

NFNPA/PDCC 219/16

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING DEVELOPMENT CONTROL COMMITTEE – 18 OCTOBER 2016

COMMITTAL PROCEEDINGS, DIRECT ACTION AND COSTS RECOVERY

BRAMBLEY HEDGE, LYNDHURST ROAD, LANDFORD, SP5 2BJ

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 Whitcher. Members will further recall that the report followed a longstanding breach of planning control which began with the stationing of a mobile home at Brambley Hedge as long ago as September 2012 by Mr Robert Whitcher.
- 1.2 In November 2015, Mr Whitcher consented to a High Court Injunction (copy appended) which required the removal of the mobile home and various other items by 4pm on 16 September 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 Whitcher has now disobeyed the High Court Injunction.

2.0 The Injunction

- 2.1 In November 2015 Mr Whitcher entered into an Order by Consent before a Deputy High Court Judge which compelled him to comply by ceasing his residential occupation and removing the mobile home and other items. Mr Whitcher 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 Whitcher 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 Brambley Hedge

- 3.1 In terms of compliance, a visit to Brambley Hedge was undertaken during the morning of 19 September in the presence of Mr Whitcher. It was observed that the mobile home remained and the residential occupation of the site was apparent from the various other items and paraphernalia present. It was understood that Mr Whitcher did

not believe he needed to comply with the Injunction owing to his submitted planning application but for the reasons set-out in the accompanying planning report to Committee this is considered to be incorrect.

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 Taking direct action will necessitate the use of reasonably significant financial resources but it remains the minimum action that is considered necessary and appropriate to remedy the breaches of planning control. It is also recommended that the Authority’s Solicitor be authorised to take appropriate action to recover the costs incurred.

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 Whitcher 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 4 years which show no tangible signs of abating and with the prospect of further legal challenges. In November 2015, the Deputy High Judge warned Mr Whitcher 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 Whitcher’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 despite the financial resources that this would entail. To do nothing risks undermining future legal/enforcement proceedings that might be taken by the Authority in similar circumstances within the National Park. It is again recommended that the Authority’s Solicitor be authorised to take appropriate action to recover the costs incurred.

5.0 Consideration of Mr Whitcher’s situation

- 5.1 It is understood that Mr Whitcher maintains his claim of genuine gypsy status, as has previously been accepted. It is not expressly known what his future accommodation plans are, as no specific information has been provided, but possibilities could include an authorised traveller site in a neighbouring authority, a move back into conventional housing or even taking to a roadside existence. It is understood that his partner at the time of the planning appeal no longer resides at the site and that his remaining son under the age of 18 visits at weekends although still lives for the remainder with his mother in Totton. No other information has been made available but it is noteworthy that in dismissing his planning appeal the Inspector recorded that ‘human rights are integral to considering personal circumstances and accommodation. As such they are already part of the planning balance. Having regard to the alternatives available to the appellant and his dependants and the policy and environmental harm to the National Park I consider dismissing the appeal is the minimum action necessary to avoid the harm and

would be a proportionate response to this harm.’

- 5.2 Likewise 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 Notice, 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 Courts. The rights of Mr Witcher and the implications of his status have been considered but are not considered to outweigh the recommendation below. We are looking to uphold planning policy and the decision of the Planning Inspector for the reasons cited.
- 5.3 It is accepted that the Authority will be interfering with Mr Witcher’s human rights in its pursuit of action against his home (Article 8 [right to respect for a private and family life]). The question is whether this interference is justified under paragraph 2 of Article 8 as being “in accordance with the law”, pursuing a legitimate aim or aims and as being “necessary in a democratic society” in pursuit of that aim or aims. The mobile home and its residential occupation is clearly unauthorised and in breach of planning control and now a Court Order. The Authority’s “interference” therefore remains 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. This would be the same should a further breach be triggered elsewhere in the National Park.
- 5.4 It is also pertinent that, in November 2015, Mr Witcher considered his personal circumstances were such that he agreed to enter into an Order by Consent to remove the mobile home and other items albeit consideration was being given to applying for a temporary planning permission, and which is subject of a separate recommendation. The Deputy High Court Judge was also content with the Authority’s assessment of the overall situation and accordingly endorsed the Order.
- 5.5 In totality, whilst taking the action recommended would interfere with a number of Mr Witcher and his families rights, the infringement is considered to be right, proportionate and in the wider public interest. It is therefore considered expedient, necessary and proportionate to take the action outlined in the recommendation below.

RECOMMENDATION:

- 1. Mr. Witcher’s failure to comply with the requirements of the Consent Order be referred to the High Court.**
- 2. Direct action be taken to secure compliance with the Enforcement Notice 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.**

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

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

Resources: As outlined.