

E/0264/46/16

Alleged unauthorised stationing and occupation of two mobile homes at Sellicks Nurseries, Chelston

OCCUPIER:

OWNER: MR SELICK
THE MOBILE HOME, SELICKS NURSERIES, CHELSTON
WELLINGTON
TA21 9PH

Purpose of Report

To consider whether it is expedient to serve an Enforcement Notice requiring the removal of mobile homes and cessation of residential occupation at the above address.

Recommendation

The Solicitor to the Council be authorised to serve an Enforcement Notice and take Prosecution Action subject to sufficient evidence being obtained should the notice not be complied with.

The Enforcement Notice shall require:

- a) Cease the use of the site for the stationing and occupation of mobile homes.
- b) Remove the mobile homes from the site.
- c) Remove all residential and domestic equipment and materials associated with the unauthorised use from the site.

Time for compliance:

With regards to a) above 6 months from the date on which the notice takes effect.
With regards to b) above 6 months from the date on which the notice takes effect.
With regards to c) above 6 months from the date on which the notice takes effect.

Background

This case was brought to the Council's attention in December 2016. Contact was made with the owner Mr Sellick who advised that he was going to submit an application. This never transpired. I issued a Planning Contravention Notice on 1st August 2017 and this was not returned. Mrs Salter and I revisited the site in September 2017 and spoke with Mr Sellick who requested to talk with Mr Bale regarding various issues as he knew the site. Unfortunately time passed and contact with Mr Sellick was never made by Mr Bale. In January 2018 I contacted Mr Sellick again who advised he had instructed Alister King-Smith of Greenslade Taylor Hunt to act for him over the various issues. The Planning Contravention Notice was returned on 23 February 2018 which confirmed Mr R & Mrs A Sellick and Mr E Sellick resided on the site. These mobile homes were placed on the land late 2016 early 2017.

Description of breach of planning control

Unauthorised stationing and occupation of two mobile homes at Sellick's Nurseries, Chelston, Wellington

Relevant planning history

46/90/0026 - Siting of mobile home to serve proposed horticultural unit - Temporary approval granted 21.11.1990.

46/93/0003 - Erection of polytunnel, shed, retention of mobile home and retention of mobile office unit - Conditional approval 11.03.1993.

46/93/0004 - Erection of dwelling to be used in connection with adjoining nursery - Conditional approval 11.03.1993.

46/95/0003 - Retention of mobile home - Temporary approval 04.04.1995.

46/96/0004/RM - Reserved Matters for the erection of a dwelling to be used in connection with the adjoining nursery - Approved 01.04.1996.

46/96/0026 - erection of storage building and polytunnel - Conditional approval 23.12.1996.

46/99/00011 - Erection of 2 Polytunnels at Sellicks Nurseries - Conditionally approved 30/07/1999

46/00/0026 - Erection of 1 Double Span Polytunnel at Sellicks Nurseries - Conditionally approved 11/10/2000

46/00/0027 - Erection of 1 Double Span Polytunnel at Sellicks Nurseries - Conditionally approved 11/10/2000

46/04/0015 - Erection of glasshouse, relocation of polyhouses and retention of workshop/canteen facility and container storage facilities - Conditional approval 05.07.2004

46/12/0011 - Change of use of land to site temporary agricultural workers mobile home (on part of the site not subject to this application, following subdivision of the site - Temporary approval 11.06.2012.

46/14/0028 - Change of use of land from horticulture to storage of scaffolding poles and related materials, erection of an office/workshop building and variation of condition no. 8 of planning application 46/93/0004 to allow occupation of agricultural workers dwelling by persons connected with scaffolding business at oaklee cottage - Conditional approval by Committee in October 2014, with the formal decision notice dated 29.10.2014.

46/14/0030 - Change of Use of storage buildings for Nursery to Class B1 (Business Use) - Conditionally approved 13/11/2014

Development Plan Policies

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Taunton Deane comprises the Taunton Deane Core Strategy (2012), saved policies of the Taunton Deane Local Plan (2004), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2004), and Somerset Waste Core Strategy (2013).

Relevant policies of the development plan are listed below. Policies from emerging plans are also listed; these are a material consideration.

Taunton Deane Core Strategy 2012

Policy SP1 - Sustainable development locations
Policy DM1 - General requirements
Policy DM2 - Open countryside

Taunton Deane Strategic Allocations and Development Plan 2016

Policy H1a - Permanent housing for rural workers
H1b - Temporary housing for rural workers

Determining issues and considerations

The key considerations in this case are as follows

- Principle of development in the open countryside including environmental harm and amenity as well as general sustainability issues
- Legal position regarding mobile homes and potential fall back
- Expediency of taking enforcement action.
- Period for compliance

Principle

The site is located within the open countryside outside the established development limits of Wellington as set out in the above policy documents. The site at the present time contains a mix of buildings and uses on land formerly associated with a large horticultural business which has now predominately ceased. A dwelling lies to the north of the site which was granted planning permission in 1993 to house a rural worker in connection with the horticultural business. Mr Sellick previously occupied the dwelling with his wife but following a divorce settlement the house was separated from Mr Sellick's remaining horticulture business and he moved out leaving the house and other elements of the horticulture business to his ex-wife.

The site comprises a mix of buildings formerly associated with the nursery business including a large glass house structure between the site now occupied by the two mobile homes and the unclassified public highway known as Haywards Lane. The highway terminates to the east of the site and has now been truncated by the M5 motorway. The site now contains a mix of business uses including the use of land

for storage of metal containers used by the public for storage purposes, and the use of the former glass house for storage purposes. Not all these elements enjoy planning permission. The Foxmoor Business Park lies to the north of the site but this is served by a separate newer access directly off the A38

To the south of the large glass house the owner has placed two mobile homes on the land. One of these is currently occupied by Mr Sellick and his wife whilst the other mobile is occupied by Mr Sellick's son.

Policies contained in the Core Strategy and Strategic allocations plan restrict new development in the countryside. In addition such policies along with policy H1a and b of the latter document require special consideration and an essential justification for any new housing development in the open countryside including the placement on land of mobile homes. These policies are supported by paragraph 55 of the National Planning Policy Framework (2012) which seeks to avoid sporadic isolated new dwellings in the countryside unless there is a genuine and essential need for a rural worker to live on that spot.

In this case the original mobile home appears to be no longer predominantly associated with a horticultural use of the site. Whilst the Planning Contravention Notice suggests that 30% of the land is still in horticultural use this has not been substantiated further. In addition there is no evidence that the second mobile home is being used to house an essential worker who needs to live in this open countryside location. The owner of the site has not provided the Council with any business case or proven an essential functional need which supports the retention of the mobile units. It is clear that if any horticultural use still exists this is at a much smaller scale than originally and to a larger extent has now been overtaken by other business uses operating on the site not connected with horticulture.

The existing business use of the site is recognised but in policy terms this is insufficient to warrant an exception being made to normal policies of restraint on new dwellings in the countryside. It is considered that whilst it may be convenient for the owner and his son to live on the site this remains an unsustainable location for such new housing units and there is no overriding essential functional need for either occupier to live on this spot. The occupiers of the mobile homes will be totally reliant on the use of private motor vehicles to access day to day services thus adding to the unsustainability of the location.

It is recognised that the placing of the mobile homes in such a position that they are for the most part hidden from public vantage points reduces the visual impact of the unauthorised development. That said there is an overriding policy objection in principle and the policies of the Development Plan and the National Planning Policy Framework (2012) need to be adhered to so as to avoid sporadic new dwellings in the countryside.

Legal position and fall back

Both the use of land for the stationing of the mobile homes and the occupation of those mobile homes as dwellings are considered to require planning permission. No such permission exists. The last permission for one of the mobile homes was granted on 11 June 2012 under the Council's reference number 46/12/0011.

The two relevant conditions attached to that permission read as follows

1. The mobile home hereby permitted shall be removed from the site and the residential use shall cease on or before the date three years from the date of this permission.

Reason: Planning permission has been granted for a temporary period in order to demonstrate the business remains financially viable.

2. The occupation of the mobile home hereby permitted shall be limited to a person solely or mainly working, or last working at Sellick Nurseries as defined by the red line on drawing 12.01.01A in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.

Reason: The site lies in area where new development is generally restricted to that for which there is a proven need in accordance with paragraph 55 of the National Planning Policy Framework.

Planning permission was granted for this mobile home following Mr Sellick's separation from his first wife and his needing to move out of the family home as part of the divorce settlement. At the time a business case was put forward to show on balance that there was still a reasonable need for a horticultural worker to live on the spot. That said the permission was a temporary one for 3 years given that the business was embryonic having been hived away from the original horticultural business and land. A long term viability of the business was not at that time proven.

It is therefore self-evident that the original mobile home no longer benefits from planning permission and is unauthorised. In addition to the breach of condition 1 there is no substantive evidence before the Council that the occupier complies with condition 2 either. The second mobile home has been brought onto the site more recently and there is therefore no evidence to suggest that either mobile unit could be deemed to be immune from enforcement action by virtue of the 10 year rule.

Expediency of taking action

A local planning authority is entitled to consider carefully any new residential uses of land and the placement on that land of mobile homes used for residential purposes. The policy context set out in the adopted Local Plan and as supported by the National Planning Policy Framework (2012) makes it clear that such isolated homes require there to be an essential need to live on the site. There is no such essential proven need in this case. The Council considers the policy objections are such that action needs to be taken in the public interest regardless of any perceived lack of visual intrusion in this case. The site lies in an unsustainable location where any occupiers would be reliant on private motor vehicles and given the lack of an essential need it is considered that the development is unsustainable.

Period for compliance

The Council has had regard to the circumstances of the occupiers of both mobile homes and recognises the occupiers currently may have nowhere else to live. A balance therefore needs to be struck between effective and timely enforcement action and the need to be sensitive to the Human Rights Act 1998 and the fact that the mobile units comprise their homes. It is therefore considered that a 6 month period for compliance would be appropriate in this case. In correspondence the owners have indicated that they would be prepared to accept such a period in which

they could re-home themselves and be able to remove the mobile homes from the site.

In preparing this report the Enforcement Officer has considered fully the Implications and requirements of the Human Rights Act 1998.

PLANNING OFFICER:

PLANNING ENFORCEMENT OFFICER: Mrs A Dunford

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