

PC 445/24 – Report Item 5

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING COMMITTEE MEETING – 20 FEBRUARY 2024

NON-COMPLIANCE WITH ENFORCEMENT NOTICE 20/0032 BRAMSHAW HOUSE (FORMERLY BRANKSOME), PENN COMMON ROAD, BRAMSHAW, LYNDHURST, SO43 7JL

Report by: Lucie Cooper, Enforcement Manager

1 Summary

- 1.0 This report concerns the non-compliance with an Enforcement Notice at Bramshaw House. In summer 2020 the Authority received a report concerning the erection of an outbuilding. It was claimed by the owners that the building was permitted development but following concerns raised by officers with regards whether or not it would meet all the relevant criteria, a Lawful Development Certificate was submitted. It was determined that the building was not lawful and as a result the Authority issued an Enforcement Notice on 11 November 2021 requiring the building to be demolished. The appeal against the Notice was dismissed by the Planning Inspector and should have been complied with on or before 9 August 2023.
- 1.1 The owners have advised they do intend to comply with the Notice and have taken steps including the removal of various elements of the structure, but the oak framing remains in situ. Therefore, to date, the requirements of the Notice have not been complied with fully and a significant structure remains. Due to personal circumstances, the owners have advised that they are currently not able to fully comply with the Notice. They have given no indication of a date by which they may be in a position to fully comply.

2 Background

- 2.0 Following complaints received by the Enforcement Team, an initial site visit was carried out in July 2020 when it was found that the building under construction appeared to meet the criteria for permitted development within the curtilage of a dwellinghouse (Part 1 Class E). However, concerns were expressed about the size, location and height of the building and the owners were not able to confirm how the building was going to be used and therefore whether it would meet the primary criteria for permitted development outbuildings to be for 'incidental purposes'. In an attempt to establish that the building would be permitted development, an application for a Lawful Development Certificate was submitted (20/00558) and refused by decision notice dated 23 October 2023. Subsequently officers entered into discussions in an attempt to find a suitable solution which would include a significant reduction in size but that the building, in its current form, was unlikely to secure planning permission due to its size and capability of providing habitable accommodation contrary to policy DP37 (amongst others). Despite being provided with a significant period of time to take remedial steps and / or submit any application with the aim to secure a more appropriate building, a further Lawful Development Certificate was submitted for the same structure but with changes to the proposed uses (21/00684).

- 2.1 Application 20/00558 showed the proposed use of the building as two offices, a fitness room, sports bar, cinema room, home school and boot room. The most recent application 21/00684 proposes that the building is to be used as games room, art and hobby studio, gym and garden storage, but there is no change proposed to the overall scale of the building. Application 21/00684 was refused by decision notice dated 23 September 2021.
- 2.2 On 11 November 2022 an Enforcement Notice was issued in relation to the erection of a building without planning permission.
- 2.3 The Notice required the owners to:
 - 5.1 Permanently demolish the building to ground level.
 - 5.2 Remove all debris and material resulting from compliance with 5.1 from the land affected.
- 2.4 The Notice was appealed along with the refusal of Lawful Development Certificate application 21/00684. The appellant's appeal did not contest that the compliance period of 8 months would not be sufficient time to comply with the Notice. The appeals were dismissed, and the Enforcement Notice was upheld on 9 December 2022. The Notice took effect on the date of the Inspector's decision and provided a compliance period of 8 months (until 9 August 2023) for the requirements of the Notice to be complied with.
- 2.5 A further lawful development certificate (23/00911LDGP) was submitted in July 2023 proposing an outbuilding on a similarly located, but smaller, footprint. The application was refused on 19 September 2023 for the reasons set out in the officer's report.
- 2.6 Following a site visit in August 2023 it was clear to the Enforcement Officer that the building had not been demolished.
- 2.7 The owners have advised that, for reasons that cannot be made public, they are currently unable to comply with the Notice.

3 Next steps

- 3.0 The Authority must now decide the most appropriate course of action in the circumstances.
- 3.1 The Authority may now choose to prosecute the landowners for non-compliance with an Enforcement Notice which is an offence under section 179 of the Town and Country Planning Act 1990, as amended (the 'Act'). All owners are responsible for ensuring compliance with the Notice. Prior to commencing a prosecution, the Authority needs to be satisfied firstly that there is a realistic prospect of success and secondly that commencing prosecution proceedings would be in the wider public interest. The Authority is satisfied that there is an adequate prospect of success given the evidence available but is awaiting further information / evidence from the owners as to the purported impediment to compliance. Once this has been received, it will be considered by officers. Non-compliance with an Enforcement Notice leaves the owner liable, on summary conviction, to an unlimited fine at the discretion of the Court.

- 3.2 In addition, or in the alternative, the Authority has the power to enter land and take the steps required by notices issued under the provisions of the Act where those requirements have not been complied with in the time specified by the Notice. This would be an effective way of remedying the breach but would involve the significant outlay in employing a specialist contractor to do the works. It is open to the Authority to recover any reasonably incurred expense in exercising our direct action powers by applying to place a charge on the land.
- 3.3 For final consideration, the Authority may choose to extend the compliance period of the Enforcement Notice under S173A. Shortly after compliance was due, the owners indicated, via their agent, that complete demolition would be completed by the end of September 2023 but that has not transpired, no further alternative dates have been put forward and there has been no tangible progress on site. However, it has been noted that personal circumstance have been advanced by the owners as to why progress has halted. During the course of this investigation, the provision of additional time to take positive steps to attempt to remedy the situation has not resulted in any significant steps forward and a sufficient period has already been provided.
- 3.4 As to the public interest in taking action, the enforcement of planning control is in the wider public interest of the community by preventing inappropriate and harmful development within a special environment of national significance, the New Forest National Park.
- 3.5 Any further action taken by the Authority would be in accordance with the powers conferred upon it by the Act, and also appears to be both proportionate and supported by the wider public interest, especially in view of the harm caused by this breach continuing. Allowing the retention of the remaining elements of the partially complete building is inappropriate and harmful to the character and appearance of the area and undermine the Authority's policies which require outbuildings to be subservient in scale and form and incidental in terms of use.
- 3.6 It is therefore considered expedient, necessary, and proportionate to take further action given the history of the site as set out above, subject to consideration of the evidence to be received regarding non-compliance. It is recommended that members authorise officers to consider any further evidence received, if any, in order to form a view as to whether to proceed with a prosecution, and either to commence with a prosecution or to take direct action / or other enforcement steps as considered appropriate in the light of the material submitted.

RECOMMENDATION:

Members authorise the Authority's Executive Director Strategy and Planning, in consultation with the Solicitor and the Enforcement Manager, to:

- (i) consider the further evidence, if any, submitted in respect of the purported impediment to compliance and form a view as to the appropriate course of action to achieve compliance with the Enforcement Notice; and**
- (ii) if officers are in agreement that it is appropriate to do so, in light of any further information referred to in paragraph (i) above, take all action as necessary to commence and conduct the prosecution of the owners of Bramshaw House (Formerly Branksome), Penn Common Road, Bramshaw, Lyndhurst, SO43 7JL in respect of their non-compliance with the Enforcement Notice issued in August 2022; or**

- (iii) if it is not considered appropriate to commence a prosecution, to consider and take such other action as necessary to achieve compliance with the Enforcement Notice including taking direct action and any other steps as necessary to recover the costs of so doing from the owners, including arranging for a charge to be placed on the land.**



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