

## Planning Enforcement Report for 0037/2022



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## Report to Planning Committee

**Reference Number:** 0037/2022

**Location:** Land at 86 Chapel Lane, Ravenshead.

**Breach of Planning Control:** Breach of Planning Condition 7 attached to planning permission 2019/0770.

### 1 Background

1.1 Planning permission was granted in 2019, reference 2019/0770 for demolition of existing dwellings at 84 & 86 Chapel Lane, Ravenshead and construction of 6 new dwellings with garages. A number of conditions were attached to the permission including:

**Condition 7:** *From the date of first occupation each dwelling hereby permitted shall be provided with access to a fully operation 3 pin socket on a dedicated 16A circuit, capable of providing a safe overnight 'trickle' charge to an electric vehicle using a mode 2 charging cable. Charging points should be provided either within garage space or via outdoor, weatherproof sockets within 3m easy access of the off road parking areas. All EV charging points shall be clearly marked with their purpose.*

1.2 An application to discharge condition 7 was submitted and approved in September 2020 (2020/0648DOC). The approved details (Plan VED587/07/D) show Electric Vehicle (EV) charging points to all plots.

1.3 In February 2022 a complaint was received by the Council's Enforcement Officer alleging that the properties had been sold and occupied without the proposed EV points having been installed.

1.4 Written contact was made with DDM Homes Ltd, the developer responsible for the development, in March 2022 drawing the matter to their attention and requesting they provide further comment on the provision of EV points. A further email was sent in April 2022 requesting a response to the initial contact made.

1.5 A response was received in April 2022 stating that the purchaser of one of the plots did not want an EV point on their property at the point of purchase. DDM

Homes Ltd were advised on return that compliance with the condition was not optional based on the preference of the purchaser.

- 1.6 Upon further inspection, it was noted that only one of the completed plots had been provided with an EV point as required by the approved drawings.
- 1.7 Discussions with the developer took place in May 2022 and confirmation as to what works would be required was provided to them in June 2022 with a deadline of 13<sup>th</sup> July 2022 for completion of the works. In total the developer has been notified of the requirements to fulfil their obligations under Condition 7 on seven separate occasions without any progress being made.
- 1.8 On 27<sup>th</sup> July 2022, the developer, DDM Homes Ltd, notified the Council that the company was in the process of liquidation. They were advised that the current company status would not preclude enforcement action being taken to secure compliance with the condition.
- 1.9 On 9<sup>th</sup> August 2022 the developer was warned that formal action was being considered to ensure compliance with Condition 7. They responded, now claiming they had installed a charging point to Plot 3 but it has since been removed. They also maintained that one of the plots did not want a charging point and they had made several attempts to make contact with the remaining plot but without response. Council officers checked with the plot owner who has confirmed no such contact has been made at all that they are aware of despite DDM Homes Ltd having their contact details.
- 1.10 On 23<sup>rd</sup> August 2022, the officer emailed DDM Homes Ltd confirming previous instructions to them in respect of installation of the EV charging points. A request to make urgent contact with the relevant plot owners to make suitable arrangements was also made.
- 1.11 On 25<sup>th</sup> August 2022, the officer requested that the complainant made direct contact with the developer (as requested by DDM Homes Ltd) to arrange installation of the EV point.
- 1.12 On 30<sup>th</sup> August 2022, the complainant made contact with the officer to advise they had been in contact with the developer who had advised the EV charger should be installed within the next month.
- 1.13 The complainant has since confirmed that no further contact has been received from the developer and no EV charger has been installed.
- 1.14 The officer requested an update from DDM Homes Ltd on 27<sup>th</sup> 2023 January but no response has been received.

## 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 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 to be permitted; 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, Condition 7 was imposed to ensure the development is constructed in an appropriate sustainable manner which takes into consideration air quality within the Borough, and takes into consideration the National Planning Policy Framework and policy LPD 11 of the Local Planning Document.
- 2.4 There are two options available to the local authority when a condition is being breached;
- i) to issue a Breach of Condition Notice (BCN) for which there is no appeal and a maximum fine of £2,500 if the Notice is not complied with or
  - ii) to issue a Breach of Condition Enforcement Notice. However, this may be appealed to the Secretary of State which would suspend the notice until the appeal decision has been reached but it does attract a maximum fine of £20,000 if it is not adhered to once it has come into effect.
- 2.5 As this is a straightforward breach of condition it is considered the simpler Breach of Condition Notice is the most appropriate action to take in this instance.

### Time limits for taking action

- 2.6 Section 171B(3) of The Town and Country Planning Act 1990 provides that generally 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. It is considered the Council is within this time limit to take action in this case.

### Human Rights

- 2.7 Under the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with a right under the European Convention on Human Rights (the Convention). In this instance under Article 1 of the First Protocol of the Convention: Protection of Property, every person is entitled to

the peaceful enjoyment of their possessions except in the public interest and subject to conditions provided for by law. Furthermore under Article 8 of the Convention all individuals enjoy the right to respect for their private and family life, their home and their correspondence except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- 2.8 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 pursuing formal 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 an enforcement notice and pursuing Court action if the enforcement notice is not complied with, would be a proportionate response to the breach of planning control.

### Equalities

- 2.9 The Council's Planning Enforcement team operates in accordance with the Council's 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 in the individual circumstances and which are in accordance with the Council's policy and government legislation.
- 2.10 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

- 2.11 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.
- 2.12 In light of all the facts it is now considered expedient to serve a breach of condition notice requiring compliance with condition 7 of permission 2019/0770.

### 3 CONCLUSION

- 3.1 The developer has been made aware of the planning conditions attached to the planning permission; in particular they have been made aware of the requirement that all plots be provided with an EV charging point.
- 3.2 The developer has failed to address the identified breach and therefore in order to remedy the breach of planning control the Council is left with little option but to take formal action and it is considered the issuing of a Breach of Condition Notice is the most appropriate action in this instance.

### 4 RECOMMENDATION

- 4.1 **That the Head of Development and Place be authorised to take all relevant planning enforcement action including the service of any necessary enforcement notices and, in conjunction with the Head of Governance and Customer Services, take proceedings through the courts, if required, to ensure compliance with condition 7 of planning permission 2019/0770.**