

NFNPA/PDCC 204/16

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING DEVELOPMENT CONTROL COMMITTEE – 19 APRIL 2016

COMMITTAL PROCEEDINGS, DIRECT ACTION AND COSTS RECOVERY

AVONSIDE, SOUTHAMPTON ROAD, FORDINGBRIDGE, SP6 2JT

Report by: Paul Hocking, Enforcement and Trees Manager

1.0 Summary

- 1.1 Members will recall that a report was brought to the Planning Development Control Committee in October 2015, a copy of which is appended to this paper. Members agreed with the report recommendation and endorsed ongoing proceedings for injunctive relief and supported a request to the Court for a National Park-wide prohibition of any unauthorised residential occupation by Mr Shutler. Members will further recall that the report followed a longstanding breach of planning control which began with the stationing of a mobile home at Avonside as long ago as November 2001 by Mr Colin Shutler.
- 1.2 In December 2015, Mr Shutler consented to a High Court Order (copy appended) which required the removal of the mobile home and various other non-agricultural items by 2pm on 4 April 2016.
- 1.3 The purpose of this report therefore is to seek Members agreement to the next steps to finally remedy these longstanding breaches of planning control given Mr Shutler has now disobeyed the High Court Injunction.

2.0 The Injunction

- 2.1 In December 2015 Mr Shutler entered into an Order by Consent before a Deputy High Court Judge which compelled him to comply with the requirements of the original Enforcement Notices. Additionally the Order included a prohibition on unauthorised residential use of a mobile home anywhere within the National Park. Mr Shutler was in attendance at Court, along with his professional representatives, and so presumably received comprehensive legal advice as to the consequences of the Order that the Court made that, importantly, he had agreed too.
- 2.2 A Penal Notice was attached to the Order. This means that, as Mr Shutler has not complied with its requirements, he may be referred back to Court. If the Court finds him to be in contempt of the Order he may be sent to prison. It is for the Authority to refer the matter back to the Court to seek his committal if considered appropriate.

3.0 Current situation at Avonside

- 3.1 In terms of compliance, a visit to Avonside was undertaken on the afternoon of 4 April when it was observed that Mr Shutler was in the process of demolishing the conservatory and hardstanding, having just demolished a flight of brick steps and

dwarf brick wall around the mobile home. He was also in the process of clearing some of the contents of the mobile home.

- 3.2 However, the mobile home and some associated residential paraphernalia, scrap material, plant and vehicles remained in situ and Mr Shutler advised Officers that he would not be removing the mobile home.

4.0 Potential Action

Direct Action

- 4.1 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.
- 4.2 In respect of the mobile home Mr Shutler has made a number of adaptations such as the removal of walls and roof alterations. It however remains a mobile home in planning terms as confirmed at Appeal by a Planning Inspector in March 2015. If Members decide direct action should be taken, contractors engaged by the Authority would take the necessary steps, including demolition, to clear the site of the mobile home and other unauthorised items.
- 4.3 Taking direct action is therefore the minimum that is considered necessary and appropriate to remedy the breaches of planning control.

Committal Proceedings

- 4.4 Alongside taking direct action, it is open to the Authority to refer the matter back to the High Court as Mr Shutler is now in contempt of a Court Order.
- 4.5 As previously noted, these proceedings arise out of a flagrant breach of planning control which has subsisted over a period of 15 years. In December 2015, the Deputy High Judge warned Mr Shutler of the implications of failing to obey the Order to which he had consented.
- 4.6 It is therefore considered appropriate for the Authority to consider bringing Mr Shutler’s failure to the attention of the Court so that a Judge may decide what, if any, further action should be taken in respect of the contempt. To do nothing risks undermining future legal/enforcement proceedings that might be taken by the Authority in similar circumstances elsewhere in the National Park.

5.0 Consideration of Mr Shutler’s situation

- 5.1 Mr Shutler advised Officers, during the site visit on 4 April 2016, that he is now living in an adapted camper van vehicle. He has consequently made his alternative accommodation arrangements. It is not known where this van is to be located but he should not be residing at Avonside or indeed elsewhere without the benefit of planning permission.
- 5.2 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 and upholding policy. The Authority's interference in taking the action outlined, in order to clear the site as required by the Enforcement Notices, 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 1990 as well as bringing the failure to comply with the Injunction to the attention of the Court.

- 5.3 It is also pertinent that, as recently as December 2015, Mr Shutler considered his personal circumstances were such that he agreed to enter into an Order by Consent to remove the mobile home and other items. The Deputy High Court Judge was also content with the Authority's assessment of the overall situation and accordingly endorsed the Order.
- 5.4 It is therefore considered expedient, necessary and proportionate to take the action outlined in the recommendation below.

RECOMMENDATION:

1. **Mr. Shutler's failure to comply with the requirements of the Consent Order be referred to the Court.**
2. **Direct action be taken to secure compliance with the two Enforcement Notices dated 10 June 2002 and 5 July 2005 respectively to include the subsequent disposal or sale of items or debris removed from the land affected.**
3. **The Authority's Solicitor take appropriate action to recover the costs incurred by the Authority in respect of the above recommendations.**

Contact: Paul Hocking, Enforcement and Trees Manager
paul.hocking@newforestnpa.gov.uk or 01590 646618

Papers: 1. Report to Planning Committee (October 2015)
2. High Court Injunction (December 2015)

Equality Impact Assessment: There are no equality and diversity implications arising from this report

Resources: As detailed