

E/08/0600/B – Breach of condition 7 (improvements to car parking areas) attached to planning permission, reference 3/04/0326/FN, (renewal of planning approval 3/99/0056) for 3 new flats over the roof of the existing flats at Peregrine House, The Blanes, Ware, SG12 0XD.

Parish: WARE

Ward: WARE – ST. MARYS

RECOMMENDATION

That the Director of Neighbourhood Services, in conjunction with the Director of Internal Services, be authorised to take enforcement action under Section 187A of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the compliance with the condition.

Period for compliance: 2 months

Reasons why it is expedient to issue an enforcement notice:

The compliance of the condition is necessary to ensure the provision of improved car parking to meet the demands associated with the approved development of 3 flats (3/04/0326/FN). It is considered that the condition meets the tests of national guidance as set out in Circular 11/95.

_____(060008B.GD)

1.0 Background

- 1.1 The site is Peregrine House, The Blanes, off Quincey Road, Ware, a block of flats, as outlined on the attached location plan.
- 1.2 On the 10th March 1999 planning permission reference 3/99/0056/FP, was approved with conditions allowing “new roof space containing 3 self contained flats”. This permission was renewed by the grant of planning permission, reference 3/04/0326/FN.
- 1.3 Both applications were subject to a condition as follows: -

“No works for the development hereby permitted shall commence unless and until a scheme of works to the car park shared between Peregrine House and Falcon court residents has been submitted, as agreed in writing with the local planning authority and satisfactorily carried out. Such scheme to provide for resurfacing, marking of parking spaces and improved lighting”.

Reason: *“To enable the more efficient use of the existing car park and so meet the need for additional off-street parking spaces for the proposed development”.*

- 1.4 In October 2004 details were submitted to the authority regarding the resurfacing of the car parking areas. After some clarification the details were considered as being satisfactory; however it was not possible to discharge the condition until the scheme had been implemented.
- 1.5 During the construction of the new roof space and flats local residents expressed concern that the car park had not been resurfaced as required by condition 7. Initially a representative of the applicant company advised the investigating enforcement officer that the works would be completed following the completion of the building works, as crane operators would destroy any newly laid surface. This was accepted. However, in June 2009 this same representative advised that the company, Beazer Investments Ltd, as a result of litigation and an insurance claim against the main sub-contractors on the site were unable to implement the works to the car park. He further advised that the condition was unfair and impractical to implement, as the lower car park is owned by a third party and that Peregrine House leaseholders were responsible for car park maintenance and upkeep.
- 1.6 On the 23rd July 2009 an application, reference 3/09/1138/FO, was submitted seeking approval for the removal of the subject condition. During the consultation process there were 20 objection letters from the residents of Peregrine House and Falcon Court, Dovedale and The Blanes. In addition to the above, a letter was received from GEM Estates who state that the applicant has not been in touch with them and is strongly opposed to the removal of condition 7.
- 1.7 The points raised by residents were: -
 - Insufficient parking for existing residents and the cars from the new residents. 35 bays for 35 flats.
 - People park on the road or the block access.
 - The car park is an eyesore and has deteriorated considerably due to the builders lorries. More people are now parking on the road and access for emergency vehicles is obstructed.
 - People are parking in the refuse bin area causing obstruction.
 - Resurfacing was a requirement of the original permission and unacceptable that they do not meet their obligations.
 - Resurfacing and marking of bays is urgently required.

E/008/0600/B

- Builders rubbish and debris has not been removed and the area is being treated now as a general dumping ground.
- Concern about possible problems that may be caused by drained off water from the new surface.

1.7 After due consideration this application was refused under delegated powers.

1.8 The applicant has proposed a compromise of 3 new parking spaces to meet the demands associated with the approved development. These new spaces will be positioned within the site. He has also proposed to erect a new bin area in place of the damaged area. These proposals are not considered as acceptable as the new spaces will encroach into current open space.

1.9 The condition has not been discharged as it has not been complied with. Photographs showing the condition of the car park will be available at the meeting.

2.0 Planning History

2.1

3/99/0056/FP	Part new roof space containing 3 self contained flats	Approved
3/04/0326/FN	Renewal of planning approval (3/99/0056) for 3 new flats over roof of existing flats.	Approved
3/09/1138/FO	Removal of condition 7 of application 3/04/0326/FN (improvements to car park area)	Refused

3.0 Policy

3.1 There is no specific policy appertaining to this issue but Circular 11/95 gives national guidance on the tests that conditions must be necessary for the development to be acceptable, relevant to the development, enforceable and reasonable in all respects.

4.0 Considerations

4.1 The main issue is whether condition 7 remains reasonable within the tests in national guidance. This is based on national planning circular 11/95

and the tests that conditions must be necessary for the development to be acceptable, relevant to planning, relevant to the development, enforceable, and reasonable in all other respects.

The condition was imposed with the original permission given the lack of opportunities to extend car parking and the perceived opportunity to improve provision by enhancement of the original unsurfaced car park. The planning permission in 1999 and renewed in 2004 was granted notwithstanding a number of objections from local residents mainly concerned with the disruption caused by the work.

- 4.2 The car park is shared between residents of Falcon Court and Peregrine House and of a loose uneven material; the access road to the car park is of concrete. From residents and photos there is evidence of damage caused during the construction works for the new flats such that the condition of the car park is worse now than when the original planning condition was conceived. When permission was first granted the car park was partly within the red land of the application site and partly within the blue line area. Subsequently the ownership was divided. Peregrine House is owned by Beazer Homes Ltd and Falcon Court by Wholecourt Ltd.
- 4.3 Correspondence in 2004 agreed a specification for the materials to be laid and some of the lighting details, subsequently construction proceeded. The developer indicated to the Council's enforcement team that the resurfacing would be carried out after building works as crane operations would have destroyed any newly laid surface. After that the enforcement officer was advised that the winter weather 2008/2009 needed to pass before implementation of the surfacing.
- 4.4 The applicant had written with the application to say that due to litigation and an insurance claim against the main sub contractor on this site Beazer Investments Ltd are unable to carry out the works to the car park. No further explanation on this is given although as liability runs with the land it is not seen to be an obstacle to enforcement.

The applicant also argues that as the freehold is owned by Falcon Court, and as they have been unable to contact them, then any works would involve trespass. However this has been countered by a director of Falcon Court who advises that they would give permission for the works. No representation was received from Wholecourt Ltd owners of Falcon Court.

- 4.5 Additionally it is argued by the applicant that Peregrine House lease holders, responsible for the car park maintenance, are unwilling to have the works carried out and feel that other work of outstanding maintenance should have priority. However, no correspondence is given to support this view and from representations made it appears the management company for Peregrine and Falcon (Gem Estates) has not been consulted. Residents

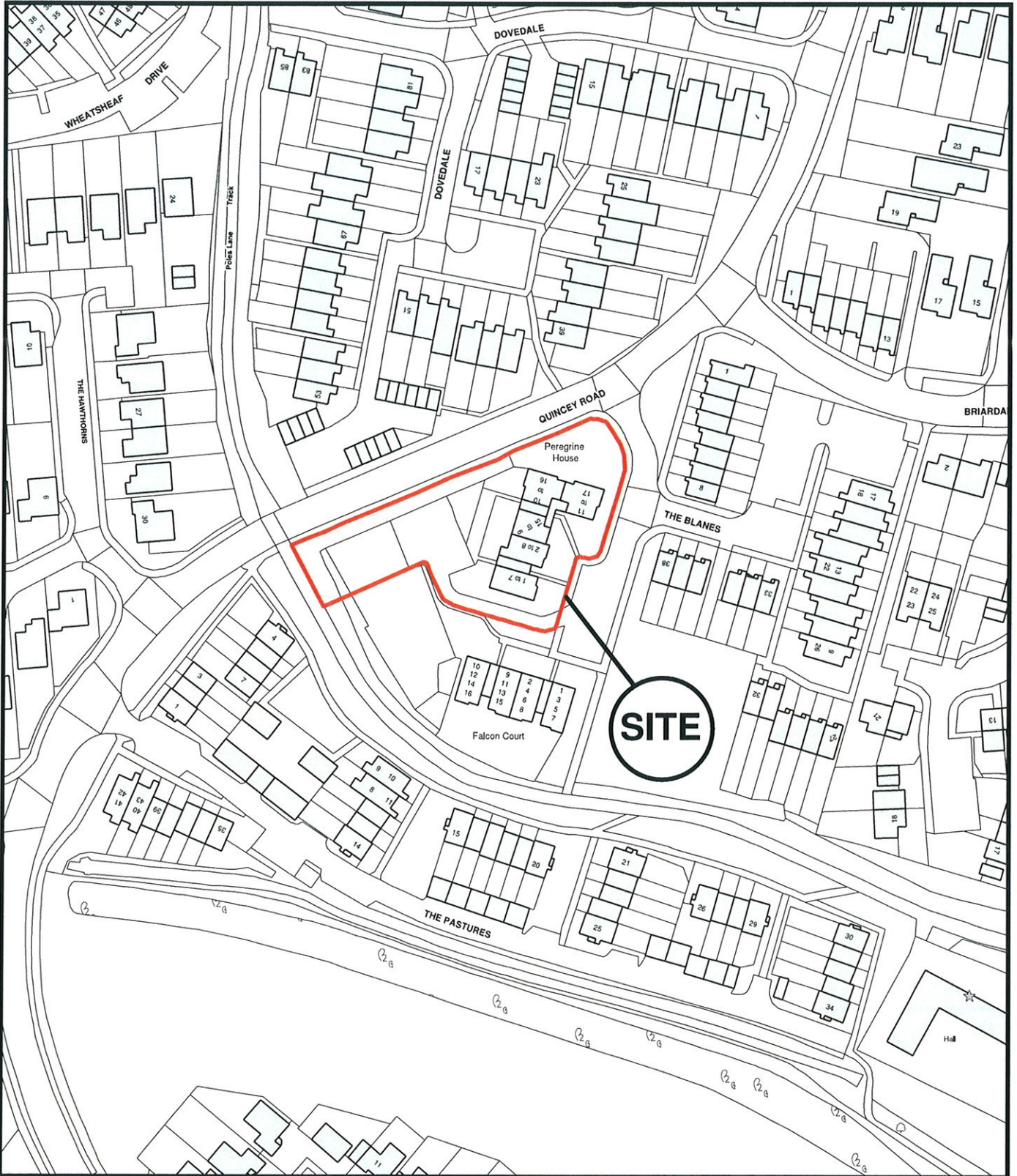
E/008/0600/B

and owners certainly wish the work to proceed and there is no reason to believe the management company would wish to obstruct a long standing condition of the planning permissions at this site.

- 4.6 Residents have disputed some of the arguments made by the appellant for not carrying out the work. There is no evidence that there is any legal restriction to carrying out the works such that it would be unreasonable to retain the condition and not pursue its enforcement.
- 4.7 Parking standards are more relaxed for new development than when the application was first approved in 1999; the deficit is reduced from 5.75 spaces, as specified on the report of March 1999, to the current calculated 4.5 spaces maximum under the local plan SPD. Given the problems of parking at the site there is clearly a need to address this deficit not only for the convenience of residents but also for the satisfactory operation of the site for refuse collection and emergency access. The condition is still therefore both relevant to planning and relevant to the development itself.
- 4.8 A specification for the works was approved although it could be varied by agreement if the applicant wished to do so. The concern about run off water is noted although given the need for marking of parking bays an asphalt surface is likely to be needed unless porous . It is felt this would be best addressed if a gravel margin were left for run off to soak away in the event of a heavy down pour.

5.0 Recommendation

- 5.1 It is recommended that the Development Control Committee authorised the issue and service of a Breach of Condition Notice and any other steps required to obtain compliance with the condition.



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