

This Report will be made public on 22 January 2019

Report Number **C/18/62**

To: Cabinet
Date: 30th January 2019
Status: Non key decision
Responsible Officer: Llywelyn Lloyd, Chief Planning Officer
Cabinet Member: Councillor Malcolm Dearden, Cabinet Member for Finance

SUBJECT: FUNDING FOR DIRECT ACTION TO SECURE COMPLIANCE WITH ENFORCEMENT NOTICES AT WHITEHALL FARM ROMNEY ROAD LYDD

SUMMARY: In March 2017 Corporate Management Team (CMT) agreed funding for direct action to secure compliance with enforcement notices at Whitehall Farm. This report provides an update on the attempts made to secure direct action within the budget agreed and seeks agreement for further funds to be released so that direct action can be secured to achieve compliance with the enforcement notices.

REASONS FOR RECOMMENDATIONS:

All attempts to secure compliance with the enforcement notices by the landowner have failed and the situation on the site is gradually worsening. The only recourse available to the Council to ensure compliance with the enforcement notices is for the Council to take direct action both in the public interest and interest of the visual amenity of the local environment and to demonstrate that unacceptable unauthorised activities in breach of enforcement notices will not be tolerated.

RECOMMENDATIONS:

1. To receive and note report C/18/62.
2. To continue to pursue direct action to achieve the following requirements as a result of the Enforcement Notice issued under section 172 of the Town and Country Planning Act 1990 (as amended):
 - i) Cease the use of the land for the storage of vehicles not connected with the permitted use of the site for agriculture and the keeping of horses.
 - ii) Remove the vehicles not connected with the permitted use of the site for agriculture and the keeping of horses.
3. To continue to pursue direct action to achieve the following requirements as a result of the Enforcement Notice issued under section 172 of the Town and Country Planning Act 1990 (as amended):

- i) Cease the use of the land for the storage of mobile homes; touring caravans; horse boxes, vehicle trailers; and a boat, not connected with the permitted use of the site for agriculture and the keeping of horses.**
- ii) Remove the mobile homes; touring caravans; horse boxes; vehicle trailers; and a boat, not connected with the permitted use of the site for agriculture and the keeping of horses from the land.**
- 4. Continue to pursue direct action to achieve the following requirements as a result of the Enforcement Notice issued under section 172 of the Town and Country Planning Act 1990 (as amended):**
- i) Secure the cessation of the unauthorised residential use of the building.**
- ii) Remove all domestic paraphernalia from the building.**
- iii) Remove all domestic paraphernalia from the Land which is connected with the residential use of the building;**
- iv) Remove the kitchen and bathroom from the building to ensure that a residential use cannot start again at short notice**
- 5. To ring fence funding up to £100,000 for direct action to be taken from the 2018/19 underspend and to be carried forward in the event of this not being spent during the 2018/19 financial year. The sum to be drawn down as and when required.**
- 6. To place a charge on the land or pursue action via the County Court for the costs incurred in achieving 2 - 4 above.**

1. BACKGROUND

Use of the Land

1.1 On the 30th of June 2014, an Enforcement Notice was served on the owners of the land requiring the following:

- i) Cease the use of the land for the storage of the caravan; vehicles; and storage crates not connected with the permitted use of the site for agriculture and the keeping of horses

- ii) Remove the caravan; vehicles; and storage crates not connected with the permitted use of the site for agriculture and the keeping of horses

The Enforcement Notice took effect on 11th of August 2014 and gave a period for compliance of three months. No appeal was made against the serving of the Notice and the date to comply with the requirements of the Notice was the 11th of November 2014. Alongside the Enforcement Notice, a letter was sent to the registered owners, [REDACTED] explaining the procedures in place should the Enforcement Notice not be adhered to and their rights of appeal.

1.2 Email correspondences dating from June 2014 between [REDACTED] and the Enforcement Officer, John Macauley, made it clear what was required to be undertaken by the date for compliance with the Notice. Although the registered owners are [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] is not responsible for the breach of the enforcement notice. Her day to day interest in the land is that she keeps horses on part of it.

1.3 Prior to the Notice compliance date being reached, a visit was made to the site on the 3rd of October 2014 and it was noted that the site had been cleared of cars for storage, as well as crates, and the caravan had been removed. However, a visit to the site on the 12th of February 2015 showed the site was again being used for the storage of vehicles, in breach of one of the requirements of the Enforcement Notice.

1.4 On the 12th of February 2015 a letter was sent to [REDACTED] requesting he attend the Council offices on the 24th of February 2015 to explain why the requirements of the Enforcement Notice had not been complied with. [REDACTED] did not attend.

1.5 On the 24th of February 2015 a letter was sent under caution to [REDACTED] [REDACTED] asking questions about the use of the Land and why the Notice had not been complied with. The letter, including answers to the questions in it, were requested to be returned by the 10th of March 2015. The letter was not returned.

1.6 A visit to the site on the 10th of March 2015 showed that the land was still being used to store vehicles.

1.7 More recent visits towards the end of 2016 and at the beginning of January 2017 showed the site still being used to store vehicles.

Unauthorised Residential Occupation

1.8 On the 12th of February 2013, an Enforcement Notice was served on the owners of the land requiring that the unauthorised residential occupation of a building known as Little Owls Barn ceased, and required the following:

- i) Cease the unauthorised residential use of the building
- ii) Remove all domestic paraphernalia from the building.
- iii) Remove all domestic paraphernalia from the Land outlined which is connected with the residential use of the building;
- iv) Remove the kitchen and bathroom from the building to ensure that a residential use cannot start again at short notice.

1.10 The Notice required compliance with the requirements of the Notice within 6 months if no appeal was made against the issuing of it. An appeal was made against the serving of the Notice, but that was dismissed on the 27th of November 2013. As a result the revised compliance date for the requirements of the Notice was the 27th of May 2014.

1.11 A visit to the property on the 8th of July 2014 showed that the Notice had not been complied with in that the building was still being used for residential accommodation; still contained domestic paraphernalia; and the kitchen and bathroom were still there.

1.12 The occupant and owner of the property is [REDACTED]. The property is not registered in the Land Registry, but the land it sits on is. The registered owners of the land are [REDACTED] and does not live at Little Owls Barn. This has been confirmed verbally by [REDACTED] and by [REDACTED] including when he was questioned under caution.

1.13 On the 17th of July 2014 a letter under caution was sent to [REDACTED] asking questions about the use of Little Owls Barn and why the Notice had not been complied with. The letter and answers to the questions in it were requested to be returned by the 31st of July 2014. [REDACTED] did not return the letter, but on the 3rd of October 2014 the Enforcement Officer, John Macauley, visited Little Owls Barn and cautioned [REDACTED] and took a statement from him, which he signed. [REDACTED] confirmed that he still lived at Little Owls Barn, and had no intention of complying with the requirements of the Enforcement Notice, believing that Little Owls Barn had always been a dwelling.

1.14 [REDACTED] has been prosecuted by the Council for failing to comply with the Enforcement Notice on Little Owls Barn. [REDACTED]

relevant documentation, removal of items from the land, off site storage for a period of time and the removal of [REDACTED] and his belongings from the building and the works required to ensure it cannot be used for residential purposes. Part of the reason for the increase in costs since the previous quotes is that the number of vehicles and caravans stored on the site has substantially increased.

1.20 In order to try to reduce these costs, in September 2018 letters were sent to all vehicle and caravan owners that it was possible to identify, advising them that the vehicle was on the land in breach of an enforcement notice and giving them until 31st October 2018 to remove it. They were advised that any vehicles left on the land after that date may be removed without further notice. It appears that only one owner has removed their caravan.

1.21 In 2016 and 2017 three planning applications were submitted to regularise the use of Little Owls Barn as a dwelling. For all of these the Council exercised its right to decline to the applications under Section 70C of the Town and Country Planning Act 1990 as there is a pre-existing enforcement notice relating to the use for which planning permission was applied for and the appeal against the enforcement notice has been dismissed by the Secretary of State. In March 2018 an invalid retrospective planning application was submitted for the change of use of the land the subject of the enforcement notices from agricultural to use for the storage of caravans/motorhomes and the change of use and conversion of an agricultural building to residential (Little Owls Barn). This was finally made valid in September 2018 and is an attempt by the owner to regularise the uses and may be the reason why vehicles and caravans have not been removed as it is understood the applicant has told people that he is going to get planning permission so they don't need to take any notice of the letters sent by the Council. A further letter was sent to vehicle owners advising them that there is still a requirement to remove their vehicles but this does not appear to have had any impact.

1.22 With regard to this retrospective application, all the relevant planning issues for these uses were taken into account when a decision was being taken on whether to enforce against the uses. The enforcement notices were served because it was considered that planning permission would not be granted for them. There has been no material change in planning circumstances since the enforcement notices were served to warrant planning permission now being granted so the application is likely to be refused. The applicant and agent were advised of this both before and after the invalid application was submitted.

2. CONSULTATION

2.1 No consultations are necessary in respect of taking direct action to secure compliance with enforcement notices.

3. OPTIONS

- 3.1 Noncompliance with an Enforcement Notice can be pursued through the courts since it is a criminal offence for which, if convicted, the maximum fine is unlimited in the Crown Court, and up to £20,000 in a Magistrate's Court. Non-compliance with the requirements of an Enforcement Notice can also be dealt with by direct action, by which the LPA, or an agent authorised to act for them, carry out the works themselves. [REDACTED] has already been prosecuted in relation to the continued occupation of Little Owls Barn in breach of the Enforcement Notice, [REDACTED] although no prosecution case has been presented before the courts regarding failure to comply with the requirements of the Enforcement Notices concerning the use of the land to store vehicles. However, it is proposed that this will be progressed at the same time as the Council taking direct action to secure compliance with the requirements of the Enforcement Notices. When taking direct action prior warning should be given stating that the Council and its appointed contractors intend to carry out the steps required by the Notices.
- 3.2 Whilst a prosecution may be successful it does not always deliver compliance with the requirements of an Enforcement Notice, as the prosecution regarding the non-compliance with the requirements of the Enforcement Notice regarding Little Owls Barn has shown. In this case it is considered unlikely that further prosecution will result in compliance with the Notices. It is considered that direct action is necessary to ensure the harm to the amenity of the area is addressed, but also to demonstrate the Council's willingness to use initiatives such as this to actively pursue landowners to secure compliance with Enforcement Notices. The use of comprehensive remedial action will therefore generate an on the ground improvement in the locality as well as an enhanced public perception of the role the Council plays in confronting such problems directly.
- 3.3 In accordance with the provisions of Section 178 of the Town and Country Planning Act 1990 (as amended) the Council should undertake all reasonable endeavours to recover expenses incurred in undertaking direct action. A charge can be applied to the land and an invoice sent to the owner. This charge would be binding on successive owners of the land to which the original enforcement notice relates. The charge would take effect on the date that the Council undertakes the direct action to comply with the Enforcement Notices.
- 3.4 It is recommended that the expenses that are sought to be recovered are those incurred by the Council in pursuing the direct action. The Council should take all reasonable steps in recovering the expenses as a debt and should raise an invoice in accordance with existing practice and procedures. The Council's land charges department should be notified immediately of the recoverable sums that need to be entered as a record against the property in the Register of Local Land Charges. If the debt remains unpaid the Council can then take steps to register the charge at HM Land Registry.
- 3.5 With regard to the recovery of the costs incurred in undertaking direct action, government guidance states the following:

'Authorities that have undertaken works themselves have not experienced great difficulties in recovering costs. Where costs cannot be immediately recovered LPAs have the option of registering a charge on the property with the Land Registry, thus assuring full cost recovery plus base-rate interest. There is also provision within the Land Charges Act for the interim procedure of placing an estimate of the charge that will become due on the property. This effectively ensures the land or property cannot be sold without a charge being shown on the land. County or High Court bailiffs have also been successfully used to recover monies owed.'

In this case it is understood that there are multiple charges already on the land and, if this is the case, cost recovery is unlikely to be successful. However it is considered that there is a public interest case for undertaking direct action.

- 3.6 Approval to ring fence funding of up to £100,000 is sought to allow for a contingency because the costs may have increased since the quotes were sought last year depending on the vehicles numbers on site. It is likely the number of touring caravans stored on the site will have increased since entry to the site was last gained in June 2018.

4. RISK MANAGEMENT ISSUES

4.1

Perceived risk	Seriousness	Likelihood	Preventative action
Landowner puts more vehicles back on site after it has been cleared	High	High	Prosecute and take direct action while vehicle numbers are low. Give consideration to serving an injunction
Occupant returns to live in Little Owls Barn	High	High	Housing Options Team to work with occupant to secure alternative accommodation. Give consideration to serving an injunction
Occupant of mobile home becomes homeless or returns to site	High	Low	Housing Options Team to work with occupant to secure alternative accommodation. Give consideration to serving an injunction
Landowner could appeal to the High Court leading to delays in taking action and resulting in	High	Medium	Ensure all correct legal procedures followed to minimise likelihood of a successful legal challenge

increased costs to the Council			
Council may not be able to recover its costs	High	High	Carry out credit check to ascertain the value of the existing charges registered on the property.
Funding is not available to take direct action	High	Low	There is sufficient underspend currently forecast for 2018/19

5. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

5.1 Legal Officer's Comments (DK)

There are no legal implications arising directly out of this report that are not already stated in it. The Council obtained legal advice from [REDACTED] (Becket Chambers) who confirmed that a court would consider [REDACTED] breaches as justifying the Council moving to direct action: [REDACTED] said that any direct action should be undertaken only after having given [REDACTED] reasonable notice of 28 days).

5.2 Finance Officer's Comments (LK)

Confirm that £14,100 was carried forward from CLT Contingency in 2017/18 and is available to use. There is a potential difference of up to £86,000 for the costs. There is no approved budget for this in 2018/19 or 2019/20 and the CLT Contingency has all been allocated for 2018/19. If approved, and the expenditure falls in 2018/19 then this could come from the projected underspend that is currently being shown through budget monitoring. At quarter 2 the projected underspend was £450,000.

5.3 Diversities and Equalities Implications (GE)

There are no equalities implications directly arising from this report.

6. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

Lisette Patching, Development Management Manager
 Telephone: 01303 853448
 Email: lisette.patching@folkestone-hythe.gov.uk

The following background documents have been relied upon in the preparation of this report:

Enforcement complaint file Y12/0184/CM