

## **NEW FOREST NATIONAL PARK AUTHORITY**

### **PLANNING DEVELOPMENT CONTROL COMMITTEE – 20 OCTOBER 2015**

#### **INJUNCTIVE ACTION**

### **AVONSIDE FARM, SOUTHAMPTON ROAD, FORDINGBRIDGE, SP6 2JT**

**Report by:** Paul Hocking, Enforcement and Trees Manager

#### **1.0 Summary**

- 1.1 This report concerns the continued stationing of a residential mobile home as well as other breaches of planning control at the above site in contravention of Enforcement Notices. The mobile home was first stationed on the land in November 2001.
- 1.2 There is a considerable enforcement history to this site but the mobile home remains on the land and continues to be occupied by the same person, namely Mr Shutler.
- 1.3 The purpose of this report is therefore to update Members on the progression of the current situation and approve the approach to widen the scope of the current injunctive proceedings in order to apprehend a possible future breach of planning control.

#### **2.0 Enforcement and Court Chronology**

- 2.1 Mr Shutler stationed a residential mobile home in a farm yard in November 2001 and commenced his occupation without planning permission. He had moved from a nearby site which had itself been the subject of extensive enforcement action. At that time it is understood the farm yard was owned by his parents who lived in an adjoining house. Other breaches of planning control were also in evidence at the site.
- 2.2 An Enforcement Notice was served in June 2002 by the predecessor planning authority directed at securing the cessation of scrap metal, plant and vehicle storage, vehicle repairs and the stationing of a mobile home. An appeal was lodged and was substantively dismissed in March 2003. This is to say that the mobile home and any scrap metal, plant vehicle storage and vehicle repairs should have ceased and been removed from the site.
- 2.3 In June 2005 Mr Shutler removed the mobile home to a nearby field for a month in purported compliance but then proceeded to return it to site

- and erected a conservatory structure to the side and dwarf walls around the base of the mobile home.
- 2.4 A second Enforcement Notice was therefore served in July 2005 directed at securing the demolition of the subsequent associated building works and the removal of the resultant debris. An appeal was lodged and then dismissed in August 2006. Planning permission was also refused and then dismissed on appeal to retain the mobile home as an agricultural workers dwelling in August 2006.
- 2.5 In the intervening period (December 2005) the predecessor planning authority secured a High Court Injunction pursuant to Section 187B of the Town and Country Planning Act given the flagrancy and seriousness of the breach as Mr Shutler had failed to comply with the original Enforcement Notice. Mr Shutler then failed to comply with the High Court Injunction and the matter was handed-over to the National Park Authority in 2006. Efforts were subsequently made in an attempt to secure compliance and thus bring the breaches of planning control to a conclusion.
- 2.6 Those efforts were to little avail and in March 2013 the Authority issued proceedings against Mr Shutler for its own High Court Injunction given the seriousness and continued flagrancy of the breaches.
- 2.7 The matter was first heard in August 2013 where the Judge issued an Order adjourning the case to enable Mr Shutler to submit and then appeal if necessary a planning application for a certificate of lawful use. The contention of Mr Shutler at that time was that his unit of accommodation was in fact a building as opposed a mobile home. If he was correct, Mr Shutler believed that it would then not be possible for the Authority to take action against him as he would occupy a building that was immune from enforcement action.
- 2.8 That application was submitted and then refused by the Authority in November 2013 as we believed the unit to remain a mobile home. An appeal was lodged which was dismissed, after being heard at a Public Inquiry over 3 days in the latter part of 2014, with costs awarded to the Authority because the Inspector stated:
- 'To have failed to comply with 2 enforcement notices upheld on appeal and reinforced by the decisions of 2 High Court judges is by itself unreasonable behaviour. To then effectively attempt to go back and fruitlessly try to change the evidence given to the 2 previous appeal Inspectors in order to somehow claim that the structure had evolved into a building by July 2005 in conflict with the decision of His Honour Judge McNaught in an attempt to demonstrate that the Authority cannot now take enforcement action, is wholly unreasonable'.*
- 2.9 Following this decision the Authority applied to the High Court in March 2015 to have its original injunctive proceedings restored. In July 2015

Mr Shutler agreed that the matter should now proceed to trial. The trial has since been set by the Courts for 2 and 3 December 2015.

### **3.0 Application for Injunctive relief**

- 3.1 It is now considered appropriate and necessary for the Authority's injunctive proceedings to be widened in its scope to apprehend Mr Shutler from then commencing a new unauthorised residential use elsewhere in the National Park. This is because Mr Shutler owns land nearby in the National Park and to allow a possible further planning breach to take place, when there is the opportunity to apprehend this now would be considered appropriate and prudent. It was previously the case that in 2005 Mr Shutler simply removed the mobile home to a nearby field for a short period of time, in purported compliance, before returning it to the site and local Parish Councils are rightly nervous of this happening again.
- 3.2 This approach has previously been accepted at the High Court where the Authority has secured Injunctions relating to the National Park as a whole to stop recurring planning breaches. Whilst this would impact on Mr Shutler's rights, it is considered appropriate and in the public interest to do so for the reasons cited in the conclusion of this report.

### **4.0 Conclusion**

- 4.1 It is accepted that the Authority will be interfering with Mr Shutler's human rights in its pursuit of enforcement 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 etc is clearly unauthorised and in breach of planning control. The Authority's "interference" 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. This would be the same should a further breach be triggered elsewhere in the National Park.
- 4.2 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.
- 4.3 In totality, whilst taking the action recommended would interfere with a number of Mr Shutler's rights, the infringement is considered to be right, proportionate and in the wider public interest.

**Recommendation:**

**Having considered the implications of the ongoing breach of planning control and all other relevant considerations, Members note and endorse the ongoing application for an injunction, to include the wider prohibition of Mr Shutler's unauthorised residential occupation anywhere within the National Park.**