

**Enforcement of Planning Control: Enforcement Item for Consideration  
Land at North End, Thurlton**  
Report by Head of Planning

**Summary:** Members will recall that there are longstanding issues around the enforcement of planning control on land at North End in Thurlton and in November 2014, direct action was taken to remove an unauthorised fence. Invoices for the cost of the works have been submitted to the landowner and separate occupier, however no payment has been made. Options to recover the costs of direct action are outlined for members in the report.

**Recommendation:** That a county court judgment and charging order are sought and the costs recovered through a forced sale if necessary.

## **1 Background**

- 1.1 Members will be aware that there have been longstanding issues around the enforcement of planning control on land at North End in Thurlton. Briefly, the land has been used for the stockpiling of non-agricultural materials, vehicle dismantling and the running of a logging operation and a metal fence was erected around the site to conceal the activities within. Enforcement Notices were served requiring the cessation of the breaches, most recently in February 2013 and an appeal against this Notice was dismissed in January 2014. The history of the site is set out in the report to the 28 February 2014 meeting of the Planning Committee.
- 1.2 Compliance was not achieved following the appeal decision, despite repeated assurances from the operator, with the fence remaining in situ and non-agricultural items still stored on the land. At the 12 September 2014 meeting of the Planning Committee Members resolved that it would not be appropriate to consider a further period for compliance and that direct action should be taken.
- 1.3 On 6 November 2014 a specialist enforcement contractor working on behalf of the Broads Authority dismantled the steel fence and removed this off site. The cost of the contractor was £3,880, excluding VAT. No action was taken on the remaining non-agricultural items on the site, on the basis that the operator would be likely to remove them himself as they were likely to be of value to him. This has happened so the site is now largely compliant.
- 1.4 On 10 December 2014 the registered owner of the land was invoiced for the cost of the contractor. On 12 December 2014 a letter was received from the operators of the site advising that they owned the land, not the registered

landowner, and requesting that they be sent the bill; this was sent to them on 19 December 2014 with payment terms of 30 days. No payment has been received.

## **2 Options for Pursuing the Costs of Direct Action**

### **(a) Bring a county court claim and enforce judgment**

- 2.1 The only viable option for pursuing the costs of direct action is to sue the operator/alleged landowner for non-payment of the invoice and, having obtained judgment to register a charge on the land so that the monies owed can be recovered when the land is sold, or a forced sale sought. The alternative is for the Authority to not pursue the debt and to bear the cost, on the basis that recovery of the monies may well cost more than the value of the debt. Details of the claim/judgment/charging order/sale option are set out below.

#### Stage 1 – claim

- 2.2 The Broads Authority could bring a claim against the operator/alleged landowner in respect of the unpaid invoice. This would be heard in the county court and would follow the same process as any other debt recovery litigation. The cost of the process would depend on whether or not a defence was filed. If no defence is filed, default judgment is entered and the matter moves to the next stage (charging order). If a defence is filed, witness statements will have to be prepared and filed and the matter will go to a small claims hearing, which would hopefully result in judgment for the Broads Authority. Were there to be a trial, the Authority would be likely to have to justify both the direct action taken and the cost of this, as well as persuade a court that the debt should be paid by the defendant. There are sound and credible justifications for both so the risk of a court finding against the Authority are small; however, the court process is not risk-free.
- 2.3 An estimated cost for this stage is under £500 if default judgment is entered, and up to £1,200 if the case is defended. The court fee is included in these estimates, and this is added to the judgment debt if the claimant is successful. However, for a claim under £10,000 (a small claim) other costs are not awarded to the successful party.
- 2.4 Civil litigation is a relatively low risk approach, however it should be noted that obtaining a judgment does not in itself necessarily result in the debt being paid, and we would need to move to stage 2.

#### Stage 2 - registering a charge on the land

- 2.5 A county court judgment can be used to obtain a charging order, which is registered at the Land Registry. This is normally a very simple and straightforward procedure, and is almost cost-neutral, as fixed costs are added to the sum secured and actual costs rarely exceed the fixed costs allowed. In this particular case, however, there are likely to be complications in that the person the Authority would be suing, who says he owns the land, is

not the registered owner, and this could lead to difficulties/delays in completing the registration process, with additional associated non-recoverable costs.

### Stage 3 – enforced sale

- 2.6 A charging order is security only. It is adequate if the beneficiary of it is in no hurry to be paid, as the land cannot be registered to a new owner without payment being made. However, a debt of this size will not attract post-judgment interest, so the real value of the security will decrease over time if the land is not sold, or if it is sold but the purchaser does not observe the legal requirement to register the purchase. Informal transactions do take place and, indeed, have previously taken place here, which is why the registered landowner (Mr Page/Hand) and the operator/alleged owner (Mr Burlingham/ Ms Talbot) are different.
- 2.7 Members may recall that where there is a charging order in place, there is legal provision for a creditor to force the sale of the land in order to recover an unpaid debt. This remedy is most appropriate where the value of the land exceeds the value of the debt, as it does here where the land is valued at approximately £18,000. The Court has discretion in the making of an order for sale and all the circumstances pertaining to the property would be taken into account. The fee for issuing a claim in the county court for an order for sale is £280, and the estimated associated costs would be between £250 and £1,000, again depending on whether the application is defended or not. This sum would however be added to the amount the Authority would be entitled to retain from the sale, subject to the court approving the costs incurred as reasonable and making the appropriate costs award.
- 2.8 If the court is minded to make an order for sale, it will first of all give the landowner one last opportunity to pay the judgment by a specified date, failing which the order would require the property against which the charge is registered to be sold for an amount not less than a specified sum, for the Authority to retain from the proceeds of sale the amount it is owed, including costs, and for the balance to be paid to the owner.

### **(b) Do nothing**

- 2.9 The other option would be for the Authority not to pursue the matter further and bear the burden of the costs itself. In funding the clearance of the land itself the Authority has met its statutory duty to conserve and enhance the natural beauty of the Broads and it could be argued that, given the resources directed at this site over the years, the Authority-funded direct action was the most cost-effective solution to bring the matter to a close.

## **3 Assessment and Recommendation**

- 3.1 There are risks associated with each of the above options, and these have been outlined. In determining the most appropriate option it is useful to be very clear on what the Authority has been seeking to achieve.

- 3.2 If the main objective was to clear the land and put an end to this long running case, the completion of the direct action achieved this and the pursuit of the debt, through whatever means, will perpetuate the officer involvement and the legal costs. The value of the debt is relatively small and the cessation of action on this matter at this point can be justified. It should, however, also be noted that if the operator/alleged landowner has had compliance achieved, but at minimal cost to himself there will be limited incentive for him to keep the site tidy. Regular monitoring will be required.
- 3.3 If the main objective was to clear the land at no cost to the public purse (other than staff costs), there is strong justification for seeking to recover the costs. The operator/alleged landowner was fully aware of the likelihood of direct action, for which he would be charged, should he fail to comply and there is an argument that the Authority should not threaten recovery of costs if it does not intend to do this, as it undermines its reputation in such matters. It is also the case that being forced to cover the cost of compliance should act as a deterrent to further breaches.
- 3.4 If the latter was the main objective, the obtaining of a county court judgment followed by the registration of a charging order would be the most reliable means of achieving this, particularly if consideration is given to its enforcement through a forced sale.
- 3.5 Taking all the above into account, it is recommended that the Authority follow the procedure outlined above to obtain a charging order and consider seeking to enforce its security by applying for an order for sale. The additional benefit of a forced sale is that the land is likely to be sold to someone with a better observance of planning regulations.

## **4 Conclusion**

- 4.1 This is a long standing enforcement case on a site with a history of unauthorised development, but where compliance has been broadly achieved through direct action. Members are recommended to pursue the operator/alleged landowner for the costs of this action through a county court claim and charging order which, in addition to enabling the recovery of costs, would act as a deterrent to further breaches.

## **5 Financial Implications**

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

Background papers: None

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Appendices: APPENDIX 1 – Location Plan

## Land at North End in Thurlton



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