



Hinckley & Bosworth
Borough Council

A Borough to be proud of

FORWARD TIMETABLE OF CONSULTATION AND DECISION MAKING

PLANNING COMMITTEE

20 JUNE 2017

WARDS AFFECTED: All Wards

Planning Enforcement Update

Report of Head of Planning and Development

1. PURPOSE OF REPORT

- 1.1 To provide an update to Members on current sensitive planning enforcement cases
- 1.2 To provide an update on planning enforcement workload and performance.

2. RECOMMENDATION

- 2.1 That the report be noted.

3. PLANNING ENFORCEMENT CASE UPDATE

3.1 Good Friday Caravan Site

Following an appeal to the High Court, the judge on the 15 July 2015 upheld the enforcement notice requiring the cessation of the use of land as a caravan site. Therefore, the occupiers of the Good Friday site were required to vacate the site by 15 January 2017, and reinstate the land by 15 April 2017.

Following the High Court decision, the occupiers of the Good Friday site submitted another planning application for the site, this application being for five traveller pitches, as opposed to the previous application for 10 pitches that was been refused on 15 May 2009; this refusal having been upheld at Public Inquiry and in the High Court. The council refused this latest application on the 4 February 2016 on the same grounds as the previous application for 10 pitches (highway safety and visual amenity). Subsequently, the applicant has lodged an appeal against this planning decision. An Informal Hearing took place on the 7 February 2017 and the Council now awaits the decision of the Planning Inspectorate.

The owners have not appealed against the enforcement notice and this is still valid. Officers are preparing for the legal proceedings necessary to require compliance with

the enforcement notice. External legal advice on these actions is being obtained to make sure that the council stands the best chance of success.

Since the appeal, two of the pitches which were not part of the appeal proceedings have been occupied. The Council has a Court date of the 22 June 2017 at Leicester County Court to seek to obtain an Injunction for the removal of the occupants of these pitches.

3.2 Land North West of Cold Comfort Farm, Rogues Lane, Hinckley

At the beginning of July 2015, it was reported to the Council that an unauthorised gypsy and traveller incursion had taken place on the land. A Temporary Stop Notice was served requiring occupation of the site to cease within 28 days. In addition to this, an injunction was sought by the council and granted by the County Court to prevent any further incursion onto the rest of the land. Following on from this the Council served a full Stop Notice and an Enforcement Notice to remove the caravans from the site. The Council returned to court to seek a further injunction to remediate the breach of planning control. However the Court only granted a further interim Injunction until a decision has been made at an appeal in regard to the enforcement notice. The owner subsequently appealed to the Secretary of State against the enforcement notice and this appeal was heard at an Informal Hearing on the 7 June 2016.

The appeal was allowed, and the site has been granted temporary planning permission for five years. The Inspector stated that the site is located within the countryside and will harm the countryside and is also in an unsustainable location away from local services. The Inspector found that the development was contrary to the Council's Core Strategy and the Site Allocations and Development Management Policies DPD. However, the inspector took into account the fact that one of the occupiers is pregnant and that special circumstances should apply which to take into account the unborn child. He considered that the five year permission will enable the child to attend a local school; the Inspector also concluded that a five year period would allow the council to plan for future Gypsy and Traveller Sites in accordance with the Local Development Scheme.

Following the appeal being allowed development commenced on site in September 2016, it became apparent to the Local Planning Authority that there were more caravans on site than permitted under the terms of the planning conditions attached to the permission issued by the Inspector. The Local Planning Authority therefore issued the owners with a Breach of Condition Notice to ensure that no more than four mobile homes are present on the site. The notice has now been complied with; however the Council will continue to regularly monitor the situation at the site as it develops.

Further to this a number of planning applications have been submitted, the first one was in regard to the erection of day rooms at the site which has been withdrawn. The second application which is currently pending consideration is in regard to a variation of condition application for the addition of an extra mobile home on the site.

3.3 Newton Linford Lane, Groby (Known as Klondyke)

On 7 September 2015, the owner of a piece of land within "Klondyke" submitted an "Application for a certificate of lawful existing use for a dwelling". The application sought to establish the use of an area within the site as a residential dwelling; the applicant was claiming that the site has been used as a permanent residential dwelling

since 1985. This site is particularly well known to the Council and there is an extensive enforcement history on the whole of the site, with previous enforcement notices and Injunctions served on the land. Based on the evidence provided by the applicant the Council refused the application and subsequently an enforcement notice was served on the 7 January 2016, stating that the dwelling had to be removed. Following the service of an enforcement notice, the applicant has submitted an appeal to the Secretary of State against the notice.

Section 124(1) of the Localism Act 2011 inserted new sections into the Town and Country Planning Act 1990 (as amended) to allow enforcement action to be taken in England against a breach of planning control when the time limits for taking enforcement action have expired and the breach has been concealed. Following a number of site visits by the Council, the local authority believed that the dwelling had deliberately been concealed by a person with a view to obtaining a certificate of lawful use.

There have been a number of high profile court cases where owners have sought to deceive the local planning authority in their initial application for planning permission or have concealed the development and then sought to argue that the local planning authority is out of time for taking enforcement action. Where it appears to the local planning authority that there may have been a breach of planning control in its area it may apply to a magistrates court for a planning enforcement order. If the Court makes such an order then the local planning authority may take enforcement action in respect of the apparent breach at any time within a period of one year and 22 days of the making of the order. Following the submission by the Council of a claim (in accordance with advice from an independent barrister) for a Planning Enforcement Order, the owner challenged the council's evidence on the basis that he believed that concealment had not occurred. The case was heard at Leicester Magistrates Court on the 7 October 2016.

The District Judge found that, based on the evidence that deliberate concealment had not occurred at the site and the Planning Enforcement Order was not granted on a the basis of a narrow 'technicality'. This decision was made on the basis that evidence was presented that suggested that people could, if they chose, view the site on a particular day in 2006 as part of an appeal site visit.

Prior to the Public Inquiry, Counsel advised that the Council withdraw the enforcement notice due to legal discrepancies in the notice and to focus purely at the appeal on the refusal of the certificate of existing lawful use. At the Inquiry a number of developments occurred including the fact that the appellants were only seeking a certificate for a dwelling, but not for the use as a dwelling. All parties agreed that there had been a building in place for a long period of time.

The Council has now received the decision from the Planning Inspectorate which grants a certificate confirming that the building; which was constructed as a dwelling is lawful due to the passage of time. The Council are currently exploring options in regard to whether further enforcement action is appropriate in relation to the use of the building for residential purposes.

3.4 19 Sycamore Drive, Groby

On the 11 October 2016 the Local Planning Authority served the owners of 19 Sycamore Drive, Groby with an Enforcement Notice in regard to the erection of an

unauthorised fence. The owner has not appealed against this notice and as a result; the owner was required to remove the fence by the 11 December 2016.

Subsequently, the fence was reduced to one metre in height which meant that the fence is permitted development and therefore lawful. However, temporary fencing has since been erected behind this and a further enforcement notice has now been served for the removal of this temporary fence.

3.5 Dalebrook Farm, Earl Shilton

Following the grant of planning permission for an additional 10 gypsy and traveller pitches in 15/01089/COU, the council received complaints that the owners were carrying out unlawful works on the site. On the 22 December 2016 the Local Planning Authority served the owners of Dalebrook Farm with a Temporary Stop Notice which required all works on the site to cease for the period during which the Stop Notice is effective; the Notice expired on the 19th January 2017. The reason for the serving of this notice is that work that has taken place on site is not in accordance with the approved plans which may have implications in relation to impact on the Flood Plain. Discussions with the Environment Agency are taking place with a view to ensuring that the works do not cause flooding problems. This will inform the next steps to be taken on this site. The owner of the site is working with the Local Planning Authority to move forward with this development. An unlawful incursion occurred on the site in May and a Temporary Stop Notice was served to require this use to cease; all caravans have now left the site and it has been secured.

3.6 23C Wood Street, Hinckley

On the 4 October 2016 the Council received a retrospective planning application for the "Change of use to dog day care and dog grooming centre" (Planning Reference: 16/00883/COU). This was refused planning permission on the 29 November 2016.

On the 6 January 2017 the council issued the owners of the property with an Enforcement Notice requiring the unauthorised use of the premises as a dog day care and grooming centre to cease.

Following on from this the owners did appeal the refusal of planning permission but not the enforcement notice. However the Inspector dismissed the appeal and now further enforcement action will be taken to ensure the cessation of the use at the site; in parallel; work is also ongoing to seek to assist the owners to find suitable alternative premises from which to run their business.

3.7 31 Flaxfield Close, Groby

On the 14 March 2017 the Council issued an enforcement notice for the unauthorised change of use of 31 Flaxfield Close, a private residential property for the parking of one flat bed lorry, which constitutes a material change of use. The owners have not submitted an appeal against the notice, and the flat bed lorry had to be removed from the site by the 14 May 2017. The flat bed lorry has now been removed from the site and the notice has been complied with.

3.7 S215 – Untidy Land Notices

Within the period from 1 January 2017 to 30 April 2017, the council was made aware of ten untidy properties. Eight properties are still under investigation and are affecting the public amenity of the area and appropriate steps are being taken to ensure that

the properties are tidied to an appropriate level with certain Section 215 Notices to be issued as necessary.

Out of the other properties, one case was closed as it was found to be not affecting the public amenity of the area to a level where action could be taken. The other case was at 42 Park Road, Hinckley where the property was affecting the public amenity of the area, however after discussions with the Council the site was tidied to a more acceptable level that no longer affects the public amenity of the area.

Further to this the Council has also issued a Section 215 Notice on owners of 1 Trinity Vicarage Road, Hinckley. This is an abandoned factory premises located adjacent to a Hammonds furniture showroom. Within the notice the owner was required to demolish the building and remove all overgrown vegetation from the premises by the 6 April 2017. It is evident that this notice has not been adhered to; this is due to the land owners going into receivership. New owners have now taken over the site and are working with the Council to remedy the issue.

A Section 215 Notice has been served upon owners of 140 Leicester Road, Markfield. This is a property which was granted planning permission in 2006 to undertake extensions and alterations. Works have been ongoing at an extremely slow rate for over 10 years. A notice has been served to ensure that the building works are completed within six months. If an appeal is not lodged then the works should be complete by 23 July 2017.

4.0 WORKLOAD & PERFORMANCE

- 4.1 The following tables show the current work load the service is managing in respect of current enforcement investigations. Table 1 demonstrates the number of cases that have been opened within that period and how many cases have been closed. The team ensures that enforcement cases are resolved as expediently as possible. Table 2 shows in more detail how the cases were closed. This table demonstrates that the majority of cases that have closed are either through negotiation, or by retrospective planning applications being received and approved. As of the 30 April 2017 there were 231 enforcement cases; however a number of these are currently dormant i.e. awaiting further information or subject to ongoing monitoring to collate evidence. The team is taking a proactive approach to ensuring cases are resolved as promptly as possible, using all available powers where appropriate.

Table 1: Number of Enforcement cases opened and closed

Period of time	Number of cases opened	Number of cases closed
1 January 2017 to 30 March 2017	99	112
1 October 2016 to 31 December 2016	86	99
1 July 2016 to 30 September 2016	98	80

Table 2: How the enforcement cases were closed

Period of time	Total Cases closed	Case closed by resolving breach	Case closed by not being a breach	Cases closed by being Permitted Development
1 January 2017 to 30 March 2017	112	40	63	9
1 October 2016 to 31 December 2016	99	42	49	8
1 July 2016 to 30 September 2016	80	28	42	10

- 4.2 On the 9 March 2016, the Council approved an updated Planning Enforcement Protocol. The protocol has been updated to be in accordance with the NPPF and sets out how the Council will proactively manage planning enforcement issues within the borough by monitoring the implementation of planning permissions and ensuring conditions are fully complied with. Currently the service is achieving its targets by ensuring that 98% of complaints received site visits are undertaken within seven working days. The service also acknowledges receipt of 100% of complainants within its three working days target.
- 4.3 Planning enforcement and monitoring is carried out on a pro-active basis to seek solutions to problems that may arise. The service provides pre-application advice which allows issues that could delay the speed at which a planning application to be determined to be resolved prior to submission. The way in which enforcement cases are dealt with now reflects this proactive approach.
- 4.4 The first strand to this proactive approach involves working more closely with elected members and community groups; for example Parish Councils and Neighbourhood Forums to deal with common complaints that are raised. This may include untidy sites, unauthorised advertisements and unlawful land uses. The aim is to actively seek out problem cases and tackle them before they become an eyesore and detract from the local area or have an adverse impact on amenity. A proactive approach is also taken to the checking and monitoring of planning permissions. A new system of regular monitoring of sites ensures that the development is built in accordance with the approved plans and that relevant condition and Section 106 obligations have been complied with (or enforced against).
- 4.5 The service will continue to take a proactive approach to monitoring progress on large housing developments in close consultation with the Executive Member for Development Services. Recent examples of this would include the work undertaken at Higham on the Hill and Welbeck Avenue in Burbage, ensuring that conditions imposed are complied with. This also allows relationships to be brokered between the site manager and those residents living within the vicinity of a development to ensure that they are not adversely affected by a development which is likely to go on for several years. The approach to tackling enforcement cases will continue to be a collaborative one; involving joined up working with other service areas within the council to find solutions. Work is also on-going to create a Leicestershire wide

enforcement group; to include all Enforcement Officers within Leicestershire Local Authorities as a forum to share experiences and best practice.

5. FINANCIAL IMPLICATIONS [TF]

5.1 None

6. LEGAL IMPLICATIONS LEGAL IMPLICATIONS MR

6.1 None

7. CORPORATE PLAN IMPLICATIONS

The 2017-2021 Corporate Plan sets out ambitions for improving neighbourhoods, parks and open spaces, improving the quality of homes and creating attractive places to live (Places theme). It also promotes regeneration, seeks to support rural communities and aims to raise aspirations for residents (Prosperity theme). This report sets out how planning enforcement powers are being used to deliver these aims.

8. CONSULTATION

None

9. RISK IMPLICATIONS

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Dealing with numerous Public Enquiries	Monthly monitoring of implications on revenue budget by Head of Service and Service Manager. Review and forecast overspend and review supplementary estimate/virement as part of budget review. Constant review of budget for public enquires for duration of the masterplan. Monitoring of budget in relation to appeal costs. Monitoring of planning decisions	Rob Parkinson

10. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

This report is for information purposes to update Members on the progress of recent enforcement cases. As this report is not seeking a decision it is envisaged that there are no equality or rural implications arising as a direct result of this report.

11. CORPORATE IMPLICATIONS

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Voluntary Sector

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