

REPORT OF DEVELOPMENT MANAGEMENT TEAM LEADER ON ENFORCEMENT MATTERS

Other Matters – Enforcement

Reference No: EC15/0079/COU

Received on : 24 June 2015

Site Address: Land off The Ridgeway, Manorbier Newton, Tenby SA70 8PB

Breach: The stationing of residential caravans, the erection of ancillary residential buildings and the change of use of the land from agriculture to the unauthorised storage of static and touring caravans, unauthorised storage of building materials, keeping of horses and change of use of the agricultural land to residential use, adversely affecting the setting of a Scheduled Ancient Monument SAMPe311 which is part of the setting of the historic Carew Beacon Tumuli.

Summary

Two Planning Enforcement Notices were served by this Authority on 24th July 2015 following development undertaken on land off The Ridgeway, Manorbier Newton without the benefit of planning permission.

An appeal was made against the Enforcement Notices which was upheld and as a result the Enforcement Notice ultimately came into effect on 10th May 2016 with a compliance period to remove the unauthorised development by 10th May 2017. To date the Enforcement Notices have not been complied with.

Planning History

- PA /14/0317 Pre-application Query for a gypsy traveller site. Clear-cut advice given by planning officers that there were concerns with this site being suitable as a gypsy traveller site due to the special setting of the Scheduled Ancient Monument (SAMPe311) and the safety requirement to establish highway visibility splays which would involve extensive hedgerow removal cutting through the Monument site (the existing road curves around the Monument).
- EC15/0079 Temporary Stop Notice put on site 26th June 2015 due to site platform being dug out and timber shed (5 metres X 2 metres) being erected. First static caravan was brought on site.
- EC15/0079 Operational Development Enforcement Notice served 24th July 2015 (to seek to prevent further development).
- EC15/0079 Material Change of Use Enforcement Notice served 24th July 2015 (to seek to prevent change of use of the land from agriculture).
- EC15/0079 Temporary Stop Notice served 12th January 2017 (to seek to prevent further development)

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Background

A complaint was first received by the Authority on the 24th June 2015 from a member of the public alleging that there were works taking place at the Scheduled Ancient Monument SAMPe311 site.

The site was visited by the Enforcement Officer. A Temporary Stop Notice was put on the site on 26th June 2015 and the owners were immediately advised to cease works as planning permission was unlikely to be forthcoming particularly due to concerns about adversely affecting the setting of the Scheduled Ancient Monument and Highway safety concerns for future residential purposes.

At that stage, only one static caravan had been brought on site. Development continued unabated and on 24th July 2015 two Planning Enforcement Notices (Operational Development and Change of Use of Land) were put on the property requiring the permanent cessation of the land for residential use and occupation, the removal of all buildings, vehicles and associated paraphernalia, the removal of horses and restoration of the land to its previous condition prior to the breach of planning control.

At the subsequent appeal the Planning Inspector upheld the Planning Enforcement Notice (see attached Appeal Decision APP/L9503/C/15/3133096) dated 10th May 2016 which requires the unauthorised caravans etc. to be removed and the land restored by 10th May 2017.

A further Temporary Stop Notice was served on the 12th January 2017 as a shale vehicular track was created believed to be for the purposes of increased residential use of the site. The track is still in place.

The site was visited to check compliance with the Enforcement Notice on 11th May 2017 where it was evident that the Enforcement Notice has not been complied with..

The Authority wrote to the owner, again on 25th May 2017 informing them that the Notice has not been complied with and also reminding them that failure to comply with the Notice could result in legal prosecution proceedings by this Authority.

At the time of writing this report the Enforcement Notices have still not been complied with. Officers have written to the landowner advising that the matter will be reported to the Development Management Committee seeking its authority to proceed with prosecution as a result of non-compliance with the Notices.

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Conclusion

The Authority has a statutory duty to ensure that new development does not damage the natural beauty, character and special qualities of the National Park.

The site lies within an area of land designated within the Local Development Plan as being countryside. The siting of residential caravans on the land has not been justified as being essential for agriculture or another purpose for which a countryside location is essential, consequently, the development is contrary to Policies 1,7,44 and 47 of the adopted Local Development Plan, Planning Policy Wales (Edition 9, November 2016) and Technical Advice Note 6 (2010).

The caravans and domestic sheds along with their associated stored paraphernalia result in an unnecessary incursion into the rural countryside which causes significant harm to the visual amenities and openness of the area and the special qualities of the National Park. The development is insensitively sited within the landscape, results in a use incompatible with its location and fails to harmonise with, or enhance the landform and landscape character of the National Park contrary to Policies 1,7,8,15,29 and 30 of the adopted Local Development Plan.

The enforcement of planning control is in the wider public interests by preventing inappropriate and harmful development. To allow unauthorised development to remain undermines the Authority's ability to take action against similar inappropriate development within the National Park and to fulfil its statutory objects.

The failure to comply with an Enforcement Notice after it has taken effect is a criminal offence answerable, in the first instance, in the Magistrates Court.

The landowner has not complied with the Enforcement Notices within the required time, nor within the time that has elapsed since and further action to remedy the breach of planning and its harmful impact is therefore required.

Legal Implications (to include Human Rights Implications)

Following service of the Enforcement Notices, the recipient had a right of appeal under Section 174 of the Town and Country Planning Act 1990 (as amended) which they availed themselves of and subsequently lost the Appeal. The time for complying with the Enforcement Notices have passed and during the period of grace since then there has been no sign of compliance with the Notices.

As the development has been used as ancillary domestic occupation it is necessary for the Authority to consider if the rights of the occupiers under the Human Rights Act 1998 and in particular the rights under Article 8 to the respect for private and family life which provides:

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- 1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*

In this case the development and occupation of the land has been held to be unlawful following a legal process and the exercise by the occupiers of their right of appeal. The family currently do not live on the site but in a house in a nearby town. The site is used as a small holding (pigs and chickens), horse grazing, dog kennels and for the storage of residential paraphernalia . Ample time has been given to enable the occupiers to relocate and appropriate and timely advice has been given to them. In the circumstances, the commencement of criminal proceedings is a proportionate response in a democratic society in the interests of the planning control of the use of land and the protection and preservation of the special qualities that have led to this location being included within a National Park.

Equal Opportunities Implications (to include Welsh Language Issues)

None.

Recommendation

In view of the issues identified it is considered expedient to pursue action in respect of the unauthorised development carried out. The development is unauthorised and impacts to an unacceptable degree on the unspoilt character of the countryside within the National Park and fails to comply with the aims of the policies contained within the adopted Local Development Plan and Policy and Guidance set out in Planning Policy Wales (Edition 9, November 2016) and Technical Advice Note 6 – Planning for Sustainable Rural Communities (July 2010)

Therefore, it is requested that the Chief Executive/Director of Planning/ Team Leader: Development Management be authorised to instruct solicitors to commence prosecution proceedings in the Magistrates Court in relation to the non-compliance with the Operational Development and Material Change of Use Enforcement Notices requiring the following:

Operational Development

- (i) Remove the timber domestic storage shed, chicken shed and dog kennels from the Land.

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- (ii) Remove all hardstandings (including gravel/stoneships/paving slabs) off the Land.
- (iii) Restore the Land to its former levels and reseed with grass.

Material Change of Use

- (i) Permanently cease the use of the land and the static and touring caravans for residential use and occupation.
- (ii) Permanently remove all static and touring caravans, the timber domestic type shed, the chicken shed and dog kennels from the Land.
- (iii) Permanently remove all existing building materials and vehicles with trailers and cease the storage of building materials and vehicles and trailers on the land.
- (iv) Permanently cease the use of the Land for the keeping of horses.
- (v) Remove all domestic paraphernalia from the Land and restore the Land to its condition prior to the breach of planning control taking place.