

Area North Committee – 17th December 2008

15. The Unauthorised Use of Land for the Siting of a Motor Home and Trailer for the Purpose of Residential Accommodation on Land Adjacent to A303 Highway, Tintinhull Forts Interchange. Ref: EN08/00458/USE

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Purpose of the Report

For members to consider the report of this breach of planning control, being;

The Unauthorised Use of Land for the Siting of a Motor Home and Trailer for the Purpose of Residential Accommodation on Land Adjacent to A303 Highway, Tintinhull Forts Interchange. Ref: EN08/00458/USE

Recommendation

- (1) That the Council's Solicitor be authorised to proceed with prosecution action in the Magistrates Court for non-compliance with the requirements of the issued enforcement notices.
- (2) That such action be instigated against;
 - (a) the occupier of the land,
 - (b) the owner of the land.
- (3) That prosecution action be deferred for a period of 3 months to allow the occupier / land owner a further period of time in which to comply with the requirements of the enforcement notices, but in the event of non-compliance at that time, prosecution action be instigated without further notification against;
 - (a) the occupier of the land,
 - (b) the owner of the land.

Background

Location

The site is located adjacent to the Tintinhull Forts Interchange with the A303 and a two-way slip road adjoining two sides. Apart from these roads, the site is surrounded by fields within open countryside, outside of any settlement boundary.

The slip road on the site's northern boundary, connects the A303 with Main Street, which serves Tintinhull, 1km away to the east; and Martock, 3km to the west.

Property

The site comprises of a fenced enclosure on level ground located in the southeast corner of a parcel of agricultural land. The wider site extends to an area of approximately 2

hectares. The southern boundary of the land is defined by trees and hedging, which separate the land from adjoining fields.

The Breaches of Control

- (i) The unauthorised change of use of land for the stationing of a motor home and trailer used for the purposes of residential accommodation.
- (ii) The unauthorised change of use of land for the deposit of vehicle bodies, portacabin, plant, domestic and engineering equipment, and materials not associated with an agricultural use of the land.



Legislation

The Town and Country Planning Act 1990

Policy

SSDC Local Plan adopted April 2006

Policies:

ST3 - Development outside development areas

ST5 - General Principles of Development

ST6 - The Quality of Development

EC3 -Landscape Character

Relevant History

- | | |
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| 14.09.06 | Application for use of land for caravan storage facility and siting of a motor home. |
| 06.10.06 | Site visit recorded occupation of land. |
| 30.11.06 | Application 06/03179/COU refused permission. |
| 08.08.07 | Service of two enforcement notices. |
| 20.12.07 | Appeals against refusal of permission and enforcement notices dismissed. |

Considerations

The land is being used to station a residential unit of accommodation. The unit in question is a lorry and trailer, although this has been modified for residential use by its occupier.

The enclosure also contains 3 no. lorry bodies and a portacabin, which contain a variety of domestic items; as well as tools and equipment associated with the occupier's engineering interest. Additionally, the site contains a number of items including a generator, gas canisters, a JCB loader, forklift, tools and machinery. Domestic items are also being stored on the site such as car trailers, a washing machine, barbeque and other domestic paraphernalia.

Two Enforcement Notices were served on 8th August 2007.

The Notices were served on the occupier of the land and the owner of the land.

The land forms part of Bearley Farm, Tintinhull.

The first Notice required;

- (i) that the motor home and trailer are removed from the site; and,
- (ii) that the land is reinstated to the condition it held prior to the stationing of the motor home and trailer.

The second Enforcement Notice required:

- (i) that the items deposited on the land are removed, including the vehicle bodies, portacabin, plant, engineering equipment and materials; and,
- (ii) that the land is reinstated to the condition it held prior to the deposit of the items.

The Planning Inspectorate upheld the terms of these notices without alteration to the period for compliance of 2 months. The period therefore expired on 21st March 2008.

The land occupied in breach of the enforcement notices, is a criminal offence.

The landowner and occupier were both interviewed under caution on the 25th June 2008 and advised of the possibility of prosecution action being instigated.

Following these interviews, the Council's Community Liaison Officer, and Cllr. Pallister, portfolio holder for Health & Housing, were to assist the occupier in finding alternative accommodation.

Land identified by the occupier as potential sites was considered to be equally unsuitable for such a change of use.

The unauthorised use of the land has continued.

There are strong policy objections to this use of land, as stated in the refusal certificate;

The site is in the countryside, outside the defined Development Area of any town, rural centre or village, where development is strictly controlled. The use of the land for the purpose proposed will not benefit economic activity, maintain or enhance the environment, nor meet the objective of not fostering growth in the need to travel. The proposal is therefore contrary to Policy STR6 of the Somerset & Exmoor National Park

Joint Structure Plan Review 1991-2011 and Policy STR3 of the South Somerset Local Plan 2006.

The site is in open countryside unrelated to any local settlement pattern and the proposed development, because of its scale, nature and conspicuous setting and the likely detrimental impact on adjacent protected trees, would have an intrusive and harmful effect on the character of the landscape. The proposal is therefore contrary to Policy 5 of the Somerset & Exmoor National Park Joint Structure Plan Review 1991-2011 and Policies EC3 ST5 and ST6 of the South Somerset Local Plan 2006.

The proposal is likely to increase the level of slow moving vehicles entering and leaving the A303 at a point where the slip roads are short, and would also result in increased turning movements at the access to the site which is on a tight bend where traffic movements are likely to be unexpected. The proposal would therefore involve an unacceptable risk to the safety of users of the A303 trunk road, and is contrary to Policy 49 of the Somerset & Exmoor National Park Joint Structure Plan Review 1991-2011 and Policies ST5 of the South Somerset Local Plan 2006.

(nb. This third reason predominantly referred to a proposal to use the land for caravan storage).

The Planning Inspector in his decision to dismiss the appeal against refusal of permission, stated;

I note the appellant's personal circumstances and reasons for seeking permission for this development, but do not consider these outweigh the harm that would result from the proposal. The appellant also contends that to allow the appeal would protect his human rights by allowing him a place to live and a source of employment income. However, refusing permission would prevent harm to matters of legitimate public interest in respect of protection of the countryside and road safety and so would not, in my view, be a disproportionate interference with his rights.

In his dismissal of the appeal against the enforcement notices, the Inspector stated;

I am aware that as a result of my decisions the appellant will need to find alternative accommodation and I have considered carefully whether, in the particular circumstances, I should use my powers to vary the notices to give a longer period than that specified. I have decided not to do so since it seems to me that in drafting the notices the Council is likely to have been aware of this consequence should the appellant make it aware of any new circumstances, it has the power to extend the period.

Summary

The use of the land commenced without planning permission and prior to the determination of the planning application.

The unauthorised use of the land is with the landowner's consent.

The full democratic process of planning application and appeal has been used by the occupier of the land.

The appeals against the refusal of permission and service of enforcement notices were dismissed.

The occupier of the land has not, at the time of this report, registered for housing with this Council.

The policy objections to this development are as stated.

The Planning Inspector considered the occupiers Human Rights in the appeal process.

The Council continues to receive complaints from the public, and elected members of the Council and the local Member for Parliament also continue to seek information on this matter.

The Council has demonstrated considerable tolerance in the period of time to resolve matters, both before and after the service of the enforcement notices.

Once an enforcement notice has been issued, there is a clear warning that prosecution will follow in the event of non-compliance. Therefore, if there has been no material change in circumstances since service and the date of compliance with the notice, not to prosecute goes against the whole principle of the enforcement notice.

Where planning matters have not been resolved, the Courts are the final arbitrator in the planning process, and prosecution action is legislated in Section 179 of the Town & Country Planning Act 1990.

Human Rights Act 1998

Article 8 & The First Protocol

This report considers the competing rights and interests involved with this business operation and the recommendation is considered to be in accordance with the law, proportionate and necessary to protect the rights and freedoms of others, and in the public interest.

Financial Implications

Cost of court proceedings within service budget.

Implications for Corporate Priorities

To promote a balanced natural and built environment.
