

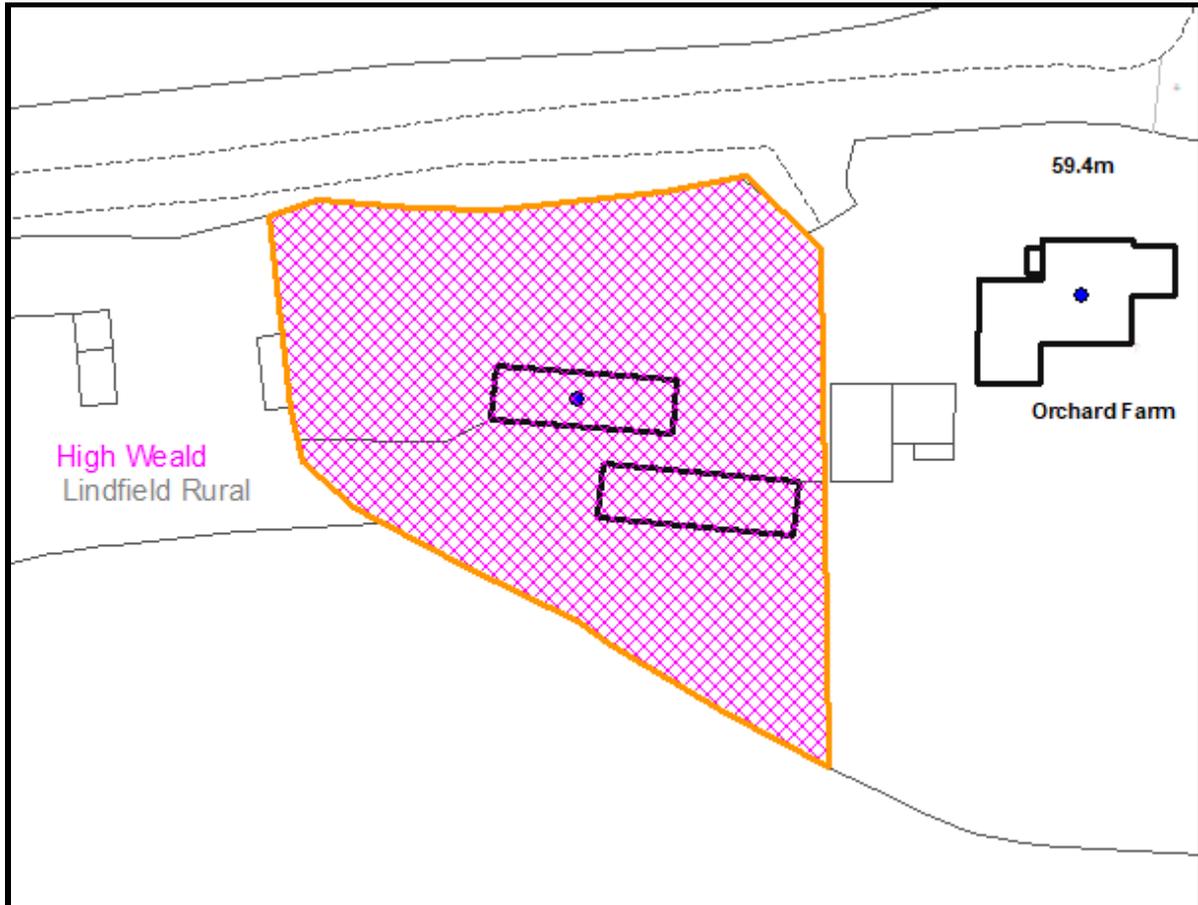
MID SUSSEX DISTRICT COUNCIL

Planning Committee

**8 OCT 2020**

OTHER MATTERS

**EF/19/0079**



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**SPRINGWOOD NURSERY, NASH LANE, SCAYNES HILL, 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 a Stop Notice issued in conjunction with an Enforcement Notice. The Stop Notice required work for the development to cease, however, the development has been carried on unabated.

## **RECOMMENDATION**

Officers are requesting authorisation from members of the committee to commence prosecution proceedings in relation to the failure to comply with an extant S.183 Stop Notice.

## **SITE AND SURROUNDING**

The alleged breach of planning control relates to the unauthorised development of the construction of a C3 dwellinghouse without planning permission.

The site is understood to have once been part of Orchard Farm and is located on the southern side of Nash Lane, a rural lane outside the built up area and to the east of the village of Scaynes Hill, It was formerly in use as a small nursery with a timber chicken shed building and a long greenhouse building oriented east-west, together with a small driveway and parking area, with a narrow access onto Nash Lane. These buildings were demolished in February 2019 and only the original base and a small greenhouse remained.

The site backs onto an extensive area of woodland, classified as an Ancient Woodland and the site is with the Ancient Woodland buffer zone and a rural area for the purposes of policy DP12 of the District Plan.

## **PLANNING AND ENFORCEMENT HISTORY**

In November 2016 Prior Approval consent for the change of use of an agricultural building to a two bedroom dwellinghouse was granted. The buildings subject to this approval were demolished in February 2019. The approval thereafter lapsed in November 2019. The Council is therefore of the opinion that approval can longer be implemented.

Planning application DM/19/1391 thereafter sought permission for the erection of one new dwelling on the footprint of a former (demolished) poultry building. This application was refused on 9th April 2019 for the following reasons:

- 1. The proposed development would be unsustainably located to local services and facilities in Scaynes Hill and would not be accessed safely by footpaths and lit by streetlights, so future occupiers would be reliant upon the private car rather than more sustainable modes of transport. As such, the proposal would be contrary to Policy DP21 of the Mid Sussex District Plan (2018), policy 1 of the Lindfield and Lindfield Area Neighbourhood Plan and the provisions of the National Planning Policy Framework.*
- 2. The proposed dwelling would constitute a new dwelling in the countryside resulting in harm to the rural character of the area and would be contrary to policies DP6, DP15 and DP26 of the Mid Sussex District Plan and the provisions of the National Planning Policy Framework.*
- 3. Insufficient information has been provided to demonstrate that the works already undertaken and the proposed development would not have an adverse impact on the*

*Ancient Woodland, contrary to Policy DP37 of the Mid Sussex District Plan (2018) and the provisions of the National Planning Policy Framework.*

A S.78 appeal against the refusal of the application was dismissed on 10th December 2019 upholding all the Council's reasons for refusal.

Following the dismissal of the S.78 appeal the developer wrote to the Council in January 2020 to confirm the status of the Prior Approval consent DM/17/2215. Officers confirmed that in order to establish the lawfulness of any proposal an application for a Certificate of Lawful Development under S.192 should be submitted. In informal discussion it was stated that any application is unlikely to be successful as the buildings subject to the Prior Approval had been demolished and therefore the consent could no longer be implemented. This matter was also addressed by the Inspector in dismissing appeal AP/19/0068 in which they stated:

*'I note that prior approval has been granted under 'Class Q' for the conversion of the pre existing barn at the site to a residential dwelling. However, the appellant is no longer able to implement that scheme. I do not consider that prior approval offers support for the erection of a new dwelling at the appeal site, even if the proposed dwelling would reflect the previous footprint of the pre-existing barn and future occupiers would make use of the existing access.'*

In late April 2020 Officers noted that work had commenced on site. Officers wrote to the developer and outlined the Council's position regarding the lawfulness of any work carried out and possible implications (the instigation of formal enforcement action) should work without planning permission carry on. Officer's therefore witnessed a period of cessation of works through May, June and July 2020.

In mid-July 2020 Officers noted that work had recommenced upon the site in breach of planning control. It was thereafter considered expedient to enter into formal enforcement action through the issue of an Enforcement Notice relating to the construction of a residential dwellinghouse without permission with the following reasons given:

*1) The breach of planning control has occurred within the last 4 years and the reasons are solely for the purposes of remedying an injury to amenity.*

*2) The Unauthorised Development is located in an unsustainable location which would not minimise the need for travel and would not provide safe and convenient pedestrian, cycling and public transport access to services and facilities. The development would conflict with Policy DP21 of the Mid Sussex District Plan 2014 – 2031, Policy 1 of the Lindfield and Lindfield Area Neighbourhood Plan and paragraph 108 of the National Planning Policy Framework.*

*3) The Unauthorised Development is located in a rural location unrelated to the needs of agricultural or any other lawful rural use and causes harm to character and appearance of the area contrary to policy DP6, DP12, DP15 and DP26 of the Mid Sussex District Plan 2014-2031 Policy 1 of the Lindfield and Lindfield Area Neighbourhood Plan and paragraph 11 of the National Planning Policy Framework.*

*4) The Unauthorised Development is located in an Ancient Woodland Buffer Zone and therefore causes harm to the ecology and biodiversity of the area contrary to policy DP37 and DP38 of the Mid Sussex District Plan 2014-2031 and paragraph 175 of the National Planning Policy Framework.*

The Enforcement Notice requires the development to cease and thereafter be removed from the land. The Notice would have come into effect on 1<sup>st</sup> September 2020, however, an appeal was received and therefore the Enforcement Notice and its requirements are held in abeyance until the appeal is held. This is likely to be not until 2021.

As the development was being carried on at the time of the issue of the Enforcement Notice it was also considered expedient to issue a Stop Notice under S.183 of the Town and County Planning Act 1990. This was issued on the 30<sup>th</sup> July 2020 and required the immediate cessation of the development

## **CURRENT SITUATION**

The Stop Notice was issued in conjunction with the Enforcement Notice on the 30<sup>th</sup> July 2020 and required the immediate cessation of the construction of the dwellinghouse. A site notice was displayed on site and a copy of the Notice hand delivered to the land owner and developer.

Under the provisions of planning law, the failure to comply with the requirements of a Stop Notice is guilty of an offence that can result in a prosecution. If found guilty of an offence the person responsible shall be liable on summary conviction, or conviction on indictment, to a fine not exceeding £20,000 per incidence of a breach of the Notice.

There is no right of appeal against the issue of a Stop Notice, other than to a magistrate.

Since the issue of the Stop Notice Officers have observed that work for the construction of the dwellinghouse being carried on. At the time of the issue of the Notice the building consisted of a timber frame over a concrete slab, however, at the time of the writing of this report the building has now been made watertight and a roof added.

Officers have observed work being carried on in breach of the requirements of the Stop Notice on the following occasions:

Tuesday 4<sup>th</sup> August 2020  
Thursday 6<sup>th</sup> August 2020  
Friday 14<sup>th</sup> August 2020  
Friday 28<sup>th</sup> August 2020

It is understood and believed, however, that work has been carried almost continuously since the issue of the Stop Notice.

Officers have spoken to the developer and have explained the implications of the carrying on of work. Officers have also written to the owner confirming that should

works carry on that the should works continue that, subject to the agreement of this Committee and the Council's Legal Officers, that prosecution proceedings will commence. It is opinion that of Officers that the developer understands the requirements of the Notice and the implications for failing to comply with its requirements.

The development has sought to raise his personal circumstances as mitigation for the carrying on of work. Whilst noted, the developer has not sought to claim that he or his family are homeless nor that any other material circumstance exists whereby the requirements of the Notice could not be complied with. In considering the expediency of issuing both the Enforcement Notice and the Stop Notice, the Council considered it both necessary and proportionate when balanced against the wider impact of the breach on public safety. The Council was satisfied that there has been a breach of planning control and that there is a clear public interest that the activity which amounts to the breach (the construction of a dwellinghouse without planning permission) must be stopped immediately.

Additionally the Council have considered the implications of the Human Rights Act 1998 and have had regard to the public sector Equality Duty (PSED) and the Equalities Act 2010. Officers are content that the issue of the Notices were compliant with these duties and requirements and that there are no personal or other material circumstances which would outweigh the harm to amenity and public interest in ensuring the breach of planning control be ceased.

The Stop Notice was issued in order to cease the development as it caused immediate harm to amenity and is contrary to the policies of the development plan. There has been no change in this situation and the carrying on of the development risks the development being completed before the appeal against the issue of the Enforcement Notice is heard. The developer has therefore carried on the development at their own risk and that risk being the instigation of the prosecution proceedings.

Officers have discussed the matter with the developer, however, there has been no voluntary cessation of works and therefore Officers are of the view that the instigation of prosecution proceedings in relation to the failure to comply with the requirements of the Stop Notice, is necessary to prevent further unauthorised development to prevent further harm to amenity.

Should the works cease 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 developer has failed to comply with the requirements of the Stop Notice, the planning harm remains. Therefore the owner may be prosecuted under S.187 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 for each incidence of non-compliance.

## **RECOMMENDATION AND CONCLUSIONS**

The owner has failed to comply with the requirements of a Stop Notice requiring the cessation of an unauthorised development of a residential dwellinghouse.

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 Stop Notice (which is an offence under section 187 of the T&CPA 1990), 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.

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