

Planning Committee – 22 November 2006

Report of the Chief Solicitor

Enforcement Item - Mobile home on land at 39 Whitmore Road, Taunton

Background

1. At the meeting of the Committee on the 1 November 2006 Members considered a report in relation to the above matter, a copy of which is appended to this report.
2. It was reported verbally to the Committee that the Planning Officer had considered the personal circumstances of the occupiers of the mobile home at 39 Whitmore Road and concluded that their circumstances were such that, at the present time, an application for a personal planning permission to retain the mobile home based on the personal circumstances of the occupiers would not receive a favourable recommendation.
3. Accordingly, Members were recommended to endorse the earlier decision to take enforcement action, but a question arose as to the extent of the requirements of the enforcement notice.
4. Officers advised that it was the nature of the occupation of the mobile home that was unauthorised, but that the mobile home could be retained if it was used for a purpose ancillary to the use of the main dwelling.
5. Members were concerned that the consequence of such advice was that the enforcement notice could not require removal of the mobile home.
6. It was therefore agreed that Counsel's Opinion should be sought on the point before a decision was made by the Committee.

The present position

7. Counsel's Opinion has been sought and will be reported verbally to the Committee.
8. Further representations have been received from solicitors acting on behalf of the occupiers of the mobile home. They make the following points:-
 - (i) The mobile home at Whitmore Road is a caravan for the purposes of the legislation. This is defined in the Caravan Sites and Control of Development Act 1960.

- (ii) The General Permitted Development Order 1995 states that the use of a caravan within the curtilage of a dwelling house for purposes incidental to the enjoyment of the dwelling house falls within the primary use of the dwelling house and does not require planning permission.
- (iii) Correspondence from the Council to the occupiers prior to the stationing of the mobile home stated:- "Planning permission is not required to place a mobile home in your garden for ancillary use and incidental to the enjoyment of the dwelling house".

A subsequent letter was sent in response to a query over the need for a Residential Site Licence. This stated:- "The Planning Department have confirmed in their view the caravan is ancillary to the main dwelling and occupied by the same persons, and thereforeno planning permission will be required".

- (iv) The mobile home does not have a separate mains connection.
- (v) Permission was granted for the extension at the property prior to the decision that the current occupiers of the mobile home would move to the property. The accommodation in the extension is unsuitable for one of the occupiers of the mobile home who needs ground floor accommodation.

9. It is still considered that the way in which the mobile home is currently being used and occupied requires planning permission and it is therefore appropriate to take enforcement action. Whether or not such action should require the removal of the mobile home from the land will need to be considered in the light of Counsel's Opinion.

Recommendation

It is therefore **recommended** that the Solicitor to the Council be authorised to take enforcement action to secure the cessation of the current occupation of the mobile home at 39 Whitmore Road and, if so advised by Counsel, the removal of the mobile home from the land.

Chief Solicitor

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APPENDIX

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 of 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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