

WEST OXFORDSHIRE DISTRICT COUNCIL
LOWLANDS AREA PLANNING SUB-COMMITTEE
MONDAY 10 FEBRUARY 2020
4 CHIMNEY FARM COTTAGES, CHIMNEY, BAMPTON
19/00070/PENF
UNAUTHORISED OPERATIONAL DEVELOPMENT
REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING
(Contact: Kelly Murray Tel: (01993) 861674)

(The Sub-Committee's decision on this matter will be a resolution.)

1. PURPOSE

To enable Members to consider whether it is expedient to authorise the issue of an enforcement notice.

2. RECOMMENDATIONS

Issue an enforcement notice to require removal of an incomplete building within the curtilage of 4 Chimney Farm Cottages, to require the reinstatement of an access that has been made onto the adjoining unmade road and removal of associated hardstanding.

3. BACKGROUND

3.1 The property is a semi-detached, grade II listed cottage situated in the rural hamlet of Chimney. Retrospective planning permission and listed building consent were granted in June last year for unauthorised deviations from plans approved in 2018 for alterations to the main building, rebuilding of the pre-existing side extension and the construction of a linked, new, two-storey extension.

3.2 In May 2019 the Council received complaints about what appeared to be business use at this property, with neighbours reporting a high level of storage of building materials and movements of commercial vehicles and personnel inconsistent with residential use. Neighbours also reported that a building was being constructed in the garden. It is not in dispute that the owners of the property run a building company. Officers visited the site noting a number of planning breaches as follows:-

- Part of the garden being used as a commercial builders' yard for storage of machinery and materials;
- Creation of hardstanding accessed by a new entrance to the site which did not appear to be provided "for a purpose incidental to the enjoyment of the dwelling house as such" as permitted under the Town and Country Planning (General Permitted Development)(England) Order 2015;
- The erection of a new building/office within the curtilage of the listed building;

- 3.3 Officers informed the owners of the planning breaches in writing and during a site visit. The retrospective planning and listed building applications were conditionally approved on 24 June. Despite further correspondence and Officers advising the owners that the use of the garden as a builders' yard was an unauthorised material change of use, the owners stated the view that the storage of building materials and machinery was incidental to the further works that were being carried out at the property.
- 3.4 Officers monitored activity at the property over the following months. Heavy plant equipment, commercial vehicles and large quantities of building materials continued to be stored on the site over this period and further complaints were received. There were reports of workmen coming and going to pick up and drop off plant equipment and evidence of storage of vans, a truck, digger and flat-bed truck, all parked on and around hardstanding installed to the rear of the property. Large quantities of building materials and waste continued to be stored in front of and behind the property. Whilst some of these – for example roof slates, might have been associated with the works still to be completed, it was clear that many of them were not – for example, waste items that appeared to have been brought to the site for onward disposal (such as pipes, building rubble, miscellaneous pieces of metal). In late May last year, ERS investigated complaints about bonfires at the property and found that controlled waste was being burned on the site. No further works appeared at that time to have been carried out on the roof of the property pursuant to the planning and listed building consents granted in June. Based on the evidence at that time, Officers were confident the activities on the site were not associated with these works.
- 3.5 Officers were and remain, of the view that the type and level of activities carried on at the site over a period of months constitute an unlawful material change of use. The nature of this use is considered to comprise commercial building depot/ builders' yard activities which are extremely harmful to neighbours' amenity in terms of noise and disturbance and also highly visually detrimental to the character and appearance of the rural hamlet and to the setting of the listed building. Accordingly, as permitted under the current scheme of delegation, Officers served an enforcement notice dealing with the material change of use on 29 October 2019. The notice required the following:-

“Within 2 weeks of the notice coming into effect:-

- (i) Desist from using the land for commercial purposes, including the parking of commercial vehicles and the storage of any plant or machinery typically used by the building trade.***

Within 1 month of the notice coming into effect:-

- (ii) Remove all building materials, rubble, waste soil and other waste matter including wooden pallets, plastic and metal items from the land; and***
- (iii) Desist from storing on the land any materials used in association with, or waste matter of a nature typically produced by, the building trade.”***

The notice would have come into effect on 29 November 2019, however an appeal has been lodged the effect of which is to suspend the compliance period until the appeal has been determined. The stated basis of the appeal is that there is no breach of planning control.

4. UNLAWFUL OPERATIONAL DEVELOPMENT

- 4.1 Officers carried out a further site visit in early January. It was noted on this visit that the property was still being used as a builders' yard although it had been tidied, there being less evidence of waste and building materials. Officers took the opportunity to re-assess planning breaches which had not been included in the previous notice (which related to the unauthorised change of use only). These breaches consist first, of the construction of a wooden building that has been erected on the former garden area which Officers consider is now being used as a builders' yard (this area is now partitioned off from the dwelling and its immediate curtilage by means of a picket fence) and secondly, a new means of access which has been formed leading onto the unmade track running between 4 Chimney Farm Cottages and Chimney Farmhouse. The access works have entailed removal of a hedge forming the western boundary of the property and hard landscaping including the laying of a membrane and hard core materials; this hard-surfaced area continues into the site and would appear to have facilitated the use of this part of the wider curtilage of the property as an area for storage of materials and machinery and loading/unloading activities.
- 4.2 In the course of previous communication with the owners, Officers informed them that any outbuildings constructed in the garden are likely to be considered as located within the curtilage of the listed building and therefore will require express planning permission. Since the complaints were made about the use of the site and the construction of the outbuilding, a roof has been added to the structure although it is still incomplete. It has, however, been filled with equipment from a large shipping/storage container in the garden (now removed). The items stored are building materials and equipment associated with the commercial operations; these are not items that would ordinarily be stored incidentally to domestic use of the property.

Planning assessment

- 4.3 The site (and the surrounding area) lies in the open countryside within the Thames Vale Architectural Character Area as described in the *West Oxfordshire Design Guide* (although Chimney is too small a hamlet to be classified as a settlement). The *West Oxfordshire Landscape Assessment* defines its landscape character as floodplain pasture in the *Western Thames Fringes* landscape area.
- 4.4 The main issues in deciding whether the unauthorised development is acceptable in planning terms are; first, the impact of the building and of the hard core surface/new access on the setting of the listed building and second, the impact of the development in visual amenity terms. In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority is required, by section 66 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 to have "special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".
- 4.5 The property is a semi-detached late 17th century stone cottage forming one of a pair. As outlined above, planning permission and listed building consent were granted in 2018 and 2019 to rebuild an existing side extension and for a new-linked extension the effect of which permissions was to increase the footprint of the dwelling, nevertheless it remains of fairly modest size and benefits from a large, open rear garden which has historically been enclosed by hedgerow on its eastern and western boundaries. This long, rectangular parcel of land appears from aerial photographs to have been cultivated over many years and has historically contained one or two outbuildings which in size and form appear to be consistent with ancillary garden/kitchen garden use. The incomplete outbuilding is sited within the "building yard" partitioned area of the site and is adjacent to the newly formed access and close to the

hard standing area; it would therefore appear to be suitably sited to form the “hub” of the unlawful commercial activity. Although incomplete, it is in any case functional in form, is clad with lengths of what may be pine and has apertures for PVCU windows. Its proximity to the listed building along with its size and utilitarian form is, in Officers’ view, harmful to the historic context and special character of the listed building and is visually detrimental to the hamlet, failing to conserve the rural and open character of the local landscape. The removal of the hedgerow in the course of operations to form a new access and the introduction of an area of hard standing has aggravated this harm, as the formerly enclosed land, hard standing and building are now on display from the adjacent roadway. The overall effect is urbanising and incongruous within the rural surroundings. The unauthorised development is considered to be contrary to policies OS2, OS4, EH2, EH9 and EH11.

5. ENFORCEMENT ACTION AND HUMAN RIGHTS

- 5.1 The Council has the power to issue an enforcement notice where it appears: first, that there has been a breach of planning control and secondly, that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. The Council must also have regard to relevant guidance, including the NPPF which sets out at paragraph 58:-

“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.”

- 5.2. The recommended enforcement action would require the owners to remove the outbuilding, re-plant the boundary to the garden and remove the hard core area, reinstating it to lawn or to garden beds for planting in accordance with normal domestic use. It is arguable that such action would interfere with the human rights of the owners.
- 5.3 Article 1 of the First Protocol to the European Convention on Human Rights provides for the peaceful enjoyment of possessions. This right applies also to legal persons, including companies. It is, however, a qualified right and the Courts recognise that it has to be balanced against the need to enforce laws controlling the use of property in accordance with the general public interest. In this case, taking into account the harm to the setting of the designated heritage asset, the impact on the character of the rural context and to visual amenity, without provision of compensatory measures, Officers consider the balance of interest lies in the need to remove the unauthorised structure and to require reinstatement of the garden and hedgerow. It is considered, having regard to the principle of proportionality that enforcement action is required and is an expedient and a proportionate response to the harm identified in this report.

**Accordingly, the options for next steps are as follows:-
Take no further action**

- 5.4 Taking no further action would mean that the identified harm to the setting of the listed building and to the character of the hamlet and the local landscape will continue.

Issue an enforcement notice

- 5.5 Your Officers consider for the reasons given above that it is expedient to issue an enforcement notice to remedy the harm.

6. ALTERNATIVES/OPTIONS

In view of the level of identified harm, it is considered that to take no action at this stage would be unreasonable and therefore not a viable option.

7. RISK

None at this stage.

8. FINANCIAL IMPLICATIONS

None at this stage.

9. REASONS

See paragraphs 4.5 and 5.4 above.