

Report of meeting at Test Valley Borough Council re planning compliance

Meeting with head of Test Valley Borough Council planning department, Mrs Madalene Winter and Ms Clare Jenkins on Thursday 28th April 2005.

Present Councillors Mike Prince, Jean Lowe and Sue Ransom.

The object of the meeting

The object of the meeting was to clarify how the breaches of planning occurred at Chapel Works and seek ways of preventing the same occurring again.

We explained that the Parish Council accepted the decision made on appeal concerning this house. A great deal of public money was spent in opposing the planning application, supported by Test Valley planning department, and we felt that we should have reasonably expected that the planning department ensured that the house was built strictly according to the appeal decision. However the dwelling has not been erected in accordance with the approved plan. In fact we discovered that the developer had been operating without appropriate plans for what was actually being constructed.

Following receipt of the initial complaint a number of site visits were made and it was concluded by Officers that from the information available a breach of planning control had occurred. This involved revised fenestration in all elevations and the dwelling having a greater overall height between damp proof course and the ridge. MW considered that the changes were sufficiently different for a new planning application to be required. The owners were invited to submit one but to date have refrained from doing so.

We then asked what powers were available to her and she acknowledged that the Planning Department had in most cases no "real teeth" when an architect, developer or owner ignored their request. Instead, they relied on the 99% of the population who follow planning rules and observe the Compliance Officer's request. We were surprised to be told that it was not illegal to build without planning permission, but if the property was sold within the next four years (in some cases more) a solicitor would warn against the purchase.

Her options for non-compliance would be a stop order, an enforcement order, or a breach of planning order. An enforcement order would come first but to effect this she would have to demonstrate "harm". In order to pursue harm she would have to demonstrate environmental damage or physical danger. Disappointingly the changes to the property as regards fenestration and height were not sufficiently great to secure a definite success because she knew that in this case her ruling would be taken to appeal and this would be at great cost to the ratepayers and would almost certainly not succeed.

We questioned the following:

That the Compliance Officer's visit report and the discharge of conditions visits were rather sketchy and that perhaps had they been more observant earlier they may have prevented the breaches of planning as they occurred. Because of limited resources measurements were rarely taken on site. MW insisted that it would have made no difference because she would still be in the same situation regarding enforcement if the owner refused to comply with requests.

Note the compliance Officer visited this site more than most and had detailed photographs of the changes, but as noted above Councils have no power to insist that a developer stops work.

As we expected, very little notice could be taken of the Village Design Statement in connection with this breach of planning because the Council is comparing the plans allowed on appeal with those as built, and it seems that it would have only limited validity in the future especially where, as in this case, the owner ignores all requests to comply. Being in a conservation area would have little or no influence in the same situation.

We addressed the question of precedent and how we might avoid a similar situation. Madalene Winter said that a similar situation could occur again for the reasons outlined above, but fortunately, as she had commented previously, most people observe the planning rules. However, she pointed out that one case does not necessarily set a precedent and, when appropriate, enforcement would be pursued rigorously.

It was very disappointing to discover that when people know how to get round the planning system there is very little that can be done about it. This has made for a rather depressing report.

The only way forward would be to lobby the government to make non-compliance with approved plans a criminal offence regardless of actual damage to the environment. However MW advice is that the government is most unlikely to agree to this.