

Development Control Committee B – 14 March 2018
Planning Enforcement Item – 131 Bridgwater Road – Update.

BACKGROUND AND OVERVIEW

This report updates Committee on the position with the unauthorised residential development of 14 dwellings that has been built at a site at land adjacent to 131 Bridgwater Road.

A planning enforcement case was set up in November 2016 and this established that the development had not been built as per the approved plans. The planning agent on being contacted by officers agreed to make a retrospective planning application and one was submitted in January 2017.

Committee refused to grant a retrospective planning permission to retain the 14 dwellings on 30 August 2017 and refused the application (17/00272/F) for the following reason:-

1. The development fails to make an appropriate contribution towards the provision of affordable housing and is therefore contrary to policy DM3 of the Site Allocations and Development Management Policies 2014.

Committee also resolved to delegate authority to officers to serve a Planning Enforcement Notice to stipulate that; no more than 11 of the dwellinghouses should be occupied until the affordable housing requirements of adopted planning policy had been met.

LEGAL ADVICE

Following the decision of Committee an instruction was sent to Legal Services on 26 September 2017 to serve a Planning Enforcement Notice in the terms put to and agreed by Committee.

On review of the instruction legal officers contacted planning officers and a meeting took place when the matter was discussed. Some initial advice had been obtained from Legal Services in April 2017 about the most effective form of planning enforcement should the planning application be refused. The discussions were not conclusive and no firm indication of the procedurally correct way to identify, define and enforce the breach of planning control was arrived at.

At the time of drafting the committee report and presenting the matter to Committee in August 2017 planning officers considered that the recommended Planning Enforcement Notice was technically and legislatively a good and sound approach.

The main issue for Legal Services was that a Planning Enforcement Notice should not be used to seek the remedy to the breach of planning control being the non-provision of affordable housing. They considered that a Planning Enforcement Notice should only be used to address a situation where planning harm had been identified and not just to secure a planning gain required by planning policy [affordable housing]. Legal advised that the best avenue to pursue this would be in defence of our position at appeal should the applicant appeal against the decision to refuse planning permission. An appeal decision will provide a definitive view from a Planning Inspector as to the need for the development to make a contribution towards affordable housing, this being the one remaining issue from a land use planning perspective.

Legal considered an alternative way to enforcement was to consider the harm those results from non-compliance with planning conditions. Planning officers consider that the original permission has now lapsed as pre-commencement conditions were not successfully discharged and this permission has not been implemented. Taking enforcement action against non-compliance with the conditions would give unwarranted legitimacy to the unimplemented permission. The Committee effectively endorsed and agreed the design and form of the development when considering the refused application and thus the deviations from the previously approved plans would be regularised when planning permission is granted either on appeal or in response to a dismissed appeal (where affordable housing is the remaining issue). In effect the Local Planning Authority has now formally determined that it does not have concerns with the physical form of the development as built.

A review of the other conditions established that conditions in relation to highways, contamination, sustainable drainage and archaeology need to be considered for enforcement action. A revised instruction was issued to Legal Services to serve a Breach of Condition Notice on 13 November 2017. This was not served as the Appeal was lodged soon after and for the reasons explained below these items can be considered as part of the appeal and appropriate conditions imposed on any planning permission that may be granted by a Planning Inspector.

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THE CURRENT SITUATION

On 30 November 2017 the applicant lodged an Appeal against the planning refusal in respect of the Committee decision from August 2017.

In the meantime a further planning application (17/02573/P) which sought retrospective planning permission in respect of just 9 houses was refused under delegated authority on 2 January 2018 the reason for refusal being:-

“The proposal would result in a form of development that fails to maximise the use of land in an efficient way contrary to policy BCS20 of the Bristol Core Strategy 2011. There is no justification for a lower density of development to protect the character of the area and it is clear by virtue of the 14 dwellings under construction (and previous permission for 14 dwellings), that the land can accommodate more dwellings.”

In January 2018 the applicant Appealed that decision as well.

As such there are two appeals with the Planning Inspectorate seeking to have the Local Planning Authority decisions overturned and to obtain retrospective planning permission. These two Appeals have been joined together and officers were advised on 1 March 2018 that a programme for the process will be issued once a suitable Planning Inspector is identified, which is usual practice. The applicant has asked that the Public Inquiry procedure be followed. The Council is yet to make representations on this or put forward its defence in the case. This will be done once the appeal procedure formally starts and at that juncture a consultation exercise on the appeals with the public will be conducted.

Two further applications were submitted in November 2017; one is effectively a resubmission of the application referenced above [i.e. a further retrospective application for the 14 dwellings) with the applicant seeking to argue that affordable housing policy should not be applied and that the scheme would be unviable were affordable housing to be provided. The second one is for a reduced site area and a proposal to seek approval to retain 9 dwellinghouses. These two applications are to be refused under delegated authority; the first for the same reason as the previous application because officers are not convinced by the arguments in respect of affordable housing. The second because the proposal as it relates to a smaller site does not maximise the use of land in an efficient way and seeks to avoid the need for affordable housing required for the larger site. In all likelihood once refused the applicant will ask to add these two decisions to the existing appeal process.

A further planning enforcement case was registered towards the end of last year concerning the installation of street lighting - that is being held in abeyance as the matter will be considered as part of the appeal.

CONCLUSION AND NEXT STEPS

No formal planning enforcement notice has been served since the resolution of Committee in August 2017.

This is following detailed guidance from your legal officers, essentially the appeal process will now enable the issue of the affordable housing to be considered and determined. The appeals will also enable issues of planning condition compliance and therefore matters of highways, contamination, sustainable drainage and archaeology to be resolved. The two planning enforcement cases are being held in abeyance pending the outcome of the various appeals.

Officers can advise and assure Committee that the appeal process is procedurally the most effective way to have the outstanding matters considered and decided. Formal planning enforcement action can be taken following the decisions on the appeals if the Council decisions are upheld and the Planning Inspector is likely to provide some guidance on that as part of their decision. Council planning officers will robustly defend the two decisions that are currently subject to Appeal and the two further decisions if they in turn are subject to Appeal.

Officers do acknowledge and accept that this has been a relatively lengthy and complicated process that has understandably caused a great deal of concern to nearby residents. However, our overall approach to the matter and our assessment and decisions have accorded with central Government Planning Legislation and the case has been handled in line with our Local Enforcement Plan (April 2017).

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Officers will continue to update the Chair, Vice Chair and Party Leads on the appeal process and will update the Committee once they have been decided.

RECOMMENDED

That the report is noted.