

PLANNING DEVELOPMENT CONTROL COMMITTEE

28 JULY 2005

BUMBLE COTTAGE, 6 LIBERTY ROAD, NEWTOWN, FAREHAM, HAMPSHIRE

REPORT OF DIRECTOR OF DEVELOPMENT

Contact Officer: Lesley Wells Tel No: 01962 848564

RECENT REFERENCES:

PDC529, PDC530, PDC531, PDC538

EXECUTIVE SUMMARY:

Members have been requested by the owner to reconsider their decision to authorise enforcement action to secure the demolition of the unauthorised building erected on the land.

RECOMMENDATIONS:

- 1 That if Members are minded to grant planning permission for planning application reference W17401/04 they resolve:-
 - a) that officers be instructed to review the site no later than one month after the outcome of the current appeal and;
 - b) should it be necessary to do so in the light of the review in a) above, that the City Secretary and Solicitor be authorised to issue an enforcement notice requiring the following steps:-
 - (i) EITHER the demolition of the whole structure erected on the land; OR
 - (ii) the reconstruction of the Building in accordance with the plan approved under Planning Permission W17401/04 namely Drawing 04.284.02 stamped 9 June 2005.

- 2 That if Members are minded to refuse planning application reference W17401/04 that they endorse the decision to take enforcement action to require the whole structure erected on the land to be demolished.

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DETAIL:

1 Introduction

- 1.1 On 7 April 2005 Members refused planning permission for "Replacement four bedroom dwelling; revision to approved planning permission W17401/01 (part retrospective)" under reference W17401/03. On 28 April 2005 members reaffirmed their decision and resolved to issue an enforcement notice to demolish the structure erected on the land. An appeal has been lodged against the refusal of planning permission. The proposed date for the inquiry is 6 December 2005.
- 1.2 A formal request has been received from the owner's agent for Members to reconsider taking enforcement action against the unauthorised development. Whilst the enforcement notice has been prepared it has not been issued, pending Members' consideration of the owner's request.
- 1.3 A revised application for "Replacement four bedroom dwelling; revision to approved planning permission W17401/01 (part retrospective)" under reference W17401/04 is on the agenda for Members' consideration.
- 1.4 A copy of the agent's letter is attached as Appendix 1.

2.0 Response to Owner's Request

- 2.1 In accordance with Planning Policy Guidance Notes 18: Enforcement Planning Control (PPG18), it has to be expedient to take enforcement action against unauthorised development. This is regardless of whether a breach of planning control is intentional or otherwise or it would result in a financial loss. PPG18 also states that an enforcement notice should not normally be issued solely to regularise development which is acceptable on its planning merits, but for which permission has not been sought. It further states that it will generally be regarded as unreasonable for the Council to issue an enforcement notice, solely to remedy the absence of a valid planning permission and that if this is held at appeal then the Council will be at risk of an award of costs.
- 2.2 The breach of planning control was not initially noted by officers on site, due to an anomaly on the approved plan. Once this was noted and the degree of the discrepancy from the approved plan identified a revised application was requested, as the view was taken by officers that the development as built would not have a material impact on the amenities of the neighbours.
- 2.3 The decision to refuse planning permission on 7 April 2005 was not a unanimous decision, but a unanimous decision is not required in planning decisions.

2.4 Officers took a report back to Members on 28 April 2005 setting out 3 options, before they made a decision on whether or not they authorised enforcement action. These options were: refuse permission but not enforce; refuse permission and issue an enforcement notice; and reconsider the decision to refuse permission. Therefore Members had regard to all material factors before they considered it expedient to take enforcement action against a development which they considered materially harmful in planning terms.

2.5 The decision to delete one of the reasons for refusal followed confirmation of advice from the Highway Engineer that the parking and manoeuvring as shown by the application was acceptable. The reasons for taking enforcement action were then confirmed by Members.

3.0 Implications of Request

3.1 If no further action is taken, as requested by the owner, the unauthorised dwelling could be completed. However, it would be at risk of enforcement action at any time within the period of four years after substantial completion of the dwelling. Members would need to consider this option carefully as there has been a large amount of local interest and involvement. It is reasonable to expect that local residents would anticipate that having refused the application, the City Council will proceed with enforcement action. Whether enforcement action is necessary, however, is likely to depend on the outcome of the current application. If the current application is successful, it would be reasonable to believe that the permission will be implemented. An enforcement notice could be issued in the future, as could a stop notice, should the owner continue work other than in accordance with any planning permission which is granted. It should however be noted that currently the owner has stopped work voluntarily. If Members do agree to grant the current application, it is recommended that officers be instructed to monitor the site and review the site by September 2008, before the four year time limitation on enforcement action expires.

3.2 Conversely if the application is refused an Enforcement Notice could be issued requiring the building to be demolished.

4.0 Conclusion

4.1 Members have considered it expedient to take enforcement action because the building is unacceptable in planning terms. The owner's reasons in support of his request do not raise any new material points which were not previously considered by Members. However, if Members granted the current application, it would be a reasonable decision not to take enforcement action at this time.

OTHER CONSIDERATIONS:

5 CORPORATE STRATEGY (RELEVANCE TO):

5.1 Looking after the natural and built environment is a key objective.

6 RESOURCE IMPLICATIONS:

6.1 Costs will be entailed in defending any appeal which is lodged. In addition, the City Council may be required to pay the appellant's cost if it is subsequently demonstrated by the appellant that the Council acted unreasonably in taking enforcement action. It

is possible that a cost claim would be successful, and as the matter is to be determined by inquiry, these costs could be significant.

BACKGROUND DOCUMENTS:

W17401/01

APPENDICES:

1. Copy of agent's letter dated 2 July 2005.