

**REQUEST FOR AUTHORITY TO DECLINE TO DETERMINE AN APPLICATION FOR PLANNING PERMISSION UNDER S70C OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) RE: (NEW) FULL APPLICATION FOR HOLIDAY RETREAT WITH HOLIDAY ACCOMMODATION INCLUDING 2 STATIC CARAVANS, 1 YURT, 9 TOURING CARAVAN PITCHES, 17 CAMPING PODS, 5 CAMPING PITCHES AND ANCILLARY FACILITIES INCLUDING TOILET BLOCK, CONVERSION OF POLE BARN TO FLEXIBLE SPACE FOR EVENTS, CONVERSION OF DUTCH BARN TO CATERING AREA, CONVERSION OF OLD MILKING PARLOUR TO 4 HOLIDAY LETS, REPLACEMENT OF 2 STOREY STORAGE BARN WITH 2 UNDERGROUND SINGLE STOREY HOLIDAY LET STUDIOS, A POLYTUNNEL AND ASSOCIATED ACCESS AND ACCESS TRACKS, PARKING AND LANDSCAPE AT HOME FARM, MAIN STREET, SHELDON (JS)**

**Summary**

1. The Authority served an Enforcement Notice (EN) on the land in 2008 and 2020. The 2008 notice was in relation to the construction of a track. The 2020 notice was in relation to the excavation of land and the carrying out of building operations, consisting of the construction of foundations and the erection of walls as part of an extension to the existing guest house, a converted former barn.
2. Both enforcement notices were appealed and dismissed. Both enforcement notices are in effect and no action has been taken to comply with the notices.
3. The landowner has now applied for use of the wider site for holiday accommodation. The proposal includes the retention of the track subject of the 2008 enforcement notice and the creation of 2 units of holiday accommodation within the 'underground studios' which have been built to the rear of the existing guest house and are the subject of the 2020 enforcement notice.
4. S70C of the Planning Act gives a power to local planning authorities to decline to determine a retrospective application for planning permission where the proposal relates in whole or in part to those matters specified as a breach in an enforcement notice.
5. Officers have notified the applicant that they are minded to decline to determine the application but under current standing orders the use of such a power is not delegated. Therefore, this report seeks authority from the Planning Committee to formally decline to determine this application.

**Site and Surroundings**

6. Home Farm is located on the eastern edge of Sheldon and comprises a traditional former barn converted and occupied as a guest house.
7. To the rear is an agricultural yard with former agricultural buildings converted or partly converted without planning permission to holiday accommodation, workshop and uses associated with the application. There is also a polytunnel, parking area and a number of timber pods located in the yard.
8. A number of pods, along with infrastructure including tracks, hardstandings, septic tanks, a stone circle and containers have been sited in the fields to the east. Two static caravans are sited to the north of the site.
9. The site is partly within the designated Sheldon Conservation Area and adjacent to the Grade II listed Church of St Michael and All Saints.

10. The nearest properties include the church and neighbouring residential properties.

### **Proposal**

11. This application is retrospective and seeks planning permission for the retention of development carried out on site along with use of the land for a glamping, caravan and camping site as described in the application and shown on the submitted drawings.

### **RECOMMENDATION:**

12. **That authority to DECLINE TO DETERMINE the retrospective planning application under S70C of the Town and Country Planning Act 1990 (as amended) for the following reason:**

1. **The application relates to development of land to which an existing enforcement notice relates and seeks permission for the retention of the matters specified in the enforcement notice as constituting a breach of planning control and there has been no material change in circumstances to warrant consideration of the application.**

### **Key Issues**

13. The impact on the landscape, cultural heritage and the character, appearance and amenity of the local area.
14. Public confidence in the planning system through the effective enforcement of the planning regulations.

### **Planning History**

#### **Planning applications and subsequent appeals**

15. 2004 – planning permission refused for creation of wildlife observation room, erection of greenhouse and creation of car park.
16. 2009 – planning permission refused for house extension and demolition of concrete frame and block walls of a barn.
17. 2009 – planning permission refused for demolition of large corrugated steel barn and breezeblock store to be replaced with a residential courtyard development for the client's extended family. Twelve ensuite bedrooms will be divided amongst four single storey buildings. This application is for phase 2 of a comprehensive redevelopment of the site.
18. 2009 – planning permission granted conditionally for demolition of large corrugated steel barn, breezeblock store and concrete frame/breezeblock building. In total 3 disused outbuildings are to be removed.
19. 2009 – planning permission refused for installation of three LPG tanks. Change of use from meadow to LPG tank site.
20. 2009 – planning permission granted conditionally for change of use of dwelling house to a guest house.
21. 2010 – planning permission refused for erection of 4.27m by 18.29m poly tunnel for growing fruit and vegetables.

22. 2010 – planning permission refused for extension to guest house.
23. 2010 – planning permission refused for erection of 15.62m by 13.68m glass greenhouse for growing fruit and vegetables.
24. 2011 – planning permission granted conditionally for conversion of part of guest room to tea room. Planning Committee – Part A 10 May 2024
25. 2011 – planning permission refused for erection of conservatory.
26. 2011 – planning permission refused for extension and alteration to guest house
27. 2011 – planning appeal against the above refusal dismissed.
28. 2012 – planning permission refused for courtyard development of 10 rooms for the guest house - change of use from field and storage to guest house.
29. 2012 – planning permission refused for the erection of 2 lamp-posts.
30. 2014 – planning permission refused for re-cladding of the existing concrete frame.
31. 2014 – planning permission refused for change of use from C1 guest house to mixed use of guest house and tearoom.
32. 2014 – planning appeal against the above refusal dismissed.
33. 2014 – planning permission refused for ancillary accommodation, leisure accommodation, owners flat and greenhouse. Change of use from yard area and storage to guesthouse.
34. 2021 – planning permission refused for creation of self-contained ancillary accommodation to create 4 bedrooms in two units, to support the current 5-bedroom holiday accommodation.
35. 2024 – planning permission refused for ‘Proposed holiday Retreat with holiday accommodation including 2 static caravans, 1 yurt, 9 touring caravan pitches, 17 camping pods, 5 camping pitches and ancillary facilities including toilet block, conversion of pole barn to flexible space for events, conversion of Dutch barn to catering area, conversion of old milking parlour to 4 holiday lets, replacement of 2 storey storage barn with 2 underground single storey holiday let studios, a polytunnel and associated access and access tracks, parking and landscape’.

#### Formal enforcement action and subsequent appeals

36. 2005 – Enforcement notice served in regard to the material change of use of the land to a mixed-use comprising agriculture and the storage of vehicles.
37. 2005 – planning appeal against the above enforcement notice dismissed.
38. 2009 – The owner (with another) was prosecuted for failing to comply with Enforcement notice, found guilty and ordered to pay £4000.00 which was paid.
39. 2008 – Temporary Stop Enforcement notice served in regard to the carrying out of an engineering operation consisting of the construction of a track and the deposit of stone, soil and other materials in connection with that operation.
40. 2008 – Enforcement notice served in regard to the carrying out on the land of an

engineering operation consisting of the construction of a track and the deposit of stone, soil and other materials on the land in connection with that operation. The partially constructed track in in the approximate position edged blue on the attached plan.

41. 2009 – planning appeal against the above enforcement notice dismissed.
42. 2011 – Enforcement notice served in regard to the material change of use of the land to a mixed-use comprising agriculture, use as a guest house and use for the storage of caravans. Enforcement notice subsequently withdrawn.
43. 2011 – Enforcement notice served in regard to building operations consisting of the erection of a polytunnel in the approximate position hatched black on the attached plan. The polytunnel was subsequently removed.
44. 2011 – Enforcement notice served in regard to operational development consisting of the erection of two lamp posts on the Land in the approximate positions circled blue on the attached plan ("the Lamp Posts"). The lamp posts were subsequently removed.
45. 2013 – Enforcement notice served in regard to the excavation of land and the erection of a building.
46. 2013 – planning appeal against the above enforcement notice allowed subject to conditions.
47. 2013 – Enforcement notice served in regard to the material change of use of Land at Home Farm, Sheldon from a guest house to a mixed use of guest house and cafe and tea room. The alleged use has since ceased.
48. 2013 – Breach of condition enforcement notice served in regard to breach of conditions 1 and 2 imposed upon planning permission NP/DDD/0211/0066. The alleged breach of condition has since ceased.
49. 2020 – Enforcement notice served in regard to Engineering and building operations: namely the continued excavation of a void (in the location shown cross-hatched on the attached plan) immediately to the north (rear) of the guest house, the laying of a concrete base and construction of walls in the void, and any engineering or building operations carried out as part of that activity or associated with it.
50. 2021 – planning appeal against the above enforcement notice dismissed.
51. 2020 – Enforcement notice served in regard to (i) Without planning permission, the carrying out of engineering operations, consisting of the excavation of the land; and (ii) Without planning permission, the carrying out of building operations, consisting of the construction of foundations and the erection of walls. Both the engineering operations and the building operations are in the approximate position shown cross-hatched black on the attached plan.
52. 2021 – planning appeal against the above enforcement notice dismissed.

#### 2023 Injunction Order

53. In 2023 the Authority applied to the High Court for an Injunction Order.
54. The Injunction Order was made on 06 December 2023. In summary it is ordered that:
  1. No development be undertaken on the land without the grant of planning permission.

2. Cease the use of land for the manufacturing and/or sale of Eco Pods or timber buildings; and  
Cease to use specified buildings on the land for commercial and/or residential and/or holiday use.

3. The requirements of the Enforcement Notices dated 1 December 2008 (as varied at appeal) and 16 October 2020.

4. Remove the following developments from the land:

4.1 track and associated works;

4.2 single storey building;

4.3 all shipping containers;

4.4 any tipi-style tents;

4.5 all wooden tents/eco pods, including any partly constructed units;

4.6 the hardstanding for touring caravans;

4.7 the car park next to the track;

4.8 any caravans sited on the land;

4.9 any associated structures, items or materials.

5. Restore buildings under point 2 (above) to the condition they were in before the change of their use from agricultural/ guest house occurred; and

Restore the land to the condition it was in before the breaches of planning control set out under point 4 (above) occurred.

55. The Order required the above to be completed by 8 March 2024 or within 3 months of the determination of a planning application submitted by that date (including any subsequent appeal or statutory or judicial review).

### **The National Planning Policy Framework**

56. Paragraph 60 on Enforcement states;

57. '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 PDNPA Local Enforcement Plan (updated 2024)**

58. In respect of Retrospective planning applications this states;

59. '... Although the submission of retrospective planning applications will be discouraged where we consider a development to be clearly unacceptable, the person responsible will still have the right to submit a retrospective application if they wish, unless an Enforcement Notice has already been issued in relation to the same development in which case we have the power to decline to determine a retrospective application.'

### **Legislation - The Town and Country Planning Act 1990 (as amended). S70C Power to decline to determine retrospective application**

60. This legislation states:

61. 'A local planning authority may decline to determine an application for planning permission or permission in principle for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.'
62. 'For the purposes of the operation of this section in relation to any particular application for planning permission or permission in principle, a "pre-existing enforcement notice" is an enforcement notice issued before the application was received by the local planning authority.'

### **Assessment**

63. Sections 70C is one measure to speed up the planning system and avoid delaying tactics caused by repeat applications. It gives a Local Planning Authority the power to decline to determine a retrospective planning application in cases where the works are specified in a valid enforcement notice, which is the circumstance here.
64. The applicant has already exercised their opportunity to appeal against the enforcement notices, and within those notices, the planning merits of the proposals were considered via their ground (a) appeal and the deemed planning application. In dismissing the appeal against the active 2008 enforcement notice, the Inspector stated: *"My attention was drawn to nearby accesses and I saw that narrow lanes are part of this rural area. However, in comparison the development would appear dissimilar because of its scale. I agree with the Authority that the track would be a scar on the landscape, and it would encroach on the countryside due to the track's positioning and significant distance."*
65. *"I note that trees have already been planted along the edge of the track, but due to the area's topography the development is visible from various vantage points and footpaths. The track's avenue-like appearance is alien to this open setting because of its obtrusive siting. I consider that landscaping would not overcome these serious planning objections, due to the scale of the scheme. And so the track would not appear as a simple limestone roadway. I find that the proposal would substantially alter the area's character, due to the urban appearance, built-form and layout of the track."*
66. *"I find that the proposal's large scale would have a negative effect on the quality of this part of the CA. The development fails to satisfy Planning Policy Guidance Note 15: Planning and the Historic Environment and policy 26 of RSS8 because, the scheme would not protect the region's cultural heritage and it conflicts with Local Plan policy LC5. On this main issue, I conclude that the proposal would not preserve or enhance the character or appearance of Sheldon's CA"*
67. The active Enforcement Notice from 2020 (ref 19/0218) and the subsequent appeal related to excavations and building operations as part of the creation of the proposed 2 units of new building holiday accommodation to the rear of the converted former barn. The appeal was dismissed and the notice upheld. The reasons given by the Inspector are material considerations in the assessment of the current application.
68. *"The unauthorised development is substantial in scale and form, and has a crude and unfinished appearance. The development does not respond to the locally distinctive design details which characterise the adjacent host property, and in this sensitive location it detracts from the valued characteristics of the area. I recognise that a condition could be imposed to require the walls to be finished in natural materials. However, the walls are not complete, the building has no roof and its intended use is*

*unknown. As constructed, facing the walls in traditional local materials would not overcome the incongruous appearance of this substantial and only partially constructed building”.*

69. *“I conclude that the development does not preserve or enhance the character and appearance of Sheldon CA and has a harmful effect on the character and appearance of the host property and the National Park. It causes less than substantial harm to the significance of the CA as a heritage asset. The harm is not outweighed by any public benefit, including any intended improvements to existing holiday accommodation. The development is therefore contrary to policies in the Framework as set out above, including those which seek to conserve and enhance the historic environment. In addition, the development conflicts with the development plan as a whole and in particular with Policies GSP1, GSP2, and GSP3 of the Peak District National Park Core Strategy Development Plan Document, 2011 which, amongst other things, seek to ensure that all development conserves and enhances the valued characteristics of the NP. I also find conflict with the design and heritage aims of Policies DMC3 and DMC8 of the adopted Peak District National Park Development Management Policies, May 2019”.*
70. There has been no significant change in either national or local policy or any other material considerations that would warrant further reconsideration of the justification for the issuing of the enforcement notices. Consequently, Officers consider that the applicant has had his case to retain the works thoroughly examined and would therefore not be disadvantaged by taking this action to decline to determine the new application.

## **Conclusion**

71. Whilst enforcement action is discretionary there were strong grounds in 2008 and again in 2020 to pursue action to remove the significant harm to the landscape and cultural heritage of the National Park that has occurred. The Planning Inspector agreed and dismissed the appeals, confirming the notices and the timescales for the removal of the works. There are no reasonable grounds to delay the removal of the track and the building works to the rear of the converted former barn. The applicant has had his case to retain the works thoroughly examined and would therefore not be disadvantaged by taking this action to decline to determine the new application.
72. The current application therefore represents an unnecessary delaying tactic which frustrates the effective enforcement of planning control. It is therefore now considered both reasonable and necessary to utilise S70C and decline to determine the application.
73. **Human Rights**
74. Any human rights issues have been considered and addressed in the preparation of this report.
75. **List of Background Papers** (not previously published)
76. Nil
77. Report Author: John Shaw – Area Planning Manager – South Team