

MID SUSSEX DISTRICT COUNCIL

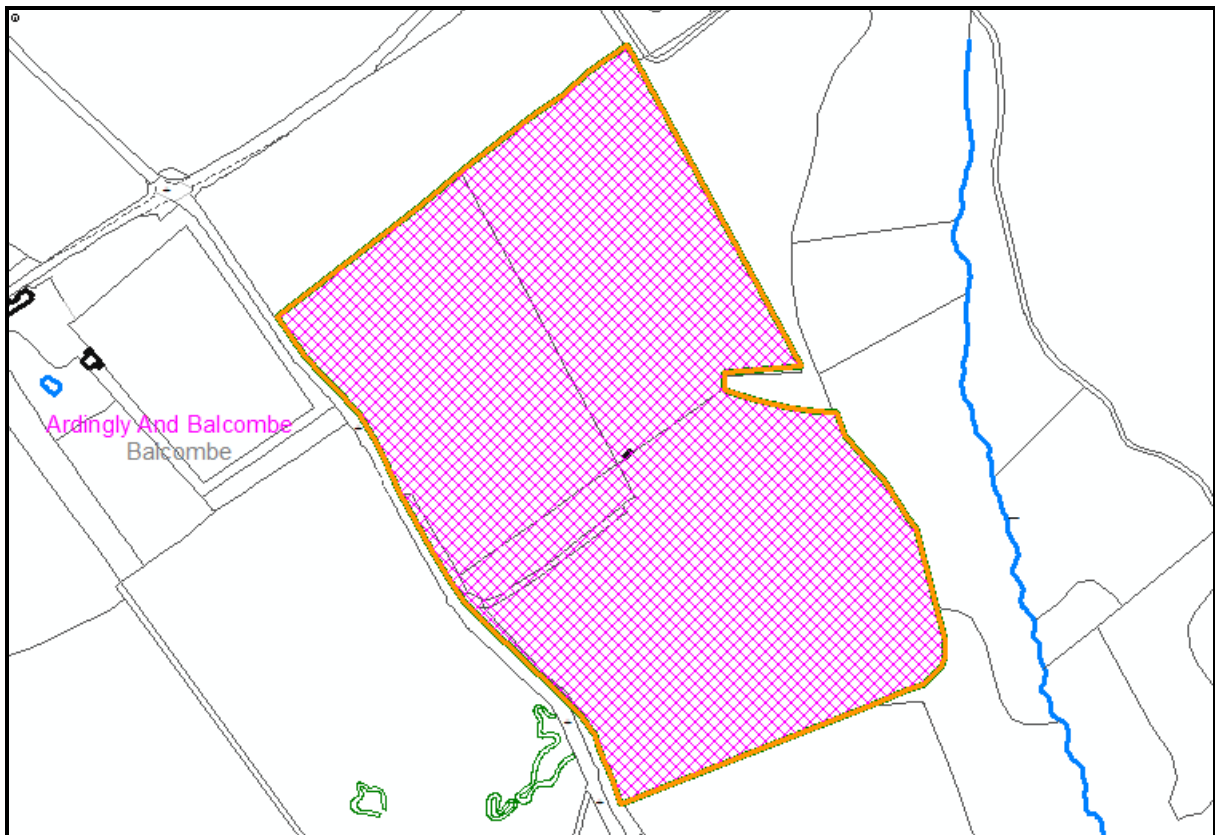
Planning Committee

4 JUL 2019

OTHER MATTERS

BALCOMBE

EF/17/0129



SITE: LAND AT CRAWLEY LANE, BALCOMBE, WEST SUSSEX

INTRODUCTION

This report relates to a planning enforcement investigation and breach of planning control where the land owner has failed to comply with the requirements of an Enforcement Notice. Officers are therefore requesting authorisation from members of the committee to commence prosecution proceedings in relation to the failure to comply with an extant S.172 Enforcement Notice.

SITE AND SURROUNDING

The land to which the Enforcement Notice relates is a parcel of agricultural land lying to the eastern side of Crawley Lane north of Balcombe. 14ha in size the land laid is now overgrown but was formally laid to pasture and falls significantly in level from north-south and west-east.

The land was formally currently free from structures, subdivision or other means of enclosure or any other lawful track and vehicular route across it.

The land is served by an existing and lawful vehicular access off Crawley Lane set approximately in the middle of the western boundary of the site. This boundary with Crawley Lane is otherwise predominately made up of high and dense natural screening. To the north and south lie other open agricultural land previously part of the same unit, whilst to the west lies a large area of Ancient Woodland. The land is within the designated High Weald Area of Outstanding Natural Beauty which benefits from special protection addressed under paragraph 172 of the NPPF which states the following:

172. Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and*
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.*

PLANNING AND ENFORCEMENT HISTORY

In March 2017 the Council was notified of the construction of a track without planning permission using imported material and finished with chippings across the land and which measured approximately 145m in length. Planning application DM/17/2361 thereafter sought to regularise the construction of the track together with the erection of an agricultural barn within the centre of the land. This application was refused on 2nd August 2017 in relation to the lack of agricultural need for the barn and track and the impact upon the character and appearance of the AONB.

An Enforcement Notice was thereafter issued on 28th September 2017 in relation to the construction of the track and requiring the following steps to be taken:

- 1. 'Take up and remove from the Land all the imported materials, including, but not limited to, the mineral surface, hardcore and drainage provision, used to form the Track.'*
- 2. Remove from the Land all other materials and debris resulting from step 1) above.*
- 3. Make good and reinstate the area of the Land on which the Track is located by infilling with soil/earth to match the adjoining area of the Land and reseeding with grass.'*

An appeal against the issue of the Notice was submitted within the statutory time period and the requirements of the Notice were thereafter held in abeyance pending the hearing of the appeal.

In December 2018, and with the appeal still not having been heard, and following discussions with the appellant, the appeal was withdrawn and in connection with this the Council used powers afforded to it under S.173A(1)(b) of the Town and Country Planning

Act 1990 to vary the requirement of the Notice and extend the period for compliance with the requirements of the Notice until 31st May 2019.

Subsequently a planning permission was granted under reference DM/18/4725 on 29th March 2019 for the retention of a 55m element of the track and the erection of an agricultural barn for the keeping of cattle. The requirements of the Enforcement Notice as laid out above remained however.

CURRENT SITUATION

The Enforcement Notice as varied in December 2018 and its requirements remain in effect whilst there is now an extant planning permission for the development of the site with the erection of an agricultural barn and retention of a small element of the track. This planning permission has not been implemented and to date no further works to the land, including general maintenance has been undertaken. A site visit on 3rd June 2019 confirmed no works to remove the track or else comply with any of the requirements of the Enforcement Notice had been undertaken by the deadline of 31st May 2019. It is therefore open to the Council to pursue a prosecution against the failure to comply with the requirements of an Enforcement Notice in line with S179 of the Town and Country Planning Act 1990 which provides that where the owner of the land is in breach of an enforcement notice they shall be guilty of an offence.

The owner has indicated that he does intend to undertake the works either to comply with the requirements of the Notice or else implement the planning permission for the barn by the end of June 2019. Whilst this intention is noted, the breach of planning control has been carried on for two years and that as no works to or maintenance of the land appear to have taken place in the recent past the Council cannot be certain that any additional deadline would be met.

Whilst there is an extant planning permission relating to the 55m element of the track, it is unlikely, at this time, that the Council would pursue prosecution proceedings in respect of this part of the track, however, the remaining 90m of track does not benefit from planning permission and remains in breach of the requirements of the Enforcement Notice.

In accordance with the contents of the NPPF and policy DP16 of the District Plan, great weight should be given to conserving and enhancing the landscape and scenic beauty in Areas of Outstanding Natural Beauty and that major development should not be supported unless it is in the public interest. The retention of the track, especially the latter 90m which does not benefit from planning permission bisects the field and creates an artificial boundary and route through the field and Area of Outstanding Natural Beauty. The track is visible from the access onto Crawley Lane and therefore it is in the public interest to pursue the breach of planning control in relation to the unauthorised 90m element of the track and to protect the character and appearance of the landscape which benefits from special designation.

Should the works to remedy the breach of planning control commence prior to any prosecution proceedings being concluded, the Council could choose not to pursue the matter further. However, at the current time and as the owner has failed to comply with the requirements of the Enforcement Notice, the harm to the character and appearance of the Area of Outstanding Natural Beauty remains. Therefore the owner may be prosecuted under s.179 of the Town and Country Planning Act and if found guilty of an offence shall be liable on summary conviction, or conviction on indictment, to a fine not exceeding £20,000.

RECOMMENDATION AND CONCLUSIONS

The owner has failed to comply with the requirements of the extant Enforcement Notice by the end of the period for compliance of 31 May 2019 and remains in breach of the Enforcement Notice. The harm caused by the unauthorised part of the track to the character and appearance of the Area of Outstanding Natural Beauty which the Enforcement Notice seeks to remedy therefore remains.

Having due regard to the options that are available (but without prejudice to any other enforcement action the Council may decide to take), the Town and Country Planning Act 1990 and relevant policies and applicable guidance issued, it is concluded that the most satisfactory course of action, at this time, is to recommend that authority be given for the Council to prosecute the owner of the land for non-compliance with the Enforcement Notice (which is an offence under section 179 TCPA 1990) with respect to the eastern 90m element of the track, subject to the Solicitor to the Council being satisfied that there is sufficient evidence and it is in the public interest to pursue a prosecution.