

MID SUSSEX DISTRICT COUNCIL

District Wide Committee

16 DEC 2021

OTHER MATTERS

Hurstpierpoint And Sayers Common

EF/17/0248

145 HIGH STREET, HURSTPIERPOINT, 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

No. 145 High Street is a detached dwellinghouse which abuts the pavement upon the northern side of Hurstpierpoint High Street and is orientated at 90 degrees to the road so that the front (but not principle) elevation faces eastwards. The property benefits from a garage and small garden to the rear (north) which is accessed via a shared driveway to the east.

The building's original form was as a small 1½ storey building constructed of red brick with tile hanging to the first floor with a catslide roof and large dormer projection.

To the east of the site lies Hurstpierpoint Players Theatre whilst no. 141 High Street; a grade II listed building, is situated to the west. The site falls within Hurstpierpoint Conservation Area which is characterised by traditional building materials and finishes which collectively contribute to the historic character and appearance of the Conservation Area.

The property is within the designated heritage asset of the Hurstpierpoint Conservation Area which benefits from special protection addressed under paragraph 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which states the following:

With respect to any buildings or other land in a conservation area..., special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

PLANNING AND ENFORCEMENT HISTORY

Planning permission was granted on the 2nd May 2017 under reference DM/16/5175 for substantial ground and first floor extensions to the building. This permission was granted with the imposition of five conditions; three of which related to the design and finish of the building.

Work thereafter commenced but were considered materially different to that approved and were considered not to benefit from planning permission and represented a breach of planning

control. Planning application DM/17/2313 sought to regularise the development as being constructed but was refused in August 2017. A further application under reference DM/18/0288 seeking remedial works to address the breach of planning control was also refused in April 2018.

Thereafter, having sought unsuccessfully to address the breach of planning control through negotiation, the Council issued an Enforcement Notice under s.172 of the Town and Country Planning Act 1990 on 25th October 2018.

The Notice alleged the following breaches of planning control:

'Without planning permission:

- (a) the construction on the existing dwelling on the Land ("the Dwelling") of a ground floor extension on the northern elevation and reconstruction of the first floor of the Dwelling including installation of a flue, three roof light windows to the western elevation, glazed panel to the eastern elevation, replacement windows and alteration to the appearance and finish of the Dwelling ("the Unauthorised Works"); and*
- (b) the demolition of a brick boundary wall.'*

And which required the following steps to be taken:

'1) Remove the Unauthorised Works and reinstate the Dwelling to its design and appearance immediately prior to the breach, to include (but not limited to) the following:

(a) remove from the Dwelling the cement board fascia and fixings to all elevations;

(b) reinstate in accordance with drawing number 16/142/SK02 A and as shown on "Photo 1" and "Photo 2" :

- i. the catslide roof and front facing gable;*
- ii. the red brick finish to the ground floor;*
- iii. the clay tile hanging to the first floor;*
- iv. the clay tile roof;*
- v. the windows at ground floor and first floor level (including cills and reveals at ground floor level);*

(c) demolish the block rendered wall erected to the rear western elevation and rebuild on the Land a boundary wall with facing red brick in a running bond to a height of 1.8m above ground level..

2) Alternatively, remedy the breach by making the development comply with the terms, including conditions and informatives, of the planning permission which was granted on 2nd May 2017 in respect of the Land under reference DM/16/5175 a copy of which is attached to this Notice and for the avoidance of doubt this shall include discharging conditions 3, 4, and 5 of the Planning Permission.

3) Remove from the Land any other waste or debris resulting from steps 1 or 2 above.'

An appeal against the issue of the Notice was dismissed on 17th September 2019. The Notice therefore came into effect in September 2019 with the requirements of the Notice to be complied with by 17th March 2020.

In February 2020 a further planning permission was granted under reference DM/19/5209 which sought to address the breach of planning control by regularising certain elements of the construction and proposed amendments to address the previous reasons for the refusal of planning applications and the comments of the Inspector in dismissing the appeal against the issue of the Enforcement Notice.

This permission included the following

- Extension and alteration of ground and first floor to create a full two storey building with a hipped roof
- Insertion of two conservation style rooflights to western roofslope in place of current three unlawful rooflights.
- Insertion of one conservation style rooflight to eastern roofslope in place of unlawful large glazed panel.
- Removal of unlawful flue and creation of a new brick chimneystack in the same location.
- Replacement of rear brickwork wall to replace unlawful rendered brick wall.
- Replace 10 composite windows with replace with timber sash windows with new cills
- Remove cement board render and replace with render applied directly to brickwork and plywood at first floor level.
- Amendments to soffit detail to introduce wooden frieze boards

Conditions were imposed requiring the amendments to the unlawful works to take place within 3 or 4 months of the date of the permission (June 2020)

CURRENT SITUATION

Whilst some works to remove the composite windows to the front elevation took place in spring 2020, works ceased at the outbreak of the Covid pandemic in March 2020 and to date no further works to comply with the requirements of the Enforcement Notice or the conditioned planning permission have taken place.

The Council has noted the height of the Covid pandemic in 2020 into 2021 may have resulted in delays in undertaking the necessary works, but since summer 2020 the Council have noted no further works and have received no correspondence from the owners.

The requirements of the Enforcement Notice have therefore not been complied with and the time period for compliance has elapsed. 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 s.179 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.

In accordance with the contents of the NPPF and policy DP31 of the District Plan, the development as it stands at the moment is considered harmful to amenity and to the appearance and character of the Hurstpierpoint Conservation Area as a designated heritage asset and therefore it is in public interest to seek to ensure the cessation of the breach of planning control through compliance with the requirements of the Enforcement Notice.

It is considered that the instigation of prosecution proceedings are undertaken where there does not appear to be any voluntary compliance with the requirements of an extant Enforcement Notice. It should be noted that any prosecution proceedings relate solely to the substantive unlawful development which took place originally and the failure to comply with the requirements of the Enforcement Notice to undo those works. Whilst there are lesser steps possible through the implementation of the later February 2020 planning permission (DM/19/5209), the Council cannot take legal proceedings for the failure to comply with the

conditions of this planning permission because no Enforcement Notice relating to the breach of planning control for the failure to comply with the conditions of a planning permission has been entered into. The Council is therefore relying on the current Enforcement Notice for the development which has taken place. This outcome and possibility was outlined to the owner in the determination of the 2020 application.

Should works to implement permission DM/19/5209 commence and remedy the breach of planning control prior to any prosecution proceedings being concluded, the Council can choose not to pursue the proceedings further at that time. At the current time, however, and as the owner has failed to comply with the requirements of the Enforcement Notice, the harm to the character and appearance Hurstpierpoint Conservation Area as a designated heritage asset 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 17th March 2020 and remains in breach of the Enforcement Notice. The harm caused by the unauthorised development to the character and appearance Hurstpierpoint Conservation Area as a designated heritage asset which the Enforcement Notice seeks to remedy remains

The Council has allowed an extended period for informal compliance through the Covid pandemic period but would now require the commencement of works in order to remedy the breach of planning control.

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) 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.