

Report to Planning Committee

Planning Enforcement 0035/2016

Reference:

Location: Fletton Court, Old Brickyard, Carlton

1 Background

1.1 On the 8th June 2006 planning permission was granted to erect 12 apartments on land now known as Fletton Court, The Old Brickyard, Carlton, subject to a number of conditions.

1.2 The conditions included;

Condition 7 – “the proposed boundary treatments shall be implemented before the development hereby permitted is first occupied and shall thereafter be retained unless alternative means of enclosure are agreed in writing by the Borough Council”.

Condition 8 - “the approved landscaping scheme shall be carried out in the first planting season following the substantial completion of the development and any planting material which becomes diseased or dies within five years of the completion of the development shall be replaced in the next planting season by the applicants or their successors in title”.

Condition 9 – “the proposed cycle stores shall be provided before any of the apartments are first occupied and shall thereafter remain available for the storage of cycles at all times”.

Condition 10 – “the proposed parking spaces shall be provided before any of the apartments are first occupied and shall thereafter remain available for the parking of cars at all times”.

Condition 11 – Development shall not begin until a scheme to deal with contamination of the site has been submitted to and approved in writing by the Borough Council as the local planning authority. The scheme shall include an investigation and assessment to identify the extent of the contamination and the measures to be taken to avoid risk to the public and buildings when the site is developed.

Condition 12 – No individual unit shall be occupied until the measures approved in the scheme have been implemented and the measures required shall be monitored and certified as being in compliance with the approved scheme by a firm of consulting engineers who shall carry suitable and

sufficient professional indemnity insurance and whose appointment has been previously agreed in writing by the Borough Council's Head of Planning. The consultant's certificate shall be given to the developer and to the Council and in so certifying the consultants shall confirm that they owe a duty of care to both parties.

- 1.3 Although details to discharge conditions 7 – 10 were submitted in October 2008 and approved by the Council on 21st January 2009, the agreed works have never been carried out. In addition, conditions 11 and 12 also remain outstanding as insufficient details were submitted to enable officers to discharge condition 11 and the Council has not been advised of any measures implemented in relation to the possible contamination identified on the site as required by condition 12.
- 1.4 Recent visits to the site have shown that old furniture and waste has been dumped in the car parking area and a builder's compound containing bricks and other items remains on the site.
- 1.5 Letters have been sent to the developer requesting that they comply with the conditions and finish off the development as approved but the requests have been ignored.
- 1.6 In May 2016, there was a meeting between Council officers and the developer. At the meeting the developer advised officers that they considered it 'a waste to dig up the existing concrete and then tarmac the car park and plant the trees and shrubs for the soft landscaping'. The developer was advised that they needed to apply to vary the conditions and submit an amended landscaping plan if they no longer wished to comply with the existing conditions and the approved plan.
- 1.7 Despite the negative response, the developer agreed at the meeting that they would clear the furniture and waste dumped on the site together with the fenced compound and the bricks left on the site. However, to date none of this work has been carried out and the Council has not received an application to vary the conditions.

2 ASSESSMENT

- 2.1 The power to impose conditions on planning permissions is an extremely important part of the development management process in order to safeguard matters of planning importance, mitigate against the impact caused by the development and ensure the development is acceptable all planning aspects.
- 2.2 Conditions have to be necessary; relevant to planning and the development; reasonable; precise; and enforceable. Unless conditions fulfil all these criteria (known as the "six tests") they are likely to fail if challenged at appeal.
- 2.3 In this case, Conditions 7 and 8 were imposed in the interests of visual amenity and in accordance with local plan policies. Condition 9 was imposed to ensure adequate provision is made for the safe storage of cycles, in accordance with the aims of local plan policies and Condition 10 was imposed

in the interests of highway safety, in accordance with the aims of local plan policies. Conditions 11 and 12 were imposed to ensure that any contamination on the site was disposed of in a suitable manner. It is considered the outstanding conditions comply with the six tests above.

- 2.4 The approved plan discharging the hard and soft landscaping conditions shows that the car park was to be partly tarmacked and partly concrete paved, marked out with parking spaces with the fall of the land to ensure water run off was directed into the existing drainage channels. There was to be a brick built bin store and soft landscaping around the site with a brick built boundary wall to the south corner of the car park.
- 2.5 A cycle store was to be incorporated within the ground floor of the building and was to be kept available at all times for the storage of cycles. There is no evidence that the developer has provided the cycle store and that it is kept available as required by condition 9. The lack of storage for cycles is contrary to local plan policies and the NPPF which seeks to encourage sustainable transport
- 2.6 Whilst the brick built boundary wall on the south corner of the car park has been provided, the car parking area remains a patchwork of old concrete block work and tarmac chippings with weeds growing between the cracks. A number of waste and recycling bins are positioned at the entrance to the building and under residents' windows on full view as the bin store has not been provided.
- 2.7 As well as being unsightly, smells and flies from the bins may cause a nuisance to the residents and visitors to the apartments and may prevent residents from opening their windows in the summertime. In addition, a temporary compound with building materials has been erected outside the ground floor windows of one of the apartments.
- 2.8 The soft landscaping areas have not been planted but remain overgrown grassy areas with some areas identified to be landscaped with plants and shrubs still just concrete block. The car park area is attracting fly tipping with an old mattress and settee and other rubbish dumped. The car parking area is unattractive and detrimental to the amenity of the local area.
- 2.9 The Council has not received a contamination report relating specifically to this site with enough information to allow the Council to discharge condition 11 and there is no evidence of any contamination remediation having been carried out.
- 2.10 The NPPF at para.120 states that "...Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner."
- 2.11 The NPPF goes on to say that the LPA should satisfy itself that the potential for contamination and any risks arising are properly assessed and that the development incorporates any necessary remediation and subsequent

management measures to deal with unacceptable risks. As information required by conditions 11 and 12 of the permission has not been submitted the Council has been unable to make this assessment.

- 2.12 There are several options available to the local authority when a condition is being breached including the service of a Breach of Condition Notice (BCN) under section 187A of the Town and Country Planning Act 1990 (“the Act”) for which there is no appeal and a maximum fine of £2,500 if the Notice is not complied with. However, local authorities tend to prefer to issue an Enforcement Notice under s.172 of the Act, for a breach of planning control where conditions on a planning permission have not been complied with, as opposed to a BCN if the matter is anything but straightforward. Although there is a right of appeal against such a notice, there is a maximum of £20,000 fine in the Magistrates Court and an unlimited fine if action is taken through the Crown Court.

Time limits for taking action

- 2.13 S171B(3) provides that no enforcement action can be taken against a breach of a planning condition after the end of the period of ten years from the date on which the breach first occurred, except where it is a condition relating to a use as a single dwelling house where the period of immunity is four years.
- 2.14 The conditions were required to be fulfilled prior to the occupation of the apartments. Council tax records show the apartments were first occupied on September 2010 and the Council is therefore in time to take formal action.

Human Rights

- 2.15 Under the Human Rights Act, it is necessary for the Authority to have regard to the rights of the owner and occupier of a site under Article 1 of the First Protocol to peaceful enjoyment of possessions and the protection of property and under Article 8 of the convention to respect for his private and family life, his home and his correspondence’.
- 2.16 In considering whether to take any enforcement action, the Council has to consider the proportionality of its actions. In other words whether the proposed action would be proportionate to the objective being pursued – here the enforcement of planning control in support of National and Local Planning Policies. It is recognised that issuing an enforcement notice or taking court proceedings in the Magistrates Court if the notice is not complied with, will result in interference with the recipients’ rights. However, it is considered that issuing a notice in the first instance would be a proportionate response to rectifying the breach of planning control taking place.

Equalities

- 2.17 The Enforcement section operates in accordance with Planning Enforcement Policy and is largely dictated by legislation which reduces the risk of discrimination in this service. The Council is accountable to the public,

including its stakeholders, for its decisions both to take enforcement action and not to utilise its enforcement powers. There is a legitimate expectation of the public and stakeholders that the Council will take action to address breaches of planning by such means as are appropriate and which are in accordance with the Council's policy and government legislation.

- 2.18 The Council strives for a consistent approach in targeting its enforcement action. This means that the Council will take a similar, but not the same, approach to compliance and enforcement decisions within and across sectors. It will strive to treat people in a consistent way where circumstances are similar. Each case however will be evaluated on the basis of its own facts and circumstances but will ensure that decisions or actions taken in any particular case are consistent with the law and with the Council's published policies. It should be noted that decisions on specific enforcement actions may rely on professional judgment. The Council will usually only take formal enforcement action where attempts to encourage compliance have failed as in this case.

Crime and disorder

- 2.19 The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on the integrity of the planning system and the setting of a precedent if action is not taken is therefore a material consideration in the authorisation of enforcement proceedings.

3 CONCLUSION

- 3.1 The developer has made it clear they do not intend to comply with the conditions which the Council considered were necessary and reasonable to make the development acceptable and he has also declined to submit an application to amend to the conditions.
- 3.2 Failure to provide the hard and soft landscaping as per the approved plan and conditions and the continued storage of old furniture, waste items and the builders compound on the site is detrimental to the amenity of the area. The lack of bin storage means the bins are stored under resident's windows and at the entrance to the apartments to the detriment and wellbeing of residents and visitors to the site. In addition, the lack of cycle storage facilities fails to encourage sustainable transport methods and is contrary to local and national planning policies.
- 3.3 The lack of a contamination report and remediation means that local residents could be at risk. Even if that risk is small, it is not an acceptable situation and the Council could be criticised for failing to enforce the conditions requiring any necessary remediation.
- 3.3 The time limit for taking action in this matter is fast approaching and it is deemed necessary to take formal action to ensure the conditions are now

complied with.

Recommendation:

That the Service Manager, Development Services be authorised to serve a Breach of Condition Enforcement Notice requiring the developer to complete the development in accordance with the approved plans and conditions, and issue any necessary enforcement proceedings through the courts, in conjunction with the Director of Organisational Development & Democratic Services.