.5 The variation provided that the compliance period to be extended to two months, this being 7<sup>th</sup> October 2015.

## **8.0 OPTIONS FOR REMEDYING THE BREACH OF PLANNING CONTROL**

### **8.1 Option 1 – Prosecution**

8.2 Section 179 of the 1990 Act provides:

Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.

Where the owner of the land is in breach of an enforcement notice he shall be guilty of an offence.

A person guilty of an offence under this section shall be liable [on summary conviction, or on conviction on indictment, to a fine].

8.3 The court has no power to order compliance with the terms of the enforcement notice.

8.4 The Local Planning Authority has already successfully prosecuted the owner of the Land for failing to comply with the requirements of the 2<sup>nd</sup> enforcement notice in the King's Lynn Magistrates Court on 16<sup>th</sup> November 2016.

Defendant was found to be guilty, with the verdict being:

A fine, an award of costs and a victim surcharge.

8.5 Although it is open to the Local Planning Authority to consider further prosecution proceedings in relation to the failure to comply with the 2<sup>nd</sup> enforcement notice, this still may not persuade the owner of the need to comply with the requirements of the notice.

### **8.6 Option 2 – Injunction**

8.7 Section 187B 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 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.

8.8 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 injunction 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 injunction they would be prepared to commit them to prison for contempt of court.

8.9 In this particular case it is considered that the Council will have some difficulty in persuading the court to grant injunctive relief, particularly as it is not the only option open to them, nor is it the last resort. Also, the court may consider that injunctive relief is a draconian and disproportionate tool under the circumstances and one that would put the owner at immediate risk of contempt if compliance was not fully achieved.

8.10 Members would therefore have to commit to the costs involved with obtaining and enforcing the order, with little realistic prospect of success. This option is therefore not considered to be the most appropriate and proportionate action to take.

### **8.11 Option 3 – Direct Action (Section 178 of the 1990 Act)**

8.12 Section 178 of the 1990 Act provides that where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may –

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

8.13 Enforcement action 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.

8.14 The continued failure to comply with the requirements of the Enforcement Notice is causing an adverse impact to the amenity of the area. It is considered that the best option for remedying the continuing breach of planning control is to undertake direct action to ensure the requirements of the Enforcement Notice are fully met.

8.15 Paragraph 5 of the Enforcement Notice requires the following steps to be taken:

- i) The use of the Land for the storage of vehicles for a purpose not incidental to the enjoyment of the dwellinghouse as such ceases.*
- ii) All vehicles stored on the Land for a purpose not incidental to the enjoyment of the dwellinghouse as such are removed from the Land.*

8.16 In this particular case, it is considered that direct action pursuant to Section 178 of the 1990 Act is justifiable, reasonable, appropriate, proportionate and necessary and the best option open to Members to remedy the breach of

planning control, to protect the amenity and prevent harm to the environment from occurring or continuing.

#### **8.17 Option 4 – Take No Further Action**

8.18 The enforcement notice will remain extant indefinitely and therefore a decision to take formal enforcement action could be reconsidered at a later date. The result of this is that the unauthorised use cannot become lawful for the purpose of Section 191 of the 1990 Act. However, Members should 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.

#### **8.19 Option 5 - Compulsory Purchase Order (CPO) (Section 226 of the 1990 Act)**

8.20 The Council has the power to purchase land under Section 226 in the following circumstances:

(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area which –

(a) if the authority think that the acquisition will facilitate the carrying out of development/ re-development or improvement on or in relation to the land, or

(b) is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects –

(a) the promotion or improvement of the economic well – being of their area;

(b) the promotion or improvement of the social well-being of their area;

(c) the promotion or improvement of the environmental well-being of their area.

8.21 Guidance for the use of this power is provided by the Department for Communities and Local Government – October 2015, which states at paragraph 12:

*A compulsory purchase order should only be made where there is a compelling case in the public interest.*

*An acquiring authority should be sure that the process for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provision of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.*

- 8.22 Further the Council would have to demonstrate that it had the funds to carry out the acquisition prior to making the relevant compulsory purchase order and that no obstacles existed to the exercises of the CPO.
- 8.23 Only in exceptional circumstances would CPO be likely to be an appropriate course of action in controlling unauthorised sites since the Council has other powers to secure compliance with planning control which have a less drastic effect than taking away property rights.
- 8.24 Again, assuming such action could be justified, the procedure involved could be likely to be protracted, most probably involving a public inquiry and subsequent report. The Secretary of State would then have to consider whether to confirm the Order or not.

### **8.25 Option 6 - A Discretionary Extension of the Compliance Period**

- 8.26 The owner of the Land has by virtue of the appeal and time period leading to the Court hearing on 16<sup>th</sup> November 2016 been afforded an extension of time to comply with the requirements of the Enforcement Notice. Furthermore there has been no indication from the Land owner that extending the compliance period will result in compliance with the notice. In this particular case, extending the compliance period of the notice is not considered the best option as it is likely to result in a delay in the need to take further enforcement action.

## **9.0 COST IMPLICATIONS**

- 9.1 An assessment has been made of the costs involved to secure compliance with the requirements of the Enforcement Notice. In accordance with the Council's Contract Standing Orders procedure (24<sup>th</sup> September 2015), the relevant number of quotations have been provided to remove all vehicles that the LPA consider to not be incidental to the enjoyment of the property, and it is estimated that a sum of less than **£10,000** plus VAT will be required.

- 9.2 Given the nature of the work, a specialist contractor would be needed to carry out the work.

- 9.3 If Members resolve that Direct Action (Option 3) is authorised it should be noted that the costs of taking direct action, including the Council's establishment costs are recoverable by way of imposing a registered charge on the Land. 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 guidance, and the Council's own procedures.

## **10.0 THE HUMAN RIGHTS ACT AND THE EQUALITY ACT**

- 10.1 The Council has a duty to consider the Land owner's rights under the Human Rights Act (HRA), in particular Articles 8 and Article 1 of the first protocol to the Convention on Human Rights, which state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property.

- 10.2 However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. Therefore, on balance it is considered that the wider adverse impact due to the condition of the land, continued failure to comply with the requirements of the enforcement notice outweighs the landowner's right under the HRA.
- 10.3 The Council must also have due regard to the provisions of the Public Sector Equality Act (PSED) contained in the Equality Act 2010. Amongst other things, this requires consideration to be given to the need to eliminate unlawful discrimination, harassment, and victimisation and to advance equality of opportunity and foster good relations between people who share protected characteristics and people who do not share it.
- 10.4 It is not known whether the owner of the Land falls within one of the protected characteristics. However, even if they do it does not follow from the PSED that formal enforcement action should not be taken. The adverse impact the condition of the property is having on the amenity of the area is demonstrable and therefore it is not considered that the requirement to have due regard to meet the needs of people with protected characteristics is of sufficient weight in this instance to justify taking no action.
- 10.5 On balance, it is considered justifiable and proportionate to remedy the ongoing breach of planning control by taking of further enforcement action using the above options.

## **11.0 RECOMMENDATION**

### **11.1 That Members of the Planning Committee:**

- a) **Note the update in respect of the continuing breach of planning control.**
- b) **Grant authority to the Executive Director of Environment and Planning for the implementation and execution of direct action under Section 178 of the Town and Country Planning Act 1990 (as amended) to comply with the requirements set out in paragraph 5 of the Enforcement Notice and appeal decision 7<sup>th</sup> August 2015.**