

Report to District Development Control Committee



**Epping Forest
District Council**

Report reference: ENF/0164/10

Date of meeting: 11 April 2012

Subject: Direct Action - Roadside House, Avenue Road, Dobbs Weir, Nazeing

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Committee Secretary: Simon Hill (01992 564249)

Recommendation:

That, subject to Cabinet approval to incur associated expenditure, authority be given to the Director of Planning and Economic Development to take direct action under Section 219 of the Town & Country Planning Act 1990 on one or more occasions to secure compliance with the requirements of the Section 215 Notice issued 31 March 2011 in respect of Roadside House, Avenue Road, Dobbs Weir, Nazeing.

Report Detail:

1. (Director of Planning and Economic Development) Complaints were received in 2010 to the Planning Enforcement Section that a building business was being run from a private domestic bungalow at Roadside House, Avenue Road, Dobbs Weir Nazeing. This is a single storey house in a residential area. The road is a private road.
2. An investigation revealed that the owner of the property was a builder and building materials were being stored on the site, with pallets of bricks, wood, scaffold poles and other equipment on the front driveway of the property. At the same time Environmental Health were investigating complaints of rubbish being burnt at the site in a pit/corrugated iron structure in the rear garden. The owner of the property was subsequently prosecuted under Environmental Health legislation for these bonfires.
3. Additionally a number of commercial vehicles were stationed on the front drive. This included a HIAB lorry and a van. The lorry had a quality of materials and waste on it. This was subject to separate enforcement action where a Notice was served. Although this is currently under appeal the vehicles have been removed from the site, although the HIAB is parked in the street, where it is immune from planning enforcement action (and highway action as the road is private).
4. Negotiations with the owner to remove the materials from the site proved fruitless, and the amount of materials increased, with domestic waste such washing machines being left on the drive, and a large sign advertising building services being placed against the house.
5. A number of planning applications have been made regarding the site since 2009, with one being for the erection of a summerhouse in the rear garden granted in December 2009. Work started on this scheme in July 2011. The owner claimed the materials were for use on the various projects at the site, such as the summer house, and in addition stockpiled for a first floor extension project. This later scheme was refused in November 2011. At this time, and at the current time, the house was being used as a house in multiple occupation with 6 rooms being let out on short term lets. This itself though does not require planning permission.

6. However, the amount of material, the domestic waste, the corrugated burning area and the signage were causing serious visual harm to the amenities of the area. Additionally the amount of materials was in excess of what could be reasonably be used for the construction of the summerhouse, and it was clear that much of it was stored in the hope of a grant of permission for the first floor extension and in connection with the owners building business.

7. Therefore a S215 Notice (Untidy Land) was authorised under the Director of Planning and Economic Development delegated authority and served on 31 March 2011. The authority to issue the Notice included authority for the Director of Corporate Support Services to commence criminal and/or civil proceedings to remedy a breach of the Notice.

8. The notice required the owner of the land to remove all domestic waste from the land, other than stored in Council wheelie bins, remove all building materials from the land, removal all company signs from the land and to remove the corrugated structure from the rear garden.

9. This notice became live on the 12 May 2011 and had a compliance period of 28 days, which expired on 10 June 2011.

10. A compliance check was carried out on the 15 June 2011 and found that the notice had not been complied with so the Council prosecuted the owner for failing to comply. On 30 August 2011 at Harlow Magistrates Court the owner, Mr James Emmerson pleaded guilty to the offence of failing to comply with the Notice. The Magistrates fined him £200 and ordered him to pay £558 towards the prosecution costs.

11. Mr Emmerson's legal representative stated that Mr Emmerson would clear the site "in the next few days", and the Councils Legal representative confirmed no further action would be taken whilst representations were made to vary the notice to permit him to store materials in the front garden in connection with the recently commenced summer house. Subsequent negotiations allowed Mr Emmerson 8 weeks to clear the site in accordance with the notice, with an area at the side of the drive to be used to store materials for the summer house being allowed to be used until 21 November 2011 when it was predicted the building works would cease.

12. On 21 November officers carried out a compliance check and found that the site had not been cleared and the materials and waste were still in situ. The Agent for Mr Emmerson argued that the materials were needed for the first floor extension (although this had just been refused) and the decision was taken to commence a further prosecution.

13. On 20 March 2012 at Harlow Magistrates Court the owner Mr James Emmerson pleaded guilty to the offence of failing to comply with the Notice. The Magistrates fined him £1000 and ordered him to pay £416 towards the prosecution costs.

14. Officers then wrote to Mr Emmerson asking him to clear the site within seven days or further action would be taken. Mr Emmerson contacted officers and arranged a site visit on 27 March 2012. At the site visit it was noted that Mr Emmerson had started work to clear the site, and had removed the domestic waste and corrugated structure from the land. He stated that he had lost his business and was working for another firm as a driver in London. He asked for 8 weekends to clear the site, and also asked to be allowed to retain materials to finish off internal works to the summer house and rear garden. This last matter is being considered by Officers. He was also under the impression that the first floor extension refusal had been appealed, but investigations revealed no appeal has been made and that it is now out of time to make such an appeal.

15. Whilst Officers are heartened that he now appears to be cooperating with the Council to comply with the provisions of the notice, due to the history on this site and the fact that the Council has had to mount two prosecutions, there is justifiable concern that the clearance

may not be finished within the time span indicated.

16. Therefore Officers ask that authority for Direct Action be granted so that if the notice is not complied with they can commence action immediately.

Power to Take Direct Action:

17. The Council has the power, under Section 219 of the Town and Country Planning Act 1990, to enter the land and take steps to secure compliance with the requirements of the Notice. Any expenditure could be recovered as a simple debt and additionally be secured as a charge against the land which would be recovered on the completion of any future transfer or sale of the land. In this case, since the requirements of the Notice have not been complied with despite prosecution and the issue of further written requests to comply, Officers have taken steps to explore the option of taking direct action to secure compliance with the Notice.

18. There are practical and legal issues associated with what specific steps a Council can take in exercising its power under Section 219 to secure a cessation of a use. Measures such as removing all of the building materials and the sign from the site are practicable.

19. Materials removed from the site while taking steps required by the notice must be held for at least 3 days and if the owner claims them within that period they must be returned (Regulation 14 of the Town and Country Planning Regulations 1992) However, if they are not claimed, then the Council can sell the materials and retain any proceeds up to the amount of expenditure incurred by the Council in taking the steps to comply with the Notice. If a debt remains to the Council after the materials have been disposed of, the Council can place a charge upon the land so that monies from any future sale may be offset against the costs incurred and recover as a simple debt.

20. Alternative courses of action open to the Council are a further prosecution or seeking an Injunction from the High Court against the owner of the land and operator of the use. There is a balance to be struck here as the first prosecution did not bring about any meaningful compliance with the notice, but the second prosecution may have brought about a change of heart on the part of Mr Emmerson. However, as explained above there are concerns that the required works may not be carried out within the timeframe proposed.

21. The process of seeking and enforcing an injunction can be costly and time consuming, although costs are likely to be recoverable in this case. The High Court may grant the Council an injunction requiring named persons to comply with the requirements of the Notice. However, if the persons served with an Injunction fail to comply with its terms then the Council could seek to have them committed for contempt of court.

Human Rights Considerations

22. Taking Direct Action could be considered an infringement of The First Article of the First Protocol of the European Convention of Human Rights. The First Article of the First Protocol states persons are entitled to the peaceful enjoyment of their possessions. That right is a qualified right and interference with it by a public authority is permitted in accordance with the law as necessary for the protection of the rights and freedoms of others and the general interest. Accordingly, there is a fair balance to be struck between individual's rights, the public interests protected by the planning system and those of other persons.

23. In this case it is considered that since the use of the land causes clear harm to the interests of to the visual amenity of the street scene and neighbours the balance falls against the rights of the owner and occupier of the land. The Council has attempted on a number of occasions to gain the cooperation of the owner and occupier to remedy the harm caused and has successfully prosecuted for failure to comply with the Notice twice but only now is work commencing to clear the site. It is therefore necessary to be prepared to take alternative action including direct action to secure compliance with the requirements of the Notice. In the circumstances taking direct action to remedy the harm caused by the continuation of the

unlawful use is considered to be proportionate.

24. The owner and occupiers Article 6 right to a fair trial has in this case already been provided by the Magistrate Court hearings.

Conclusion:

25. Following the two successful prosecutions it has been established that the continuance of the use of the land for the storage of building materials is not acceptable in planning terms. Since the Council's actions to date have not been successful in bringing the unauthorised use to an end, if the Council does not seek to uphold the terms of the Notice by taking further alternative action to secure compliance this would result in the continuation of harm to visual amenity. Moreover, if the Council does not take such action to uphold the Notice it could lead to the owners of other land and operators of similar unlawful uses disregarding the Council's planning control function in the future. Although the Council could again prosecute the owner in the Magistrates' Court again it is at best a course of action that is used in conjunction with other action.

26. The options for alternative action are to either take direct action under Section 219 of the Town & Country Planning Act 1990 or to seek an Injunction from the High Court against the owner of the land and operator of the use. In this case taking direct action is likely to achieve compliance with the requirements of the enforcement notice faster than could be achieved if the Council sought and then had to take steps to enforce an Injunction. It is considered that the costs of taking direct action in this case are likely to be relatively modest when compared to those of seeking and enforcing an Injunction, although the Council should be able to recover its costs whichever of the alternative courses of action were taken.

27. If direct action is unsuccessful it would still be open to the Council to seek an Injunction at a later date. Authority already exists to pursue that option as part of the original authority.

28. It is therefore recommended that authority be given to the Director of Planning and Economic Development to take direct action under Section 219 of the Town & Country Planning Act 1990 on one or more occasions to secure compliance with the requirements of the Notice, subject to Cabinet approval to incur associated expenditure over the threshold for delegated cost expenditure by the Planning Department.