

**Enforcement Item for Consideration:  
Site adjacent to Land at North End Thurlton**  
Report by Head of Development Management

**Summary:** This report concerns the unauthorised use of land for the storage of non-agricultural scrap and other items and sets out potential options should compliance with the Enforcement Notice not be achieved.

**Recommendation:** Members' views are sought on the options outlined within the report.

## **1 Background**

- 1.1 In April 2010 land at North End, Thurlton (where there was a history of planning enforcement action) was sold by Mr David Page to Mr Danny Burlingham although this transfer was never registered with the Land Registry. Non-agricultural equipment and other materials were brought on to the site by Mr Burlingham and on 22 April 2010 a Temporary Stop Notice was served. Discussions were held with the landowner regarding his intentions for the site, which were described as the establishment of a smallholding, with some ancillary buildings.
- 1.2 Further unauthorised works were undertaken and the site appeared to be being used for car breaking. A 2m high metal fence was erected around the site, the effect of which was to screen the unauthorised development contained within the fenced area. A Stop Notice and Enforcement Notice were served in February 2011. The Environment Agency successfully prosecuted the landowner Mr Burlingham for unauthorised waste operations and some clearance was undertaken. Further material was, however, subsequently brought on to the site, including scrap machinery and log splitting equipment.
- 1.3 During 2011 discussions were held with the landowner regarding their intentions for the site. An invalid planning application was submitted for the retention of a container on the site for storage in association with a smallholding use. However, the application was not progressed and was later withdrawn; there is no smallholding use on the site.
- 1.4 On legal advice a Section 16 Notice was served on 15 September 2011 as pre-cursor to prosecution.
- 1.5 Following continued non-compliance a Conditional Caution was issued on

8 March 2012. The effect of a Conditional Caution is to allow an enforcing authority to obtain an admission of an offence through a declaration by the offender and allows a further period for compliance which, if compliance is achieved, saves the need for a full prosecution. Whilst subsequent legal advice has identified that use of a Conditional Caution does not in fact extend to the Local Planning Authority (LPA), the Conditional Caution was not signed by the landowner who instead contacted the LPA to advise that compliance had been achieved. However, a site visit showed that this was not correct.

- 1.6 At the 12 October 2012 Planning Committee, authority was given to officers in consultation with the Solicitor to explore the feasibility of direct action for failure to comply with the requirements of the Enforcement Notice.
- 1.7 In February 2013 on legal advice the Enforcement Notice was re-served to ensure that it covered the matters which would be the subject of the direct action.
- 1.8 The landowner appealed against the re-served Enforcement Notice, however the appeal was dismissed in January 2014 and the Planning Inspector upheld the requirements of the Notice.

## **2 The Requirements of the Enforcement Notice**

- 2.1 The requirement of the Enforcement Notices and the time period for compliance (as amended as a result of the appeal) are as follows:
  - (1) Cease all non-agricultural use of the Land by 18 February 2014
  - (2) Cease all storage of non-agricultural items on the land comprising vehicles, a caravan, scrap metal and metal items, storage bins and stockpiles of wood by 18 February 2014
  - (3) Cease to cause or permit the importation of any non-agricultural items onto the Land by 18 February 2014
  - (4) Remove from the Land all non-agricultural items arising from compliance with 1 - 3 above and restore the Land to its condition before the breach took place and then level and harrow the soil so that it is in a condition suitable for agricultural use by 15 April 2014
  - (5) Permanently remove the fence from the Land together with all building materials arising from the removal of the fence and then level and harrow the soil so that it is in a condition suitable for agricultural use by 18 February 2014
- 2.2 Compliance with the requirements of the Notice will see this land restored to an agricultural character and appearance.
- 2.3 Members will be updated verbally at the meeting on the progress towards compliance. However, given the previous failure of the landowner to comply with Enforcement Notices it is appropriate to consider the options for the next action should compliance not be achieved.

### **3 Options for Securing Compliance**

- 3.1 There are three main options for securing compliance, namely negotiation, prosecution and direct action. These will each have different timescales and costs, as well as differing prospects for success.

#### Negotiation

- 3.2 The landowner indicated at the Inspector's site visit that, whatever the outcome of the appeal, he would be happy to discuss with the Local Planning Authority (LPA) the future use of the site. He reiterated his intention to use the site as a smallholding and advised that he would wish to retain a number of structures on site, for example the caravan to provide storage and hygiene facilities.
- 3.3 The LPA could pursue this route and seek to establish a level of use and a layout that is agreeable to both parties. It is noted, however, that the retention of the existing structures on-site, including the metal fence, is not likely to be acceptable to the LPA due to their impact on the character and appearance of the area and this is likely to be an obstacle to securing a mutually acceptable solution.
- 3.4 Given the history here, it would be unrealistic to expect a negotiated solution to be achieved quickly.

#### Prosecution

- 3.5 The second option is to prosecute the landowner for non-compliance with the Enforcement Notice. Non-compliance with an Enforcement Notice is a criminal offence under s179(2) of the Town and Country Planning Act 1990 and the landowner would suffer the consequence of this; in addition he would be likely to receive a fine. It is also an offence under s179(5) of the same Act for a person who has control of or an interest in the land to which an enforcement notice relates (who is not the owner) to carry on any activity which is required by the notice to cease or to cause or permit such an activity to be carried on.
- 3.6 These matters can be heard in the Magistrates' Court and in the Crown Court. The penalty in both these circumstances is a fine of up to £20,000 if the matter is disposed of in the Magistrates' Court to an unlimited fine if the matter is disposed of in the Crown Court. In considering the level of the fine the court is obliged to have regard to the financial benefit which has accrued or which appears likely to accrue to the defendant in consequence of the offence though will also need to take account of the defendant's means. If a defendant chooses to plead guilty at the first opportunity at the Magistrates' Court the matter should be disposed of within a few months and costs should be within £1250. Should a defendant enter a not guilty plea and especially should the matter proceed to the Crown Court the time taken by the prosecution and the costs will be significantly increased and are not quantifiable at this stage. Recovery of costs will be a matter for the discretion of the magistrates or

Crown Court judge. Depending on the evidence available it would be possible to prosecute both the owner of the land and the person in control of the land under the different sections of s179 of the Act.

- 3.7 It should be noted that a successful prosecution would still not actually achieve compliance and the LPA would need to pursue the landowner further to have the site cleared.

#### Direct action

- 3.8 The third option would be for the Local Planning Authority to take direct action under s.178 Town and Country Planning Act 1990 which states; 'S.178(1) 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'. The direct action could be comprehensive and comprise the total clearance of the site, or partial comprising simply the removal of the metal screening fence on the basis that this would be likely to prompt the removal of the remaining items which are of value to the landowner.

- 3.9 A quote was previously obtained for the cost of direct action and this was estimated at approximately £20,000 for the clearance of the entire site, or around £3,000 for the fence only. The quote was obtained from an experienced contractor with a proven track record in difficult cases. It is likely that the work could be completed within a matter of days. However, there will of course be legal fees in addition as part of the recovery of the costs of direct action. The legal fees may vary depending on the cooperation of the land owner.

## **4 Assessment of the Options**

### Negotiation

- 4.1 Given the history here and the incompatibility of the aspirations of the landowner with the requirements of the Enforcement Notice, it is unlikely that a negotiated solution could be achieved quickly, if at all. It would also be resource intensive and would require intensive monitoring to ensure full compliance is both achieved and maintained. It is not considered that the pursuit of a negotiated solution is likely to be appropriate here.

### Prosecution

- 4.2 Whilst prosecution would not in itself achieve compliance, it can be a useful tool to prompt compliance, although it is rarely a swift remedy as the Court processes can be slow. It is noted that the Environment Agency prosecution for the waste offences secured a cessation of these uses, but it should be recognised that the removal of the scrap cars would have been easier to achieve than it will be to meet the requirements of the Enforcement Notice.

- 4.3 Whilst the limitations of a prosecution are recognised, this is a straight forward process and Members may consider that it is appropriate to pursue it, particularly given the costs and risks associated with direct action.

#### Direct Action

- 4.4 In considering direct action, the LPA must be mindful that this is an approach of last resort. It must be satisfied that the degree of harm to the interests protected by planning control justifies such action, that the action is required to uphold and enforce planning control embodied in the Enforcement Notice and that there is a need for a swift or urgent remedy now that the appeal has been determined. Furthermore, it must consider the personal circumstances and impact on the individuals of removal.
- 4.5 In this case, the harm being perpetuated includes the harm to the protected landscape of the Broads and it is the case that this would justify this action. The situation has persisted now for almost 4 years and there has been no resolution through negotiation, so there is a need to bring the matter to a close both in order to remedy the harm and protect the credibility of the planning system. With regard to the impact on the landowner, the forced cessation of the unauthorised uses will likely be, as a minimum, an inconvenience. However, the uses are unauthorised, which the landowner has been advised of and therefore any unauthorised uses are at his own risk. It is not understood that the unauthorised use of the site represents the main livelihood or home of the landowner. Overall, it is not considered that the use of direct action would be disproportionate or incapable of justification in this case.
- 4.6 Were direct action to be taken, the LPA would seek to recover its costs. Initially this would be through a demand for payment from the landowner, but if this were not paid it would need to pursue the matter through the Courts. The process would involve seeking a Judgement and registering a Charge on the land. The LPA would then seek to force a sale of the land in order to recover the value of the charge. Lower grade agricultural land is valued at around £6 - 7,000 per acre, so with a site area of approximately 1.2 hectares it is likely that the value of the entire site, including those areas to the east and west, would be approximately equivalent to just the cost of direct action (estimated at £20,000) but may not cover the legal fees. However, if Members decided to take this route then full and up-to-date details of both the costs of action and the value of the land would be obtained to confirm that this approach would be broadly cost effective. Members should, however, be mindful that the Authority might not recover all the costs of direct action, particularly given the likely legal costs, or that the recovery of these may be protracted.
- 4.7 Members should also be aware that there is already a further known complication, in that the land is still registered with the previous owner (Mr Page), however the current landowner has admitted ownership in response to being served with a statutory notice and this would assist the process.

## **5 Conclusion**

- 5.1 This is a long standing enforcement case on a site with a history of unauthorised development. The dismissal of the appeal against the Enforcement Notice gives clear impetus to the need to secure a resolution here. It is considered that direct action represents the most effective option for securing compliance. This will, however, be expensive and the recovery of the cost will in itself generate cost and may be protracted. Given this, Members may consider that it is worth pursuing prosecution in the first instance.

## **6 Financial Implications**

- 6.1 There will be costs associated with this course of action.

## **7 Recommendation**

- 7.1 That full and up-to-date details of both the costs of action and the value of the land be obtained in order to inform the cost-effectiveness of direct action. Subject to cost effectiveness being demonstrated, members consider whether direct action be pursued.

Background papers: None

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Appendices: None