

Barrow Borough Council

Planning Committee

14 December 2021

**Update on Enforcement Action – Various Sites,
Barrow in Furness**

Report from: Development Services Manager (Planning and Enforcement)

Report Author: Maureen Smith, Principal Planning Officer

Wards: Roosecote, Hawcoat, Dalton South.

1.0 Summary and Conclusions

1.1 To update Members on recent enforcement action within the Borough.

2.0 Recommendation

2.1 It is recommended that Planning Committee:

Note the contents of the report

3.0 Background and Proposals

Introduction

The purpose of this report is to update the Planning Committee members on recent enforcement action at various sites within the Borough.

The sites

(i) Rock Lea, Abbey Road, Barrow in Furness

Consent was granted via 2016/0789 in October 2017 for 10 houses on the site of Rock Lea a former CCC care home. The houses were larger units aimed at the “Executive sector” and as such required off street parking suitable for the size of dwellings in accordance with the County design guide as required by Policy I6.

Plot 1 had a row of three spaces set lengthways along the rear garden boundary. These have been omitted from the built scheme by the developer Mullberry Homes and the garden has been extended instead. There appears

to be no feasible options to provide appropriately sited parking on the plot, without infringing on neighbouring amenities and general highway safety.

The developer was approached in June this year and given the option to resolve the situation either by implementing the approached consent or provide a viable alternative through a fresh application. Neither has transpired, although a recent attempt was made to submit a revised application, but this could not be validated.

The house is currently being used as a showhouse for the development. Members should note that should the house be sold then the onus for compliance would fall to the new purchaser if the matter was not picked up during the conveyancing. On the basis that the as built scheme is considered unacceptable, an Enforcement Notice was served on 30th November following agreement by the Planning Panel.

(ii) Land to the south of Leece Lane, Barrow-in-Furness

In late summer several complaints were received in relation to works taking place on land to the south of Leece Lane, Barrow, as outlined in the plan attached to this report.

The works related to two areas of land to the south of Leece Lane. The first field, to the west located between No's 7 and 12 Stonedyke is an allocated housing site in the recently adopted Local Plan, reference REC05, although no planning consent has been sought or granted.

The second field, immediately to the east of the first is designated as "green wedge" in the recently adopted Local Plan.

Officers carried out site inspections and liaised with other agencies including the Environment Agency, Natural England and the Forestry Commission. The work, which was undertaken using heavy machinery, has included building and engineering operations namely soil excavation, mounding, regrading of the land and in-filling of voids, deposition of hardcore, creation of a hard surfaced driveway and vehicular access, and associated ground clearance. Furthermore, the removal of established hedgerows, trees and mature greenery to facilitate the engineering works has completely transformed the character of the area.

Officers are of the view that the scale of the works amounts to "development", as defined in section 55 of the Town & Country Planning Act 1990.

In this case Officers have sought legal advice and were of the view that a breach of planning control had taken place and that it was expedient that the activity be stopped immediately. It was determined that the most appropriate course of action initially was the serving of a Planning Contravention Notice (PCN) and Temporary Stop Notice (TSN) as first steps and this was agreed with Planning Panel.

Panel Members will recall that the Panel report issued on 21.10.21 set out the background to this case.

The reason for issuing the Temporary Stop Notice was that the Council require unlawful development occurring on the land to cease immediately and to prevent any further damage from that already sustained to the land allocated as Green Wedge in the Council's most recent Local Plan.

A temporary stop notice expires 28 days after the display of the notice on site (or any shorter period specified). At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served.

The legislation states that it is not possible to issue a further temporary stop notice unless the local planning authority has first taken some other enforcement action against the breach of planning control.

There is evidence to suggest that works continued 1 day after the serving of the notice although no further work has been known to have taken place since. Your officers are investigating this breach of the TSN and have also taken legal advice in relation to the failure of the developer to respond to the planning contravention notice.

Once the Stop Notice expired your officers considered that it was expedient to issue an Enforcement Notice, having regard to the provisions of the development plan and to other material planning considerations.

The breach of planning control is as described above.

What does the Enforcement Notice require?

In this case, the parties on whom the Notice is served are required to:

- (i) Cease carrying out the unauthorised engineering operations and works as specified above.
- (ii) Cease carrying out works of site clearance and ground and site preparation.
- (iii) Remove the vehicular access to both fields.
- (iv) Remove all hardcore from Field 2 (the "Green Wedge").
- (v) Re-seed the land in question (for clarity this refers to both fields) using an agricultural grass seed and re-instate the land to its previous greenfield condition. This should be carried out and completed within the next planting season
- (vi) Re-instate the hedgerows along the entire length of the roadside frontages of both fields, other than a gap for a small field gate to a given specification, including species, height and plant numbers. This should be carried out and completed within the next planting season.

This notice takes effect on **22 December 2021** unless an appeal is made against it beforehand.

Is there a right of appeal against an enforcement notice?

There is a right of appeal against an enforcement notice.

What happens if an enforcement notice is not complied with?

It is an offence not to comply with an enforcement notice, once the period for compliance has elapsed, and there is no outstanding appeal.

A person guilty of an offence is liable on conviction to an unlimited fine. In determining the amount of any fine, the Court is to have regard to any financial benefit which has been accrued or appears likely to accrue in consequence of the offence ([section 179 of the Town and Country Planning Act 1990](#)).

(iii) Ruskinville, Abbey Road, Dalton in Furness

Committee resolved to refuse an application for retrospective planning permission for the erection of a garage and the creation of a new vehicular access onto Abbey Road. At the same time authorisation was given for the service of an enforcement notice [14/09/2021 minute 47 refers]. The notice was served on the 13th October 2021 and which specified a compliance period of 6 months. PINs has however notified the Council of an appeal being lodged. As a result the requirements of the notice have been suspended until the appeal is determined.

(iv) Premises known as The Cry and Kavannas, Cornwallis Street, Barrow in Furness.

Members will be aware that these properties have been in a deteriorating condition for some time and your officers have sought to engage with the owners to secure repairs, with some limited improvements to the ground floor. The properties fall within the Heritage Action Zone which gives some additional scope for negotiating improvements.

In recent weeks the owners have failed to carry out the required works through negotiation and a Section 215 warning letter has now been issued, as a precursor to a Section 215 Notice if no progress is made.

4.0 Consultation

No formal consultations were required although legal advice has been taken.

5.0 Alternative Options

- 5.1 The alternative option would be not to proceed with enforcement action. This would undermine the Council's enforcement policy and set a dangerous

precedent by giving the developers and the public the impression that the Council did not take this type of unauthorised works seriously potentially leading to poor public perception of the Council. Where legislation exists and it is considered expedient to do so, serious breaches such as the ones outlined in this report will be acted upon.

6.0 Links to Council Priorities

6.1 The Council Plan seeks to ensure that our environment is enhanced, protected and celebrated and that we promote natural beauty.

7.0 Implications

Financial, Resources and Procurement

7.1 There will be financial implications since the Council has had to seek external legal advice. There are resource implications since this type of enforcement action requires significant on-going Planning staff input and will be at the expense of delaying some application decisions.

Legal

7.2 Set out elsewhere within this report.

Equality and Diversity

7.1 Have you completed an Equality Impact Analysis? No the report has no direct Equality and Diversity implications.

Risk

Risk	Consequence	Controls required
Unauthorised works continue on these sites and elsewhere in the Borough if left unchecked.	Environmental and damage to visual amenity, loss of habitat and green infrastructure, danger to public, poor public perception of Council and enforcement function. Potential escalation of complaints to ombudsman.	Strong enforcement policy using legal powers available.

Risk	Consequence	Controls required
Developers do not comply with Enforcement Notice.	Land remains of poor visual appearance and further neighbour complaints are received. Potential escalation of complaints to ombudsman.	Ensure legal advice is taken as necessary and all potential avenues explored including through Courts.

Contact Officers

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Appendices Attached to this Report – None

Background Documents Available

Name of Background document	Where it is available
None	