UPDATE REPORT - POTENTIAL ENFORCEMENT ACTION

HOMESTEAD FARM, MAIN STREET, BOTHENHAMPTON, BRIDPORT, DT6 4BJ

Planning Committee date: 8th October 2020

Case Ref:	WD/D/19/003186
Breach of planning:	Demolition of original farmhouse and Erection of a dwelling not in accordance with planning approval WD/D/17/002888 as amended via the approved non material amendment approvals WD/D/19/000355/NMA & WD/D/19/000624/NMA
Location:	**HOMESTEAD FARM, MAIN STREET, BOTHENHAMPTON, BRIDPORT, DT6 4BJ**
Case Officer:	**Darren Rogers**

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1 Full details of the breach of planning control

1.1 The carrying out of operational development comprising the "Demolition of original farmhouse and Erection of a dwelling" not in accordance with planning approval WD/D/17/002888 **Approved April 2018** as amended via the approved non material amendment approvals set out under:

- WD/D/19/000355/NMA - Non-material amendment to Planning Permission No. WD/D/17/002888 for changes to external materials and the omission of rooflights, photovoltaic panels and external staircase. **Approved March 2019**
- WD/D/19/000624/NMA - Amendment to planning permission reference WD/D/17/002888 - Change to dormer windows on west and east elevation. **Approved March 2019**

2 The site and surrounding areas

2.1 This is as described in paras 5.1 - 5.3 of the attached report to Planning Committee held on 12th August 2020 as regards application number WD/D/19/003186. That application sought retrospective planning permission for the variation of Condition 1 (the plans list) on application approval ref WD/D/17/002888/FUL – described as "Demolition of original farmhouse in Conservation Area. Erection of 1.no. new 4 bed low carbon house".

3 Relevant planning and enforcement history

3.1 The following applications set out the planning history of this site in chronological order.

WD/D/17/002888/FUL - Demolition of original farmhouse in Conservation Area. Erection of 1.no. new 4 bed low carbon house. **Approved April 2018**

WD/D/18/001167/CWC - Request for confirmation of compliance of conditions 9 (proposed access onto Duck Street is commenced full construction details) & 10 (details of the days and hours that operations shall take place on site during the demolition and construction phases of the development and details of site operative parking arrangements) of planning approval WD/D/17/0028. **Approved Dec 2018**

WD/D/18/002892/CWC - Request for confirmation of compliance with conditions 3 (details and samples of all facing and roofing materials including details of the proposed glass (to be of a non-reflective type) to be installed in the rear lower extensions , 4 (proposed heritage greenhouse; compost bins; wooden shed; mobile chicken caravan; outdoor shelter; and tool shed) & 6 (proposed drainage works (foul and surface water) of planning approval WD/D/17/002888 - **Approved Dec 2018**

Jan 2019 Enf Investigation opened - Alleged construction of building higher than approved.

WD/D/19/000355/NMA - Non-material amendment to Planning Permission No. WD/D/17/002888 for changes to external materials and the omission of rooflights, photovoltaic panels and external staircase. **Approved March 2019**

WD/D/19/000624/NMA - Amendment to planning permission reference WD/D/17/002888 - Change to dormer windows on west and east elevation. **Approved March 2019**

WD/D/19/000782/CWC - Request for confirmation of compliance with condition 3 (Further to previous submissions of tile samples; the Phalempin Single Camber Clay Plain Roof Tile - Val De Siene (104) size 170mm x 270mm; is considered to be acceptable) of planning approval WD/D/17/002888 **Approved May 2019**

WD/D/19/001329/CWC - Request for confirmation of compliance with condition 3 (Proposed materials have been agreed previously except for the non-reflective glass to be installed in the rear lower extensions. The Guardian clear float glass with a Guardian Clarity low reflectance coating as submitted is considered to be acceptable) of planning approval WD/D/17/002888 - **Approved Oct 2019**

WD/D/19/002277/NMA - Amendment to planning permission WD/D/17/002888 - alterations to height and width of dwelling (as part of Enf Investigation) **Refused Oct 2019**

WD/D/19/002463/CWC - Request for confirmation of compliance with condition 3 (The render mix to be a traditional lime render with a mix of 1:3 Non-Hydrated Lime with washed sand is acceptable of planning approval WD/D/17/002888. **Approved 30th October 2019**

WD/D/19/003186 - Demolition of original farmhouse in Conservation Area. Erection of 1.no. new 4 bed low carbon house (with variation of condition 1 of planning approval WD/D/17/002888 to amend approved plans) **Refused 13th August 2020**

4 Officer's investigation and evidence

4.1 As Members will be aware at their Committee meeting on 12th August 2020, retrospective planning permission ref WD/D/19/003186 was refused for the "Demolition of original farmhouse in Conservation Area. Erection of 1.no. new 4 bed low carbon house (with variation of condition 1 of planning approval WD/D/17/002888 to amend approved plans)".

4.2 Permission was refused for the following 2 reasons:

1 The proposal is a visually dominating and prominent built form of development, out of character to the area. The site is located within the Conservation Area and where the wider

setting of that area is affected such that the proposal does not 'preserve' or 'enhance' that area as is required and set out given the statutory Section 72 test of the Planning (Listed Buildings and Conservation Areas) Act 1990. On that basis it has an adverse impact on the existing Conservation Area character and harms the Conservation Area character and appearance. That harm would be less than substantial but there are no wider public benefits arising from the proposal that would outweigh that harm in the planning balance. As such the proposal would not be in accordance with Policies ENV4, ENV10 or ENV12 of the West Dorset, Weymouth & Portland Local Plan (2015) ; Policies HT2, D1 & D8 of the Bridport Neighbourhood Plan; nor paragraph 127 and section 16 of the National Planning Policy Framework (2019) and in particular para 192 which states:

In determining applications, local planning authorities should take account of:
c) the desirability of new development making a positive contribution to local character and distinctiveness.

2 The proposed development by reason of its mass, scale and bulk has an unduly dominating and overbearing impact when viewed from existing neighbouring properties in Main Street and Duck Street. As a result it sits uncomfortably in relation to those neighbouring occupiers and is detrimental to their amenity (outlook). Its mass, scale and bulk is also detrimental to the character and appearance of the area. As such the proposed development would be contrary to Policies ENV10; ENV12 & ENV16 of the West Dorset, Weymouth & Portland Local Plan (2015); Policies D1 & D8 of the Bridport Neighbourhood Plan; and Section 12 of the National Planning Policy Framework (2019) and in particular paragraph 127 which states amongst other things that decisions should ensure that developments provide a high standard of amenity for existing and future users.

5 Relevant planning policy

This was as set out in the 12th August 2020 Planning Committee report under application number WD/D/19/003186 and is set out here again in full with the policies that were referred to in the reasons for refusal in bold:

5.1 National Planning Policy Framework

Section 4 - Decision Making
Section 5 - Delivering a sufficient supply of homes
Section 11 - Making effective use of land
Section 12 - Achieving well-designed places
Section 14 - Meeting the challenge of climate change, flooding and coastal change
Section 15 - Conserving and enhancing the natural environment
Section 16 – Conserving and enhancing the historic environment

5.2 Adopted West Dorset and Weymouth & Portland Local Plan (2015)

INT1. Presumption In Favour Of Sustainable Development
ENV2. Landscape, Seascape and Sites of Geological Interest
ENV2. Wildlife and Habitats
ENV4. Heritage Assets
ENV10. The Landscape and Townscape Setting
ENV11. The Pattern of Streets and Spaces
ENV12. The Design and Positioning Of Buildings
ENV13. Achieving High Levels of Environmental Performance
ENV15. Efficient and Appropriate Use of Land
ENV16. Amenity

SUS1. The Level of Economic and Housing Growth
SUS2. Distribution of Development
HOUS1. Affordable Housing
COM1. Making Sure New Development Makes Suitable Provision for Community Infrastructure
COM7. Creating a Safe and Efficient Transport Network
COM9. Parking Standards in New Development
COM10. The Provision of Utilities Service Infrastructure
CPM11. Renewable Energy Development

5.3 Bridport Neighbourhood Plan

Climate Change
POLICY CC1 - Publicising Carbon Footprint
POLICY CC2 - Energy and Carbon Emissions
POLICY CC3 - Energy Generation to Offset Predicted Carbon Emissions

Access & Movement
POLICY AM1 - Promotion of Active Travel Modes
POLICY AM2 - Managing Vehicular Traffic

Housing
POLICY H7 - Custom-Build and Self-Build Homes

Heritage
POLICY HT1 - Non Designated Heritage Assets
POLICY HT2 - Public Realm

Landscape
POLICY L2 - Biodiversity
POLICY L5 - Enhancement of the Environment

Design for Living
POLICY D1 - Harmonising with the Site
POLICY D2 - Programme of Consultation
POLICY D5 - Efficient Use of Land
POLICY D6 - Definition of Streets and Spaces
POLICY D7 - Creation of Secure Areas
POLICY D8 - Contributing to the Local Character
POLICY D9 - Environmental Performance (see also Policies CC2, CC3)
POLICY D11 - Building for Life

5.4 OTHER MATERIAL PLANNING CONSIDERATIONS:

Design & Sustainable Development Planning Guidelines (2009)

Village Design Statements (VDSs) previously adopted as SPG in West Dorset, which remain relevant and may be material considerations in planning decisions include:

• Bothenhampton: includes parish plan (2003)

WDDC Landscape Character Assessment February 2009 – Urban Area

Bothenhampton Conservation Area Appraisal

Dorset Area of Outstanding Natural Beauty: A Framework for the Future AONB Management Plan 2019 – 2024

6 Enforcement action available and reasons for the taking of formal action.

6.1 As the previous application has been refused and was retrospective in nature consideration now needs to be considered as to whether it is expedient to take enforcement action; and if so what action is required to remedy any planning harm.

6.2 Officers have already informed the applicants that following the Committee's decision on 12th August, that further construction work at the site should cease until any planning appeal against the refused application has been determined and that any further work that is carried out is done entirely at their own risk pending the outcome of any such appeal.

6.3 The applicants' agent has replied (August 2020) stating that he is instructed to make a Section 78 planning appeal and that the applicants acknowledge the degree of local concern about the scheme. Therefore, they are looking at ceasing work, while the appeal runs its course but they do not wish to see the building, or the plants deteriorate. The have set out a schedule of works (attached to this report) to be carried out to make the building properly secure and weathertight and to put it into a state so that it does not deteriorate, while the appeal is determined. Once these are completed (due at the end of September 2020), the applicants have agreed that no further work to complete the building would be undertaken until the appeal has been determined. Your officers have already agreed to these works as this is considered to be a pragmatic approach to enable the building to be made watertight and safe, prior to all further works ceasing, pending the appeal outcome. Officers have also stressed to the applicants agent the fact that these remain to be carried out entirely at the applicants own risk pending any appeal outcome. They have also agreed to let us know if (and hopefully there will not be) there is any slippage in the September timetable.

6.4 Given the above, and setting aside the appeal, the Council need to consider at this stage whether to commence formal enforcement action which could run alongside the Section 78 appeal.

6.5 It must be remembered that planning permission has already been granted for a replacement dwelling at this site which does offer a significant material planning consideration fall-back position. That approval was for a development permitted under ref number WD/D/17/002888 (Approved April 2018) as amended via the approved non material amendment approvals set out under:

- WD/D/19/000355/NMA - Non-material amendment to Planning Permission No. WD/D/17/002888 for changes to external materials and the omission of rooflights, photovoltaic panels and external staircase. Approved March 2019
- WD/D/19/000624/NMA - Amendment to planning permission reference WD/D/17/002888 - Change to dormer windows on west and east elevation. Approved March 2019

6.6 On 12 August, the Committee concluded that the changes requested under the most recent application WD/D/19/003186 which sought to deal in part retrospectively) with changes from the originally approved application (as amended) by the 2 NMA approvals listed above) are unacceptable for the reasons set out at paragraph 4.2 above.

6.7 Both of the above reasons are supported by relevant development plan and national policy references as are set out in this report.

6.8 It is therefore falls to Committee to consider the need for, and scope of, any enforcement action and the need to consider the issue of expediency having regard to the development plan and any other material planning considerations. A number of options are available.

Option 1 – That no enforcement action be taken at this stage.

6.9 This would be pending the outcome of the Section 78 appeal. Members need to take account of the planning permission that has already been granted and the applicant's agent has indicated that there will be an appeal. Of course there would be delays that could occur if enforcement action is taken only after the planning appeal is determined in favour of the Council but if the outcome of any such appeal is that it is allowed then no formal enforcement action would then be necessary. However an Inspector's view on any subsequent planning appeal will help to inform what formal enforcement action may be appropriate, if any, particularly noting that Inspectors often give a view in their formal decision letters as to which aspects of a development they consider acceptable, and which are not. By waiting for the outcome of any planning appeal, the Council will have a more defensible position as regards to any formal enforcement action we then decide to take. The matter would be brought back to Committee as soon as possible if permission is refused on the appeal.

Option 2 - That enforcement action be taken requiring demolition of the whole building

6.10 This would require demolition of the whole of the building as is now built and that it be replaced with the dwelling as was approved under ref WD/D/17/002888 (Approved April 2018) as amended via the approved non material amendment approvals. Officers' advice is that it would not be expedient to require demolition of the whole building as it is capable of being altered to address the reasons for refusal of the latest application and more closely match the approved building.

Option 3 - That enforcement action be taken requiring alteration of specific elements

6.11– Officers consider that the Committee's reasons for refusal could be properly addressed by requiring that only certain elements of the building are changed such as the roof heights of the building as was approved compared to the height of the building as built; and/or that the footprint of the building as built is altered to that of the footprint of the building as approved.

6.12 It is not considered that for example the vehicular accesses onto Main Street and Duck Street are unacceptable in planning terms notwithstanding the fact that they are technically not in accordance with the approved scheme – these are considered to be minor transgressions that result in no significant planning harm to the character of the area; neighbour amenity; or to highway safety given that there were no highway objections to the proposals and this did not form a reason for refusal.

6.13 Nor is it considered that the alterations to the landscape proposals main to the south of the main building that includes a domestic pond and ancillary buildings namely the Heritage greenhouse; barbeque shelter; field shelter; tool and lawnmower store; open wood & trailer store; compost bins and wood shed; and chicken coop all as part of the wider rear garden area raise any significant planning harm to the character of the area and in fact were approved under

compliance with condition application WD/D/18/002892/CWC - Request for confirmation of compliance with condition 4 (proposed heritage greenhouse; compost bins; wooden shed; mobile chicken caravan; outdoor shelter; and tool shed) of planning approval WD/D/17/002888 - Approved Dec 2018.

7 Human rights and Equality considerations

7.1 The provisions of the European Convention on Human rights including the following articles;
Article 1 of the First Protocol (Right to peaceful enjoyment of possessions and protection of property)
Article 8 – Right to respect for private and family life, home and correspondence
Article 14 – Prohibition of discrimination

are relevant when considering enforcement action. These rights are not absolute and need to be balanced against the wider public interest. Local planning authorities have a duty to enforce planning legislation in a proportionate way. Enforcement action should be necessary in the public interest of upholding the integrity of the planning system to address the planning harm caused by the unauthorised development, and proportionate to the harm which it is identified that the breach is causing.

7.2 The recipient of any such notice will have the opportunity to submit an appeal against an Enforcement Notice.

7.3 Consideration has also been given to the Council's duties under the Equalities Act 2010, to have regard to the need to eliminate discrimination, harassment, victimisation, or other conduct prohibited by this Act, to advance equality of opportunities and fostering good relations between those who share characteristics protected by the Act and those who do not share them. Taking enforcement action would not conflict with the Council's duties under this Act.

8 Statutory authority.

Section 172 of the Town and Country Planning Act 1990 (as amended)

9 Financial implications

The financial implications include staff resources, the costs of any subsequent appeal/prosecution and any legal representation required. These costs will be met by the existing budget.

A Costs award to the applicant could be an issue if an application for Costs is made by the applicant for any unreasonable behaviour of the Council in seeking to defend the appeal and/or issue formal enforcement action but this is unknown at this stage.

10 Recommendation

Committee are requested to consider the options available and to determine what action they consider is necessary to remedy the breach of planning control. However **Officers recommend to Members that Option 1 is approved** and we hold any formal enforcement action in abeyance, until such time as any Section 78 planning appeal is determined.

The reason for this is that the Inspector's view on any subsequent planning appeal will help to inform what formal enforcement action may be appropriate, if any, particularly noting that Inspectors often give a view in their formal decision letters as to which aspects of a

development they consider acceptable, and which are not. By waiting for the outcome of any planning appeal, The Council will have a more defensible position as regards to any formal enforcement action we then decide to take.

Darren Rogers
Planning Enforcement Manager