

NFNPA 196/16

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING DEVELOPMENT CONTROL COMMITTEE – 19 JANUARY 2016

DIRECT ACTION

LAND ADJACENT BRANSGORE HOUSE, 140 BURLEY ROAD, BRANSGORE, BH23 8DA

Report by: Paul Hocking, Enforcement and Trees Manager

1.0 Summary

- 1.1 This report concerns breaches of planning control at a small parcel of woodland on the outskirts of Bransgore. The woodland is the subject of a Tree Preservation Order and was divided into various small parcels in the 1960's. The woodland however retains its original character and surrounds Bransgore House with further residential properties to the east.
- 1.2 The land concerned was purchased by a Mr Brooks in June 2015 and shortly thereafter he stationed a touring caravan to include the storage of other general paraphernalia as well as some makeshift fencing in breach of planning controls.
- 1.3 The purpose of this report is therefore to update Members as to the progression of the current situation and approve direct action being taken to secure compliance with an Enforcement Notice that was subsequently served on 13 August 2015.

2.0 Enforcement and Court Chronology

- 2.1 A number of complaints were received in mid-July about works to trees as well as the stationing of a caravan and other paraphernalia within the woodland parcel. A site visit confirmed this was in breach of planning controls.
- 2.2 A Temporary Stop Notice was served on 17 July to halt the rate of development and enable the Authority to investigate the matter fully. A Planning Contravention Notice (PCN), which asks questions about owner intentions, was also served on the same day to aid the investigation.
- 2.3 The owner, a Mr Brooks, did not respond to the PCN but did meet with the Enforcement Manager on 7 August and provided some insight into his intentions. Most pertinent was that he was not residentially occupying the site as he lived nearby. He also claimed to be a 'Freeman of the Land' and so allegedly did not recognise the jurisdiction of the Authority (or indeed the Law Courts).
- 2.4 An Enforcement Notice was served on 13 August directed against securing the removal of the caravan and paraphernalia as well as the cessation of the non-forestry use of the land. The land currently has the appearance of a heavily wooded garden or a woodland area used for occasional camping.

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- 2.5 The Enforcement Notice was not appealed and so should have been complied with on 25 September. The owner did not comply with the Enforcement Notice and despite requesting more time (generally in fortnightly increments) has failed to do so.
- 2.6 Proceedings were then issued in the Magistrates Court on 2 November pursuant to a prosecution against Mr Brooks owing to his failure to comply with the Enforcement Notice and respond to the PCN. Despite then advising the Courts that he would comply he again failed to do so. Mr Brooks was then successfully prosecuted on 16 December after failing to appear. Mr Brooks was fined a total of £850 and the Authority was awarded its costs of almost £1400.
- 2.7 Despite all the above, Mr Brooks has failed to engage meaningfully with the Authority or Courts or take any tangible steps to comply with the Enforcement Notice. If anything, Mr Brooks is trying to frustrate compliance efforts by digging a trench around the caravan. The caravan and other items have now been on the site in excess of 6 months and the use and appearance of the site is causing concern and distress to the occupiers of nearby residential properties.

3.0 Direct Action

- 3.1 The ability to take direct action arises from Section 178(1) of the Town and Country Planning Act which gives a local authority the power to enter onto land and “take any steps required by an Enforcement Notice to be taken” where they are not taken within the period for compliance with the Notice by the owner.
- 3.2 In the case of this breach of planning control, a contractor would be employed to winch the caravan out of the site and trailer it to their compound. The caravan, unless damaged as a result of its removal, would then be held for a short period prior to its disposal. All other paraphernalia, items and debris at the site would be collected into a skip and immediately disposed of or recycled responsibly at landfill. Given the age and condition of the caravan and items at the site the monetary value is considered to be very low and thus the costs of any attempted sale of the items would be outweighed by the time it would take to manage the process. The cost for the contractor to undertake the necessary site clearance and disposal would not exceed £2500. It is therefore also recommended that we place a charge on the land to recover our costs in the longer term. Taking direct action would also, in this instance, be considered a more efficient and cheaper option than taking the matter back to Court.
- 3.3 The enforcement of planning control is in the wider public interest of the community by preventing inappropriate and harmful development within a very special environment of national significance, the New Forest National Park. It is a legitimate aim within a democratic society to protect the rights of others through the preservation of the environment. The Authority’s interference in taking direct action against Mr Brooks is therefore in accordance with the law in that the Authority would be acting in accordance with the powers conferred upon it by the Town and Country Planning Act.
- 3.4 In totality, whilst taking the action recommended would interfere with some of Mr Brooks human rights, the infringement is considered to be right, proportionate and outweighed by the wider public interest. The Authority has been very clear with Mr Brooks from the outset that his actions are in breach of planning control and are not acceptable. He has therefore placed himself in this position owing to his pattern of behaviour and inaction.

4.0 Conclusion

- 4.1 Taking direct action would address the breaches of planning control at this site. Mr Brooks has tried to frustrate our efforts to secure compliance and taking further action through the Courts is likely to have little positive effect at this juncture given his pattern of behaviour.
- 4.2 It is therefore considered expedient, necessary and proportionate to take direct action following which a charge should be placed on the land to aid the recovery of the legal and direct action costs incurred in concluding this matter.

RECOMMENDATION:

- 1. Members authorise that direct action be taken within the next 28 days to secure compliance with the Enforcement Notice served on 13 August 2015 to include disposal of all the items collected from the land affected.**
- 2. Members authorise that the Authority's Solicitor place a charge on the land affected to aid recovery of the costs arising from the legal and direct action taken.**

Enclosures: Copy of Enforcement Notice dated 13 August 2015