

**PLANNING COMMITTEE**

**22<sup>nd</sup> SEPTEMBER, 2020**

**REPORT OF THE ASSISTANT DIRECTOR PLANNING**

**A.1 Caravan/Chalet Sites Occupancy Restriction**

**PART 1 – KEY INFORMATION**

**PURPOSE OF THE REPORT**

To update the Planning Committee on caravan and chalet sites occupancy including the result of planning and enforcement appeals as to planning breaches relating to occupancy conditions in Point Clear Bay and to secure support to progress further enforcement action.

**EXECUTIVE SUMMARY**

Cabinet received a report on 13<sup>th</sup> December 2013, which outlined the outcome of an initial review of seasonal occupancy restrictions on holiday parks/homes across the district. Cabinet supported an on-going review and made recommendations as to its progress.

Cabinet received an update at its meeting in June 2014 on each of its previous recommendations including

- liaison with the Environment Agency to understand flood risk issues on a site by site basis;
- working with the sites' owners and operators and individuals affected to improve emergency planning procedures;
- analysis of appeal decisions; and
- monitoring of compliance with conditions on sites in Tendring district.

Decisions relating to planning enforcement come within the terms of reference of the Planning Committee and subsequently, a further report was presented to the Committee on 2 February 2016 detailing the outcome of the review at that time. The Planning Committee resolved that it:

1. Notes the outcome of the review, including the monitoring of sites and the potential breaches of planning controls that have been identified;
2. Supports the principle of seeking voluntary compliance with planning controls relating to holiday caravan and chalet occupancy, and where this is not successful to serve Planning Enforcement Notices, giving priority to breaches at Point Clear Bay, Clear Springs and Bel Air; and
3. Receives an update report in relation to this enforcement action early in 2017.

In accordance with this decision, work has continued and this report provides updates on:

- Action taken to resolve breaches at Clear Springs, Point Clear Bay and Bel Air through voluntary compliance;
- Formal action taken at Clear Springs and Point Clear including the outcomes of appeals against enforcement notices.

And the report seeks agreement to:

- Undertake further monitoring of compliance at caravan and chalet sites.

## RECOMMENDATIONS

It is recommended that the Planning Committee:

1. Notes the contents of this report, and the action taken to date;
2. Requires the Assistant Director Planning to formally write to each of the Appellants for Point Clear proceedings, as soon as possible to confirm the outcome of their appeal and where compliance with the Enforcement Notice is still required, the date by which this takes effect; and
3. Supports the carrying out of further planning enforcement investigations as necessary at other sites with other winter occupation restrictions in areas at high risk of flooding and where voluntary compliance cannot be achieved, taking formal action as necessary.

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

The aims of the review reflect the Council's priorities contained within the Corporate Plan. In particular the review will reflect the Council's priorities – 'Community Leadership' and 'Tending 4 Growth'.

The Council's priorities are to put community leadership at the heart of everything we do through delivery of high quality, affordable services and working positively with others.

### FINANCE, OTHER RESOURCES AND RISK

#### Financial

Important financial issues including new homes bonus, council tax and local council tax support scheme were described in the 13 December 2013 report which is a Background paper to this report. In addition, if appeals are lodged against any Enforcement Notices served, there will be associated costs to defend them.

#### Flood risk

Issues relating to flood risk were described in the reports to Cabinet on 13 December 2013 and 13 June 2014.

The number of people living lawfully in high flood risk areas and unsustainable locations, contrary to Council policy, will be increased if compliance (probably through formal enforcement action) with the planning regulations is not achieved. This would be contrary to the National Planning Policy Framework (the Framework), the Environment Agency's and Council's policies. It would place an increased pressure and risk on emergency services, when carrying out rescue operations, increased pressure on local services and unknown effects on areas of nature conservation. Delays in taking action will result in an increased immunity from enforcement action and greater likelihood of successful applications for Certificates of Lawful Use.

**LEGAL**

A breach of planning control is defined in Section 171A of the Town and Country Planning Act 1990 (TCPA 1990) as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

Local planning authorities (LPA) have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative areas. There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.

In accordance with the Town and Country Planning Act and planning guidance, local planning authorities (LPA) have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations.

In considering any enforcement action, the LPA should have regard to the National Planning Policy Framework, in particular paragraph 58:

*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. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.*

The Council Corporate Enforcement Strategy 2017 accords with the government's 'Better Regulation Agenda'. Specifically, it implements good practice recommended by the Cabinet Office Enforcement Concordat, the Regulators' Code; and the regulatory principles required under the Legislative and Regulatory Reform Act 2006 ("the 2006 Act"),

In achieving compliance, we will work within the principles of good enforcement and exercise our regulatory activities in a way which delivers certain principles, including guidance on consistency and proportionality.

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. There is a clear public interest in pursuing a legitimate aim, by enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

**10 YEAR RULE**

Section 171B TCPA 1990 provides for two different limitation periods for enforcement action.

- Four years is the time an authority has to take enforcement action where the breach of planning control comprises either operational development or the change of use

of any building to use as a single dwelling house.

- Ten years is the time allowed for any other breach of planning control.

The 10 year rule relates to the period of time which may have elapsed when enforcement action occurs. In the case of conditions preventing winter occupation no further formal action to enforce conditions may be possible once they have been continuously breached for over 10 years. Whether that has happened or not can lead to matters in dispute which need to be settled at appeal.

#### **OTHER IMPLICATIONS**

Other implications in relation to flooding, housing, local services, local economy, education, health, housing, human rights, European Nature Conservation Sites, caravan site licensing and public consultation, past planning histories and the Council's emergency planning team, were all described in the 13 December 2013 and 13 June 2014 report to Cabinet and the 9 December 2014 report to Planning Committee.

Prior to Enforcement Notices being served, each case is considered separately with an individual risk assessment, taking into account the personal circumstances known at the time.

### **PART 3 – SUPPORTING INFORMATION**

#### **BACKGROUND**

Reports to Cabinet were presented in December 2013 and June 2014, details are summarised within the Executive Summary and are background papers to this Report. A report to Planning Committee was also made on 2 February 2016

#### **HOLIDAY OCUPANCY**

There are many developments in the Tendring District that would not have been granted planning permission if it were not for the fact that the developments had been restricted for holiday purposes only. The developments were to provide self-catering accommodation in the form of caravans, cabins and chalets. These planning conditions were to ensure that the accommodation does not become the person's sole or main residence. If they were to become residential then it could put undue pressures on services and be contrary to long-established planning policies to protect the countryside and to deliver sustainability objectives and the positive impact on the economy that tourism provides would be lost.

#### **CURRENT POSITION/UPDATE**

The Planning Committee held on 02 February 2016 resolved that it:

1. Notes the outcome of the review, including the monitoring of sites and the potential breaches of planning controls that have been identified;
2. Supports the principle of seeking voluntary compliance with planning controls relating to holiday caravan and chalet occupancy, and where this is not successful to serve Planning Enforcement Notices, giving priority to breaches at Point Clear Bay, Clear Springs and Bel Air; and
3. Receives an update report in relation to this enforcement action early in 2017.

The action taken at the three sites given priority for action by the Planning Committee is summarised below followed by an overview of other sites:

### **Clear Springs**

This site comprises 20 chalets constructed circa 1963 originally as part of a holiday camp. The chalets have since become dwellings. Conditions prevent winter occupation between 14 January and 1 March each year. The majority of the chalets are in Environment Agency Flood Zone 3 with escape routes also in Flood Zone 3. The Council undertook winter monitoring of the site between 2013 and 2016 as a result of which Planning Contravention Notices were served on those chalets which appeared to be occupied during the winter break. The service of these Notices did not resolve matters and therefore a number of chalets were served with Planning Enforcement Notices on 5 August 2016.

Two types of Notice were served; one alleging a change of use as the last known lawful use was as part of a motel and the other alleging breach of the winter occupation conditions. Nine chalets lodged enforcement appeals against various notices.

A decision was issued by the Planning Inspectorate on 12 December 2017. The Inspector quashed those notices alleging a change of use as she found that the chalets had been dwellings both before and after the alleged change of use. In one case she also found that the alleged breach of the winter occupation conditions had not taken place.

However in the other appeals against the breach of winter occupation condition Notices she dismissed the appeals and refused to grant planning permission for all year round occupation on the grounds of high flood risk. The Inspector set a period of four months after 12 December 2017 to meet the Notices. In practical terms this made 14 January 2018 the first winter closed season to which the Notices applied

The Council has written to those occupiers receiving Enforcement Notices giving them details of the date for compliance with the Notices. The site has been monitored in the 2018, 2019 and 2020 closed seasons. In the 2018 closed season warning letters were sent to those chalets which were found to be occupied during the closed period, but these were in the minority. In the 2019 closed season warning letters were again sent to those chalets found to be occupied in the closed season but these were less than in the 2018 closed season. In the most recent monitoring 2020 visit it appeared that only 4 chalets out of 20 were occupied during the winter season. Two appear to be let out for short periods on Airbnb type arrangements to casual occupiers with two found to be let out to casual occupiers. Further action seeking full compliance is being undertaken.

### **Point Clear Bay**

#### **Informal Action**

Informal action has mostly related to the exchange of letters with local residents and the residents' association between 2013 and 2017. Residents denied that the Council was able to take further formal action as to breaches of winter occupation conditions arguing this would infringe their human rights. The Council also warned of further formal action through the service of Planning Contravention Notices but this did not result in matters being resolved. Planning Enforcement Notices were therefore served as all year round occupation continued.

#### **Notices Served**

Notices were served in relation to 78 properties of the 148 investigated in Point Clear Bay. Appeals were lodged against 47 notices,

### **Appeals Lodged**

Appeals were lodged on the grounds that:

- Planning permission should be granted for the development, known as ground (a) and much like determining a planning application. All of these appeals were dismissed primarily on flood risk grounds;
- The Council was too late to take the enforcement action, known as ground (d). Not all of these appeals were allowed but 17 succeeded;
- The requirements of the notices were excessive, known as ground (f). All 8 appeals made on this ground failed; and
- The period for compliance was too short, known as ground (g). The time period for compliance was varied by the inspector to allow 14 months for compliance, as described above.

### **Appeal Decisions**

30 appeals were dismissed and 17 were allowed. Overall, 61 of the 78 enforcement notices served remain in place (31 were not appealed and 30 appeals were dismissed).

The Inspector's decision letters provide useful guidance to the Council in dealing with the occupancy conditions in areas of high flood risk. Key comments from the decision letters include those set out below.

#### Planning inspector's general comments:

The Inspector stated that deciding whether planning permission is granted is whether winter occupation conditions remain reasonable having regard to flood risk and the location of the property outside a defined settlement boundary and its proximity to services and facilities.

She concluded that the condition preventing winter occupation remains reasonable and necessary having regard to the location of the appeal properties in Flood Zone 3 and the risk of flooding during winter months

#### Comments in relation to appeals dismissed

The development is one to be avoided in Flood Zone 3 and the Inspector sees the use as a dwelling in considering flood risk in an area where a breach in defences would be extreme (dangerous) for all for both residents and emergency services. The Inspector acknowledges the risk of deep flood water if this happens and it could be as deep as 3m with a possibility of 4m in places. No Flood Risk Assessments to show how chalets could be made safe were submitted by Appellants nor is it likely that these plans could achieve success.

The Inspector supports the Council's pragmatic approach in granting planning permission for a flood resilient dwelling at 138 Colne Way in 2018 as a replacement for a chalet as an

alternative to other measures to protect chalets.

Importantly, the lack of a five year housing supply does not engage the tilted balance in presumption of planning applications here as there are important reasons not to engage it due to flood risk. This dismisses the argument put forward by the agent in one case arguing that appeals be allowed due to the lack of a five year housing supply

Dismissing appeals would not make residents homeless as there are similar properties to buy or rent in the area. Here it appears the Inspector refers to the Tendring area and not Point Clear specifically.

Very limited weight can be given to concerns about crime or house insurance if properties are left vacant.

Dismissal of the appeals would be proportionate and necessary interference with the appellants' human rights as to private property and family life on the grounds of public safety due to compelling evidence as to flood risk in winter months

Where appeals are dismissed Notices will now allow 14 months for compliance from 18/12/2019 i.e. up to 18/2/2021. 01/11/2021 will be the start of the first full period when the occupiers must leave until 01/03/2022 to meet notices. However, there will first be a two week period, 18/02/2021 – 01/03/2021 when occupation will not be allowed.

The Inspector rejected arguments that notices should be quashed due to possible issues about plans or properties having two different versions of their address. She found no hardship to appellants in making minor corrections to notices before moving on to decide whether appeals were then allowed or dismissed.

#### Planning inspector's comments on Appeals Allowed

The Inspector allowed three appeals and quashed notices on the grounds the Council were out of time for action because the winter occupation restrictions had been breached for more than 10 years continuously. Council Tax evidence was unable to contradict this. The Appellants' evidence was produced very late in the day at the Inquiry itself in most of these cases and would not have been produced except for the service of the Enforcement Notice and appeal. Nevertheless, the Inspector saw the evidence as truthful.

30 appeals included ground (d) that the Council was too late to take action, and 17 of the appeals including ground (d) were allowed. In these cases the Council has often served a prior Breach of Conditions Notice or Enforcement Notice in 1999-2012. It was argued by the appellants that the latest Enforcement Notice was now out of time due to 10 years continuous breach of the condition prior to its service. The Council said case law defeated this argument as not meeting older notices was a criminal offence. However, the inspector rejected this argument which relates to the drafting of various sections of the Town and Country Planning Act 1990 and case law.

The Inspector believes the Council may still be able to take action as to the earlier notices served in 1999-2012 to prevent winter occupation so these may be cases where all year round occupation can still be prevented. Further legal advice has been obtained and alternative steps may be preferable.

14 appeals were made on the ground that the time period for compliance should be longer. The inspector varied notices to allow 14 months from the decision for compliance, as set out above.

Appeals at two properties were allowed, despite previous information being supplied to the Council being shown to be incorrect through the Inquiry . Upon receipt of further legal advice no further action has been taken in this regard.

### **Next steps at Point Clear Bay**

1. Meet with the Environment Agency to discuss the appeal decisions as they are very important as to flood issues and subsequent planning applications in high risk zones.
2. Ongoing engagement with residents whose appeals were dismissed to confirm the revised compliance date and to request that they meet the requirements of the enforcement notices by the relevant date.
3. Monitoring of the site in the 2020/2021 and 2021/2022 closed period to ensure that notices have been met. Not all the notices served were appealed and in those cases the compliance period will be earlier than those notices appealed.
4. Consider alternative legal steps to prosecution as to those properties served with Breach of Condition Notices in 2012.

### **Bel Air Chalet Estate**

#### **Update at Bel Air**

The appeal decisions received at Point Clear now provide helpful guidance and relevant considerations to taking planning enforcement action in high risk areas. This site is also within Environment Agency Flood Zone 3 overall and the same high risk of flooding is a factor as to winter occupation. It has a different planning history to Point Clear. The Council has already been monitoring the site in winter closed seasons and is now identifying those properties where further formal action may be needed as to all year round occupation in breach of planning conditions.

Unlike Point Clear there is an overall landlord for the site where chalets are mostly leasehold or held on licences and further discussion will take place as to whether action by the landlord against those occupying chalets all year round is also likely. However, the Council can also consider whether enforcement action against the landlord is also justified.

Prior to taking any formal enforcement action, individual decisions are required following a detailed risk harm assessment.

#### **Next Steps at Bel Air**

- Complete assessment of chalet occupancy, including serving of Planning Contravention Notices as necessary.
- Serve planning enforcement notices where appropriate.

### **BACKGROUND PAPERS FOR THE DECISION**

- Report to Cabinet (13 December 2013)



- Report to Cabinet (13 June 2014)
- Report to Local Plan Committee (21 October 2014)
- Report to Planning Committee (9 December 2014)
- Report to Planning Committee (2 February 2016)