

Report by the Director for Economy

ENFORCEMENT REPORT

7a Shelley Road, Worthing

**ALLEGED UNAUTHORISED BUILDING WORKS: LAYING OF HARDSTANDING
AT 7a SHELLEY ROAD, WORTHING**

1. Planning History and Background

- 1.1 In May 2015, a complaint was received regarding the laying of a hardstanding on the site of a former scout building in the grounds of a former Church building now adopted by a Company providing medical services.
- 1.2 The former scout building was granted temporary planning permission in 1980 and subsequently granted permanent permission in 1990. A condition imposed upon the permission stated that the building could only be used for purposes ancillary to the then United Reformed Church.
- 1.3 The main building was used as place of worship until 2005 when the congregation moved to another Church and the building became empty soon after.
- 1.4 In 2009, a Certificate of Lawful Use application was submitted for the proposed use of former church building as a health centre (Class D1). The Certificate was granted but but did not include the land occupied by the scout building.
- 1.5 In 2011, an application was received for the replacement of the former scout building to provide a diagnostic clinic and hydrotherapy unit in connection with the health centre. Permission was granted, but was not implemented and subsequently lapsed.

- 1.6 The building was subsequently removed and hardstanding, which has been used for parking, constructed in its place. Upon receipt of the complaint, the Council investigated the matter and considered that the laying of the hardstanding comprised unauthorised development for which a planning application was required.
- 1.7 An application to retain the hardstanding was submitted shortly after but was invalid because of insufficient information and therefore was never registered. In the absence of a valid application an Enforcement Notice was served in October 2015. The site owner immediately appealed against the Notice.
- 1.8 On receipt of the appeal, the Planning Inspectorate raised a query that the Notice alleging the breach of planning control as the laying of a hardstanding was defective as the requirements of the Notice related to the use of the land rather than the operational development itself. As the requirements of the Notice covered a use of the land and not the operational development the Planning Inspectorate stated that it was not clear if the notice complied with section 173 of the Town and Country Planning Act 1990 (as amended). The Planning Inspectorate, therefore, recommended that the Council should withdraw the Notice.
- 1.9 In December 2015, a revised Notice was served which attempted to take account of the comments of the Inspectorate and the original Notice was withdrawn.
- 1.10 The withdrawal of the original Notice meant that the appellant was entitled apply for costs for work undertaken in respect of an appeal against a Notice which the Council subsequently withdrew. The costs application was allowed and a full award of costs made to the appellant. In awarding costs, the Planning Inspector stated:
- 'For the avoidance of doubt, this decision should not be taken to imply any view on the Council's decision to take enforcement action in respect of the alleged unauthorised development.'*
- 1.11 A second, similar, Enforcement Notice was issued and the site owner again appealed and made a second application for costs, stating that the second Enforcement Notice was again invalid.
- 1.12 The appeal decision found that the second Enforcement Notice was indeed, again, invalid. The Inspector stated in the appeal decision:

'The notice with which I am concerned alleges the laying of a hardstanding and the requirements are to cease the use of the hardstanding for car parking and to erect a wooden fence. The notice therefore combines an allegation of operational development with requirements relating to a material change of use. This formulation does not accord with the statutory requirements of the purposes of the notice as provided for in s.173(4) which are purposes dependent on the allegation, that is, either a material change of use for which the requirement is to discontinue the use; or operational development for which the requirement is restore the land to its condition before the breach took place; or to remedy any injury to amenity which has been caused by the breach.

The Council's case is that the requirements seek to remedy the injury to amenity caused by the breach and it is under-enforcing pursuant to s.173(11) because complete removal of the hardstanding would be excessive. But to my mind this argument is misconceived because the injury to amenity must arise from the breach, in this case, the operational development of laying the hardstanding. This is an argument the Council appear to accept as it is also said in its statement that 'it is not the physical works of the laying of the hardstanding which are harmful rather the resulting use of the area so created'.

Similarly it seems to me that any under-enforcement also has to relate to the operational development alleged. It is notable that the Council also appears to acknowledge this in that it states 'a second notice could be served relating to the unauthorised change of use of the land for car parking'. However, the Council did not issue a second notice because it considered 'this would have placed an additional burden on the Appellant and was felt to be excessive when one notice could suffice

For the reasons given above I find that although the notice is flawed it does contain the statutory requirements as provided for in s.173, albeit incorrectly applied, and it is not therefore a nullity but it is invalid.'

- 1.13 In respect of the second award for costs, the Inspector again found in favour of the appellant stating:

'The Guidance advises that although a Council has a general discretion to take enforcement action it is expected to exercise care when deciding to issue a notice and is at risk of an award of costs if it is concluded that an appeal against a notice could have been avoided if it had ensured that the notice was

accurate. Given the similarity between the withdrawn notice and the notice in this appeal I consider that the Council acted unreasonably in issuing a second notice with the same flaws. In reaching this view I note that the Council appeared to be aware of the inconsistencies in the notice in that it says in its statement that 'it is not the physical works of the laying or the hardstanding which are harmful rather the resulting use of the area so created' and 'a second notice could be served relating to the unauthorised change of use of the land for car parking'.

2. Current Position

- 2.1 Following the second unsuccessful Notice and consequent award of costs, your Officers met on several occasions internally to carefully consider the next steps.
- 2.2 As a result the site owner was invited to a meeting to discuss whether a mutually acceptable solution could be agreed in preference to serving another Enforcement Notice. At this stage, your officers were of the view that should a planning application be submitted, without prejudice, the most mutually acceptable solution was likely to be to grant permission subject to conditions which would mitigate the impacts of the hardstanding.
- 2.3 Although an application, albeit invalid, was submitted in 2015 to retain the unauthorised hardstanding, the agent now contends that planning permission was not, in fact required. In reaching this conclusion it is argued by the agent that the laying of the hard standing is allowed in accordance with the rules relating to permitted development. Further it is submitted that a material change of use has not occurred as the parking of cars in the area in question is an ancillary use of the medical centre, such use have occurred previously (circa 1970's) and could not be abandoned.
- 2.4 In response to the agent's comments, your officers contend the contra argument, that the use of the area of hardstanding as a car park is not an ancillary use of the medical centre, and that the grounds relied upon for permitted development of the hard standing are not applicable, as the site form part of a medical centre, not a hospital, as required within the meaning of the Town and Country General Permitted Development Order 2015 Part 7 Class N and M.1g(ii). In determining ancillary use it is argued that the area subject to dispute has in all material respects become a separate planning unit and that former use (circa 1970's) has been abandoned through the operation of the 1990 permission.

2.5 The agent and the Council are at an impasse in relation to their respective legal positions for the site.

2.6 The agent has maintained his argument that the area is used for an ancillary purpose to the medical centre and argues that 1990 permission does not have the effect of taking the area outside the planning unit of the medical centre, and that at best the 1990 permission now creates a 'nil use' for the area. It is further contended that the Council's earlier comments in relation to the appealed enforcement notices that it accepts the position that the laying of the hardstanding is permitted development. In conclusion to these arguments the agents contends that there are three options available, and has stated in correspondence,

"As far as I can see there are 3 options:

1) The Council serve a third enforcement notice. Please note that I am instructed to vigorously appeal the notice following consultation with senior Counsel; and apply for costs if appropriate.

2) You provide compelling evidence that I have misjudged the ancillary argument, at which point I would recommend to my client to apply for planning permission. I remain open to being convinced otherwise, but as things stand I am adamant that "Area A" is ancillary to the former United Reform Church which is now operating as a medical centre use, and therefore using it as an ancillary car park is wholly lawful.

3) The enforcement investigation is dropped."

The Council's position remains that the additional parking area requires planning permission . A neighbour to the car park continues to object to its use, and argues, through her legal representation that the use of the area as car parking amounts to a material change of use requiring planning permission, and that its current use is causing harm to her residential amenity. The Planning Committee is therefore requested to consider the expediency of serving a further Notice having regard to the level of harm being caused to residential amenity.

3. Planning Assessment

3.1 As detailed above, this has become a complex case. The Council has unsuccessfully attempted to serve two Enforcement Notices resulting in an award of costs to the appellant on both occasions. The potential serving of a

third Enforcement Notice therefore has to be considered very carefully. The original complainant maintains their strong objection to the additional car park area..

- 3.2 The area in question is accessed via Grafton Road, with the former Church building now housing Panacea Ltd, being situated to the north in Shelley Road. To the south of the site are residential properties in Chandos Road and there are other residential properties to the west in Buckingham Road.
- 3.3 The entire area is rectangular in shape, with the eastern side historically used for parking. When the former scout building was removed, hardstanding was laid in its place. There is also some landscaping in the south western corner of the site although this does not rise above the low boundary wall that borders the site in that location. The western boundary has a 2 metre high close boarded fence while properties towards the south eastern side of the site have erected their own close boarded fence behind the low boundary wall. Essentially, in terms of neighbour impact any harm is primarily on the properties in Chandos Road to the south western corner as they have no other screening than a boundary wall and are closer to the additional parking area.
- 3.4 For the reasons set out above, your Officers are of the view that the additional car parking area requires planning permission. This was set out to the site owners at the time of the original complaint in 2015, and is also the view of 2 Solicitors within the Council who have provided advice at different times. It is important to note that the unsuccessful Enforcement Notices were not quashed because of any consideration of whether the development requires planning permission. It remains open for the Council therefore to serve a further Notice.
- 3.5 In terms of a remedy, your Officers are of the view that the submission of a planning application could, quite easily, resolve the problem as conditions could be imposed to mitigate the impact of the hardstanding, which is essentially the use of land for parking in close proximity to neighbouring properties in a location where historically stood a building. Indeed in September 2015, just after the complaint was received and following the submission of the application which was incomplete and therefore never registered, the Enforcement Officer advised the agent:

My advice was that the relationship that this creates between vehicles using the extended car park and the rear of the neighbouring residential properties is unacceptable. I advised you that in order for Officers to be able to

recommend approval fencing and/or significant planting would need to be incorporated.

- 3.6 Your Officers, in visiting the site, remain of the view that were additional planting or the erection of a fence to be carried out, which as such would result in the loss of little, if any parking, then there would be no reason to proceed with enforcement action. Unfortunately, the agent does not consider that planning permission is required. Such a view does not prevent the provision of additional landscaping or the provision of a fence outside of the planning process, but it is understood that the site owner does not wish to undertake either action.
- 3.7 It therefore falls upon the Council to decide whether to take enforcement action. It is clearly highly regrettable that the previous Enforcement Notices were defective to an extent that warranted the award of costs to the appellant on 2 occasions. In mitigation, the failure of the Notices was primarily because officers felt that to require the removal of the hardstanding by way of an Enforcement Notice was unreasonable and that a fairer compromise (and certainly less costly to the site owner) was to simply to cease the use of the hardstanding for parking purposes. Officers were mindful that the company involved, Panacea, provide extremely useful medical care facilities and to that end as such would wish to avoid putting the company to considerable expense. However, it is not possible to specify a breach (the laying of a hardstanding) in an Enforcement Notice and then specify a remedy which does not involve the removal of the identified breach.
- 3.8 It is clear from the the Enforcement Officer's comments in 2015 that the retention of the hardstanding and consequent use for parking in its current form is unacceptable. Your officers having reviewed the case consider this remains the case. Previously, the occupier of the buildings to the south would have had a building and fencing screening them from the rest of the parking area. Now, as only a low wall separates the site from these residential properties, the view is completely open. While there is landscaping in the south western corner, this has little impact as it is below the level of the wall.
- 3.9 It has been contended by the agent that the parking use at the site is relatively limited. From your Officers observations of the site, this indeed appears to be the case, yet on a recent visit there was still a car parked in the south western corner of the site (and hence very close to the properties in Chandos Road) when the rest of the car park was almost empty. There appears little reason for this. If it is accepted that the car park is not intensively used, then there seems little apparent reason why the parking cannot be adequately

accommodated away from neighbouring boundaries or screened if necessary. In the absence of a planning application, it is not possible to secure either remedy.

- 3.10 The fact remains, therefore, that if the hardstanding is retained in its current form, then the Council is unable to prevent parking in a location where it causes disturbance to neighbouring properties, even if the overall use of the car park is not to a high level.
- 3.11 Your Officers, therefore, have no option other than to conclude that to proceed with enforcement action is necessary in this case. It is considered that the serving of a third Enforcement Notice can be achieved without it being considered as defective by the Planning Inspectorate provided that the remedy relates to the unauthorised use. This would be the removal of the hardstanding and its restoration to its previous surfacing, which was rough ground beneath the previous scout hut.

4. Conclusion & Recommendation

- 4.1 While it is was hoped that this matter could be resolved by agreement between the respective parties, it has not proved possible to do so. Your Officers are satisfied that the hardstanding is unauthorised and requires planning permission. Your Officers are also satisfied that the retention of the hardstanding in its current form causes harm to the amenities in properties in Chandos Road to the extent that, without mitigation, planning permission would be refused for its retention.
- 4.2 It is therefore recommended that file be passed to Legal Services to review and consider whether enforcement proceedings to facilitate the removal of the hardstanding are actioned. Members are therefore requested to endorse the recommendation.

Schedule of other matters

1.0 Council Priority

1.1 To support and contribute to the health, safety and well-being of the area

2.0 Specific Action Plans

2.1 Matter considered and no issues identified.

3.0 Sustainability Issues

3.1 The location at this level in a flood zone is unsustainable.

4.0 Equality Issues

4.1 Matter considered and no issues identified.

5.0 Community Safety Issues (Section 17)

5.1 None in this context.

6.0 Human Rights Issues

6.1 Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns non-interference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those affected by proposed developments and the relevant considerations which may justify interference with human rights have been considered in the planning assessment.

7.0 Reputation

7.1 Decisions are required to be made in accordance with the Town & Country Planning Act 1990 and associated legislation and subordinate legislation taking into account Government policy and guidance (and see 6.1 above and 14.1 below).

8.0 Consultations

8.1 As referred to in the above report.

9.0 Risk Assessment

9.1 As referred to in the above report.

10.0 Health & Safety Issues

10.1 As referred to in the above report.

11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership Working

12.1 Matter considered and no issues identified.

13.0 Legal

13.1 Powers and duties contained in the Town and Country Planning Act 1990 (as amended) and associated legislation and statutory instruments.

14.0 Financial implications

14.1 Decisions made which cannot be substantiated or which are otherwise unreasonable having regard to valid planning considerations can result in an award of costs against the Council if the land owner is aggrieved and lodges an appeal. Decisions made which fail to take into account relevant planning considerations or which are partly based on irrelevant considerations can be subject to judicial review in the High Court with resultant costs implications.