

PLANNING COMMITTEE – 1 NOVEMBER 2006

Report of the Chief Solicitor

Enforcement Item

MOBILE HOME ON LAND AT 39 WHITMORE ROAD TAUNTON

Background

1. At the meeting of this Committee on the 14 June 2006 Members considered an enforcement item recommending the service of an enforcement notice in relation to the stationing and occupation of a mobile home within the curtilage of 39 Whitmore Road Taunton.
2. It was reported verbally to the Committee that the occupiers of the mobile home felt they had been misled by the Council into believing that planning permission was not needed. It was confirmed to the Committee that it was considered that planning permission was required but it was indicated that a meeting would take place with the owners of the main house and the mobile home prior to the service of the notice.
3. Following such a meeting the owners instructed solicitors to act on their behalf and a lengthy exchange of correspondence has taken place. This did not persuade the Council's officers that planning permission is not required and accordingly an enforcement notice was served on the 3 October 2006.
4. Solicitors for the owners objected to the service of the notice on two grounds. Firstly, there was an error in one of the dates on the notice which would render it invalid, and would therefore require re-service. Secondly, the Council had not given consideration to a proposal that the owner should apply for a personal planning permission based on the needs of those who would be occupying the mobile home. These issues had not been raised with the Council's officers or with the Members at the time of the resolution to take enforcement action.
5. The notice was withdrawn because of the error on the face of it, but it was further agreed that the Committee should be given the opportunity to re-consider its decision to take enforcement action in the light of the additional submissions as to the personal circumstances of the occupiers.
6. The advice on personal permissions is that they should only be granted "where there are strong compassionate or other personal grounds for doing so", and Members would therefore need to consider when authorising enforcement action whether planning permission would be likely to be granted on that basis.

The personal circumstances of the occupiers.

7. The representations as the occupiers personal circumstances are set out in the letter from Battens attached to this report . In addition to this, a letter has been submitted from Mrs Follet's doctor, confirming the nature of her illness, the fact that she is likely to deteriorate in the future and that she currently needs ground floor accommodation.

8. The Principal Planning Officer will give a verbal assessment to the Committee of the extent to which these circumstances can be considered to justify a personal permission.

The current position

9. Enforcement action was authorised in June 2006 based on the facts available to the Committee at that time. Since then, solicitors on behalf of the owners and occupiers have suggested that the granting of a personal planning permission based on the personal needs of Mrs Follet, one of the occupiers, would be a way of resolving the issue, although they do not accept that planning permission is required.

10 Having withdrawn the Enforcement Notice for technical reasons, the normal procedure would be to re-serve. However, in the light of the additional information now available Members must consider whether it is still expedient to enforce, or whether there is a likelihood that a personal planning permission would be granted in the light of the current submissions.

11. In the event that Members do not consider it expedient to enforce they may wish to consider inviting an application for the retention of the mobile home subject to a personal permission to the current owners.

Recommendation

It is therefore **RECOMMENDED** that Members either:

1. Endorse the decision of the 14 June 2006 that enforcement action be taken to seek removal of the unauthorised mobile home at 39 Whitmore Road or
2. Resolve that any enforcement action be discontinued and an application for the retention of the mobile home subject to a personal permission be invited.

Chief Solicitor

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Your ref: JMJ/R59/PD2/2006
Our ref: CAS/AC/7615721-001
Date: 23rd October 2006

Ms Judith Jackson
Senior Solicitor
Taunton Deane Borough Council
The Deane Dwelling
Belvedere Road
TAUNTON TA1 1HE

Dear Ms Jackson

Mobile Home on land at 39 Whitmore Road

Further to our recent correspondence I write as requested to set out Mrs Follett's personal circumstances in relation to her use of the mobile home at 39 Whitmore Road.

I understand that this letter will be placed before the committee at the meeting due to be held on 1st November with a planning officers report, the report dealing with this letter as if it were a planning application seeking the use of the mobile home by Mr and Mrs Follett. Any application would be made on an entirely without prejudice basis.

Mrs Follett suffers from rheumatoid arthritis, which is an extremely debilitating condition. It is incredibly painful disease, which causes severe disability and ultimately affects a person's ability to carry out everyday tasks. Due to the restrictions forced upon her by the disease Mr and Mrs Follett have had to move from their previous property, as Mrs Follett can no longer manage stairs unaided and needs assistance with day to day activities such as cooking, cleaning and bathing. The disease is degenerative and as such will worsen and she will eventually be wheel chair bound. We enclose letter from Mrs Follett's Doctor. We should be grateful if this could be used confidentially.

The care and assistance Mrs Follett requires will increase and she will become more and more dependant on members of her family to care for her. The move to 39 Whitmore Road was so that this care could be provided.

Mrs Follett and her husband have had to sell their previous home in order for Mrs Follett to be with her family. All the funds received from the sale of her previous home have been invested in the mobile home and the move. Mr and Mrs Follett both of whom are in their sixties are simply not now in a financial position to purchase another property and would effectively be homeless if they were no longer allowed to use the mobile home.

Before selling their previous home and buying the mobile home Mrs Follett sought the advice of the Local Planning Authority as to whether or not she required planning permission for the siting of a mobile home within the curtilage of their daughters property. In an informal meeting with Mr Ed Norton in June 2005 she was told that a mobile home situated within the curtilage of a dwelling house did not require planning permission. This advice was confirmed by Ann Dunsford (the planning officer) who verbally advised that as long as Mrs Follett took her main meal within the main dwelling then the use of the mobile home would be considered ancillary. This advice was followed by a letter where Mrs Follett was told that she did not

need planning permission for the stationing of a mobile home provided that the use of that mobile home was incidental to the use and enjoyment of the main property (see letter of 8th July 2005 from Ms Ann Dunford attached hereto).

Mrs Follett was later informed that the planning departments' view was that the caravan was ancillary to the main dwelling and therefore permission was not required (see letter dated 6th December 2005 from Mr Paul Dare a copy of which is attached hereto). Relying on this advice they moved a mobile home onto the land.

The Local Planning Authority now say that the use undertaken by Mr and Mrs Follett is not ancillary to the use of the main dwelling and therefore planning permission is required. Mrs Follett has attempted to justify the ancillary nature of the use of the mobile home but this has not been accepted as such.

In short the whole family use the main dwelling and the mobile home as one unit. All utilities for the mobile home come via the main dwelling and are metered as such; all post is delivered to the main dwelling and there is no access to the mobile home other than through the garden of the main dwelling.

We attach herewith photographs showing the position of the mobile home in which the access can be clearly seen.

As can also be seen from the photographs the mobile home is not visually intrusive and does not harm or detract from the visual amenities of the surrounding area or properties. The mobile home can in any event remain on the land notwithstanding the use of Mr and Mrs Follett.

Section 55(2)(d) of the Town and Country Planning Act 1990 (as amended) states that the use of land or buildings within the curtilage of a dwelling for any purpose incidental to the use and enjoyment of the dwelling shall not be taken to involve development. Planning permission is therefore not required for such use. The stationing of a mobile home is not a building operation and will not therefore require planning permission provided that there is no material change of use. The mobile home can therefore remain on the land providing it is used for purposes incidental to the enjoyment of the property. This has been confirmed by the Local Planning Authority in the above mentioned correspondence.

It is not therefore the intention that the mobile home will be moved from the land even if Mr and Mrs Follett are forced to cease their occupation of it. It will be put to perhaps more acceptable uses incidental to the enjoyment of 39 Whitmore Road, for example, the storage of garden tools, toys or to keep pets. A use more akin to a summerhouse or garden shed.

The Local Planning Authority have said that enforcement action will be taken against the use of the mobile home, indeed an invalid enforcement notice was issued by the LPA which has now been withdrawn.

We have previously suggested to the Local Planning Authority that, notwithstanding whether the use of the land is ancillary, planning permission should be granted due to the exceptional personal circumstances in which Mr and Mrs Follett find themselves.

Circular 11/95 considers the use of conditions and states:

"The power to impose conditions when granting planning permission is very wide. If used properly, conditions can enhance the quality of development and enable many

development proposals to proceed where it would otherwise have been necessary to refuse planning permission”.

The circular goes on to consider personal and temporary conditions and the use of ancillary accommodation. Paragraph 93 considers the use of personal conditions and states:

“There are occasions...where it is proposed exceptionally to grant permission for the use of a building or land for some purpose which would not normally be allowed at the site, simply because there are strong compassionate or other personal grounds for doing so”

Paragraphs 108 – 113 consider the use of temporary conditions and state:

“Section 72(1)(b) of the [Town and Country Planning Act 1990 (as amended)] gives power to impose conditions requiring that a use be discontinued or that buildings or works be removed at the end of a specified period.” ...“Where a proposal relates to a building or use which the applicant is expected to retain or continue only for a limited period, either because they have specifically volunteered that intention ... then a temporary permission may be justified”

Mr and Mrs Follett would be more than happy to have a temporary and/or personal condition attached to the use of the mobile home whereby it is restricted to the use of Mr and Mrs Follett for the time in which they need the care of the family.

We therefore ask the committee to consider Mr and Mrs Follett’s personal circumstances and determine that, if an application were made for the use of the mobile home by Mr and Mrs Follett only for their lifetime or for so long as care needed to be provided to them, such application would be granted. The issue of precedent of similar development would not arise due to the exceptional circumstances.

Mr and Mrs Follett, due to no fault of their own, having followed the LPA’s advice have invested all their available funds in the purchasing and siting of a mobile home within the curtilage of their daughters home in order that care would be provided to Mrs Follett by her family. If they are not allowed to stay on the land they will be homeless and would face a bleak and uncertain future

Yours sincerely

CERI STEPHENS