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ENF/2018/00130

WARD: HE-Heathlands

Subject: Proposed direct action under s219 of the Town & Country Planning Act 1990 to secure compliance in respect of 1 Hermitage Bridge Cottages, Hermitage Road, St Johns, Woking, Surrey, GU21 8XP

Case Officer: RDE
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1. REASON FOR REPORT

The purpose of the report is to obtain authority to take direct action against the owner of the land due to the continued failure to comply with an Untidy Site Notice issued under S215 Town and Country Planning Act 1990 (TCPA).

2. RECOMMENDATION

- (i) Authority be granted to proceed with direct action under S219 of the TCPA 1990 in order to undertake the outstanding steps required by the notice, as set out in section 4 below, paragraphs (i) to (iv).
- (ii) Recover from the owner of the land any expenses reasonably incurred by the Council for carrying out the works required by the Notice, including registering a charge against the land if necessary

3. Site Description:

The semi-detached cottage is the first property located on the South side towpath to the Basingstoke Canal if walking from Hermitage Bridge.

It benefits from a large/long plot of land which abuts the towpath and it is this area that is being used for the storage of waste/scrap material and the two disused/abandoned vehicles. The lawful use of the site is a single residential dwellinghouse.

The area is clearly visible when walking the towpath and impacts public amenity.

4. REPORT

Following complaints received about the deteriorating condition and appearance of the property and a Section 215 Notice was issued on 14 March 2019 requiring the following:-

- (i) Remove from the Land the two abandoned vehicles namely the red Peugeot estate and White Citroen estate including all items contained or stored within the said vehicles to an authorised place of disposal.
- (ii) Provide the Council with a copy of the Waste Transfer Certificate to show that the vehicles have been disposed of to an authorised place or to an authorised Waste Carrier.

- (iii) Remove from the right of the garage/in front of the side door of the Land the rubbish which includes, but not limited to, discarded plastic, insulation material, bikes, metal framework, brickwork, wood, sheeting, balustrades and loose items to an authorised place of disposal.
- (iv) Provide the Council with a copy of the Waste Transfer Certificate to show that the waste has been disposed of to an authorised place or to an authorised Waste Carrier.

A period of two months was given to comply with the requirements of the Notice namely 18 June 2019. No appeal was lodged against the Notice. A site visit was undertaken in July 2019 where the Enforcement Officer observed all items in situ. There has been no attempts made by the owner to comply with the notice. Following advice received from Legal colleagues the owner was given further opportunities to comply with the notice, without success. Letters were sent to the owner on 9 October 2018, 16 January and 17 October 2019. The Enforcement Officer undertook site visits in August 2018, 16 January 2019 and 16 March 2020.

Having had no contact with the owner the Planning Enforcement team asked for the support of Neighbourhood Officers to try and help engage but they similarly could not make contact or meet face-to-face with the owner.

The owner has made no attempt to comply with the requirements of the Notice despite numerous requests to do so.

As a result of the owner's failure to comply with the s215 Notice, the Council has been left with no option but to consider enforcement action to ensure full compliance with the S215 Notice.

6. EXPEDIENCY OF TAKING ACTION

Whilst the Council may prosecute the owner for failing to comply with the Notice it is the view of Legal colleagues that a prosecution will simply delay the matter further given the current circumstances with the pandemic. It is unknown when a court hearing would be obtained. Matters are currently being listed in April/May 2021. It is also questionable how effective a prosecution would be. If the LPA decides to prosecute the owner it may find itself in the same position several months later if the owner still fails to comply with the notice.

The alternative to a prosecution would be to take direct action. The LPA is empowered to enter land and to undertake all or some of the works required to ensure compliance with the Notice.

This power can be exercised after the time for compliance has expired, including any informal extensions of time that have been given to the owner. The power is exercisable summarily (without notice) so the LPA is not obliged to give the owner notice because they are deemed to have had sufficient time for compliance under the Notice. However, the LPA would advise that some form of advance warning is appropriate in this case and it is recommended that one month's notice be given of the LPA's intention to take direct action. As a consequence, the notice of direct action would provide the owner with a final opportunity to remove the items and to make him aware of the LPA's next course of action.

The advantage of taking direct action is that the items are removed from the land securing compliance with the notice, saving considerable officers time of further visits and correspondence and that of the court.

The disadvantage of taking direct action is the expense of having the works carried out, which will be payable by the LPA up front. However, the LPA is able to recover the expense of taking direct action from the owner of the land. Repayment of the cost of the works would be secured by imposing a Legal Charge on the land which would be repaid when the land is sold (if not before).

It is therefore considered expedient to take direct action to secure the removal of the scrap metal/vehicles and secure compliance with the notice.

The LPA aims to secure compliance with the notice as effectively as possible because the poor condition of the site and appearance of the land is detrimental to the surrounding area and neighbourhood. The condition of the land is affecting the amenity of the area and scrap metal/waste items are considered to be visually intrusive.

7. FINANCIAL CONSIDERATIONS

Enforcement Officers have liaised with Council contractors via the Neighbourhood Services Team with a view to undertaking the necessary works. Officers have received an estimate of costs from Council contractors for the removal of the scrap waste and vehicles. A ball park figure of £900 plus VAT has been given. This costing is an approximate costing and does not take into account for example problems gaining access to the site and the work taking longer than scheduled.

It is therefore suggested that we allow a small contingency of up to say £1000 plus VAT.

If the Committee decide to authorise direct action the Council would bear the initial expense of having the works carried out but the reimbursement of the costs of the work would be secured by way of a Legal Charge on the land in the event of non-payment by the owner. Following a recent Land Registry search the land is mortgage free so the LPA is confident funds will be recovered.

Whilst there is no standing budget for direct action, in the past a separate planning budget has been set up to fund such matters.

8. RECOMMENDATION

- (i) Authority be granted to proceed with direct action under S219 of the TCPA 1990 in order to undertake the outstanding steps required by the notice, as set out in section 4 above, paragraphs (i) to (iv).
- (ii) Recover from the owner of the land any expenses reasonably incurred by the Council for carrying out the works required by the Notice, including registering a charge against the land if necessary