

21. E/08/0501/A – Prosecution action in relation to access to site to investigate an enforcement complaint at Barleycroft Works, Barleycroft End, Furneux Pelham, Herts, SG9 0LL

Parish: FURNEUX PELHAM

Ward: LITTLE HADHAM

RECOMMENDATION

That the Director of Neighbourhood Services, in consultation with the Director of Internal Services, be authorised to commence a prosecution under Section 196C (2) of the Town and Country Planning Act 1990 (as amended) and obtain a warrant under 196B (1) of the Town and Country Planning Act 1990 (as amended) requiring admission to the land.

Period for compliance: Not applicable.

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1.0 Background

- 1.1 The site is shown on the attached Ordnance Survey extract. It is located adjacent to the 'T' junction in Barleycroft End. Unfortunately neither of the roads at the 'T' junction are named. Photographs of the site will be available at the meeting.
- 1.2 Members may recall that the storage of material by this company on agricultural land adjacent to this site was the subject of a report to their meeting of 14 January 2009.
- 1.3 Pallets Unlimited have operated a business comprising the repair and recycling of pallets for several years and, more recently, have also operated a business manufacturing woodchip material from wood imported into the site. This element of the business was granted a lawful development certificate by a Planning Inspector in May 2006 following the allowing of an appeal against an enforcement notice issued by Hertfordshire County Council.
- 1.4 In 2006 a concern was expressed to this Council that material at the site appeared to be stored at a height in excess of the 3.6 metres maximum permitted by both planning conditions attached to application numbers 3/99/0081/FP and 3/99/1636/FP and the Inspector's lawful development certificate.

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- 1.5 Officers were aware that there was an extant breach of condition notice served on the site on 5 June 2002, relating to the overheight storage of material on the site. Furthermore the owner was prosecuted at the Hertford Magistrates Court on 5 November 2004 for a further breach of the same condition. He pleaded guilty and was fined £500 with £670 costs.
- 1.6 The enforcement officer visited the site on 8 November 2006 and found that material was being stored there in excess of 5 metres in height. He wrote to the owner requiring that the stored material be reduced to 3.6 metres in height within 7 days.
- 1.7 A further visit to the site on 28 November 2006 disclosed that the stored material was still at a maximum of 5.25 metres in height. The case was transferred to the Legal Department. Following a letter from a Solicitor, another site visit on 19 January 2007 revealed that the material storage had been reduced in height to 3.6 metres. No further action was taken regarding that breach of planning control.
- 1.8 Following a further complaint to the Authority regarding overheight storage, and other matters, the enforcement officer again visited the site on 17 November 2008. The stored pallets ranged between 4 metres and 6.1 metres in height.
- 1.9 On 26 January 2009 the enforcement officer wrote to the owner giving him notice that officers would attend the site on 4 February 2009 to measure the stored material once again. Officers duly attended the site on 4 February. They spoke to the owner of the site who admitted that goods were stored above the maximum height in the yard.
- 1.10 However, he refused the officers entry to the yard to check the height of the stored pallets and woodchip pile. The officers' correctly identified themselves and showed their authorisation to enter land under Section 196A (1) of the Town and Country Planning Act 1990 (as amended). They also pointed out that it was an offence to wilfully obstruct a person exercising a right of entry under the Act. However, he still refused to allow the officers to enter the storage yard.

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2.0 Planning History

2.1 The recent planning and enforcement history is as follows: -

Planning

3/99/0081/FP	Change of use of redundant grain store to industrial/storage	Approved with conditions
3/99/1636/FP	Enlargement of yard area for storage	Approved with conditions
3/04/0117/FP	Erection of building for shredding and storage	Refused

Enforcement.

E/01/0383/A	Materials stored in excess of 3.6 metres high in breach of a planning condition	Breach of Condition Notice issued; prosecuted and convicted at Hertford Magistrates Court.
E/05/0159/A	Complaint of scaffold structure.	No breach of planning control
E/06/0493/A	<ol style="list-style-type: none">1. Height of stored material in yard.2. Storage of woodchip on agricultural land.	<ol style="list-style-type: none">1. Complied2. No apparent breach.

3.0 Considerations.

3.1 The considerations in this matter relate to the impact of the obstruction of duly authorised officers of the Council in the exercise of their powers of entry granted under Section 196A (1) of the Town and Country Planning Act 1990 (as amended) and the need to gain access to the land to ascertain whether there is a breach of planning control.

3.2 Although not required by the Act, Officers had given written notice of their intention to attend the site to measure the height of the stored material following earlier visits when overheight storage was observed. Despite properly identifying themselves and showing their authority they were denied access, although the operator did admit to them that the storage was above the permitted maximum.

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3.3 The actions of the site operator, if unchecked, would result in an inability to investigate the apparent breach of control at the site and would result in an unfortunate precedent for the Authority.

4.0 Recommendation

4.1 For the above reasons, it is recommended that authorisation be given to commence prosecution proceedings and apply for a Justices warrant to obtain entry to the site. Notwithstanding this, Officers will still endeavour to gain access to the yard with the agreement of the land owner if possible.