



North Devon Council

Title of Decision Requested: Enforcement Notice for Escape Down The Rabbit Hole, 1 Garoncrest House, Market Street, Barnstaple, EX31 1BX Ref 13190

Decision requested by decision maker: Agreement to issue Enforcement Notice for Escape Down The Rabbit Hole, 1 Garoncrest House, Market Street, Barnstaple, EX31 1BX

1. BACKGROUND / REASONS FOR THE DECISION REQUEST/BREACH OF PLANNING CONTROL

- 1.1. The breach of planning control alleged that is within the last 4 years unauthorised development consisting of structures in the courtyard area.
- 1.2. An Enforcement Notice should be issued to remedy the alleged breach of planning control. The Council considers it expedient to issue this notice for the following reasons:
- 1.3. The number of unauthorised structures, adhoc placement, poor design and materials utilised, unacceptably impacts on the setting of the immediately adjacent historic assets, Grade II Listed Buildings and furthermore erodes the character and appearance of the designated Barnstaple Town Centre Conservation Area whereby the public benefits of the scheme do not outweigh the harm identified and as such the development is contrary to the provisions in the National Planning Policy Framework Chapter 12, paragraphs 131, 135, 139 Chapter 16 paragraphs 206, 208, 212 and Policies ST04, ST15, DM04, DM07 and DM19 of the North Devon and Torridge Local Plan.

2. FINANCIAL IMPLICATIONS:

- 2.1. There are no immediate financial costs involved with this action. Should the owner not comply with the Notice served, there may be cost involved with taking prosecution action for non-compliance with the Notice or direct action, but this is a decision which can be made at a later time and will only occur if the owner does not comply.

3. ANY ALTERNATIVE OPTIONS CONSIDERED AND REJECTED?

3.1. There are no other actions the Council can take to remedy this breach of planning control. The owner has not willingly complied with requests to remedy the breaches by removing all the structures although one structure has been removed. No planning application has been submitted to regularise the structures.

4. ANY CONFLICT OF INTEREST DECLARED?

4.1. None

5. DISPENSATION IF GRANTED

5.1. Not applicable

6. BACKGROUND PAPERS

The following background papers were used in the preparation of this request (The background papers are available for inspection and kept by the author):

- 6.1. The enforcement case was opened on 6 December 2021 and alleged a trailer was being stored on the site. A site visit on 15 December 2021 found a trailer on site but due to Covid further action pursuing compliance was agreed to be delayed. A site visit on 5 April 2022 found outdoor structures in the courtyard area, the trailer had been removed. No further action was taken until another site visit on 14 September 2023. Environmental Health were consulted on 15 September 2023 and they responded on 18 September 2023 confirming there was the potential for noise nuisance but it depended on what the structures were used for how often they were used and during what hours. [More recent consultation with EHO (19 April 2024) confirms they have received no noise complaints and there is no residential accommodation nearby which could be adversely affected. They confirmed they received one complaint about noise of customers leaving the premises but not from the premises itself and this complaint wasn't pursued as the complainant did not fill out and submit back to the Council the noise diary sheets]
- 6.2. On 25 September 2023 a further site and was carried out and detailed photos taken of the structures on site now. This visit established that there were 4 structures in the open courtyard area on land to the east of 1 Garoncrest House, to the north of Pannier Market both of which are Grade II Listed Buildings.
- 6.3. Following Covid, the government made permanent the rights for pubs, restaurants or other hospitality locations to have a marquee or similar moveable structures within their curtilage (Jan 2022 – under Schedule 2, part 2 Class G) “Class G – moveable structures for pubs, restaurants etc Permitted development G. The provision of one moveable structure within the curtilage, and for the purposes, of a building used for a purpose within—

(a) article 3(6)(p) or (q) (drinking establishments etc.) of the Use Classes Order(1); or (b) Class E(b) (sale of food and drink etc.) of Schedule 2 to that Order.

Development not permitted

G.1. Development is not permitted by Class G—

(a) on land which is or forms part of—

(i) a scheduled monument or land within its curtilage;

(ii) a listed building or land within its curtilage;

(b) if any part of the moveable structure would be within 2 metres of the curtilage of any adjacent land that is used for a purpose within Part C (residential uses) of Schedule 1 to the Use Classes Order;

(c) if the height of the moveable structure would exceed 3 metres;

(d) if the footprint of the moveable structure would exceed the lesser of—

(i) 50% of the footprint of the building, or

(ii) 50 square metres;

(e) if the moveable structure is used for the display of an advertisement

6.4. All structures are within the curtilage of a Listed Building and therefore the Permitted Development Regulations under Class G are not applicable. All structures are not removed at the end of the working day or night (like perhaps parasols or umbrellas) and due to their size, degree of permanence and means of attachment constitute development requiring planning permission.

6.5. The large number of existing unauthorised structures, adhoc placement and poor design, not taking into account a beautiful mature tree within the courtyard, causes demonstrable harm to the setting of immediately adjacent historic assets, Grade II Listed Buildings and further harms the character and appearance of the Barnstaple Town Centre Conservation Area and has the potential to impact on amenity, contrary to the provisions in the National Planning Policy Framework Chapter 12, paragraphs 131, 135, 139 Chapter 16 paragraphs 206, 208, 212 and Policies ST04, ST15, DM04, DM07 and DM19 of the North Devon and Torridge Local Plan. The view from the Conservation Officer is “In terms of effect on the Conservation Area and adjacent listed building, I don’t think any of the structures are particularly appropriate in their physical appearance.”

6.6. Between September and December 2023 internal discussions were being had with regards to the ongoing breaches of planning control.

6.7. A Land Registry search was carried out on 11 December 2023 and (due to the Christmas break) a letter was sent to the owner on 2 January 2024

setting out the breaches of planning control, in relation to the four unauthorised structures in the courtyard and advising them to discuss their options with the Lead Planning Officer. A site meeting took place between the Lead Planning Officer and the operator of the site on 9 January 2024. During that meeting the contents of the letter and the issues of the business, the Local Plan and the links the business had with the local community were all discussed. The operator outlined a potential proposal for the provision of an enclosure along the road to define the area and reduce antisocial behaviour etc. They also discussed their wish to enhance the area with landscaping. It was concluded that the operator would consider what structures they would like to keep/revise to make the business viable going forward and that they would write to us setting this out within 28 days so the Council could make a decision as to whether such revisions could potentially be supported following the submission of a planning application.

- 6.8. An email was sent to the operator on 19 February 2024 chasing a response as we had not heard from them. The operator responded the same day stating, "We are having discussions with the landlord Peter Banbury to come up with a good constructive way forward that suits all parties. Coatings [costings] are currently being worked on coupled with a consultation with our neighbours especially the Pannier Market as we have planned joint ventures scheduled this season. The encouraging signs are positive and we are hopeful for options very shortly.
- 6.9. No further response was received from the operator and a chasing email was sent to them on 1 March 2024 asking for an update. No response was received and a further chasing email was sent on 12 April 2024. No response was received.
- 6.10. An email was sent to the operator on 19 April 2024 advising that the Council were now proceeding with more formal action which would require the structures to be removed by way of an Enforcement Notice against which there was a right of appeal. The operator responded the same day requesting another site meeting. The Council responded the same day asking for details of their proposals but agreeing to a further site meeting once we had received these.
- 6.11. No further email or drawings were received from the operator. A site visit carried out on 7 May 2024 found the structures still insitu.
- 6.12. Between May – June 2024 there were further emails between the Council and the operator seeking a resolution and compliance and one



structure has been removed but the remaining structures are still on the land. A site visit on 9 July 2024 found evidence of these.

6.13. An email from the Council to the Operator on 9 July 2024 advised that a formal Notice for the outstanding breaches was now being served. The Lead Planning Officer instructed the Planning Enforcement Officer to proceed with serving a Notice the same day.

7. CONSULTATION UNDERTAKEN (Please note all who have been consulted on this decision):

7.1 The Lead Planning Officer Matthew Brown has instructed the Planning Enforcement Officer to serve a Notice and drafted the reasons for doing so.

8. OFFICER REQUESTING DECISION TO BE TAKEN: Stacey Salter, Planning Enforcement Officer

9. NAME OF DECISION TAKER: Tracey Blackmore Service Manager (Development Management): Head of Planning, Housing and Health

10. DATE DECISION TAKEN: 12th July 2024

11. APPROVED BY DECISION TAKER: Yes /

12. DECISION TAKER'S COMMENTS: