

## **NORTH AND EAST PLANS PANEL**

**THURSDAY, 12TH NOVEMBER, 2015**

**PRESENT:** Councillor N Walshaw in the Chair

Councillors R Grahame, M Harland,  
C Macniven, J Procter, G Wilkinson,  
B Cleasby, B Selby, S McKenna and  
P Gruen

### **95 Chair's opening remarks**

The Chair welcomed everyone to the meeting and asked Members and Officers to introduce themselves. The Chair informed the Panel that further legal advice would be provided and asked Panel to consider whether the public should be excluded to enable such discussions to take place

### **96 Exempt Information - Possible Exclusion of the Press and Public**

**RESOLVED** – That the public be excluded from the meeting during discussions on legal aspects of the case, with it being considered as if members of the public were present there would be disclosure to them of exempt information as designated as follows:

Discussions referred to in minute 100 under Schedule 12A (3) Local Government Act 1972 and the terms of Access to Information Procedure Rule 10.4(5) and on the grounds that there would be disclosure of information in respect of which a claim to legal professional privilege could be maintained. It is considered that if this information was in the public domain there would be potential legal implications in respect of the information discussed

### **97 Late Items**

There were no formal late items. However, the Panel was in receipt of a supplementary report setting out the latest position in respect of this matter. A copy of this report had been circulated in advance of the meeting and published on the Council's website (minute 100 refers)

### **98 Declarations of Disclosable Pecuniary Interests**

There were no declarations of disclosable pecuniary interests

### **99 Apologies for Absence**

Apologies for absence had been received from Councillor A McKenna, with Councillor P Gruen substituting. Apologies for absence had also been received from Councillor Wadsworth

**100 Application 14/00575/FU - Update report in respect of development granted by planning permission 14/00575/FU for a 4 bedroom detached house incorporating basement accommodation (part retrospective - 56 The Drive LS15**

Photographs were displayed at the meeting

The Panel considered two reports of the Chief Planning Officer setting out the current situation in respect of this matter and providing further information on issues resolved by Panel at its meeting held on 29<sup>th</sup> October 2015

Officers presented the reports and informed Members that in terms of proceeding to demolition of the structure, in line with procurement rules, three tenders for this work had been obtained. In respect of two of the tenders, further information was being sought to clarify aspects of the quote

On the issue of demolition, the Council would need to give 7 days notice of the intention to enter on the land and commence demolition and that following further correspondence with the applicant's legal representatives, it had been stated that the applicant's legal advisers would progress injunctive relief through the High Court once this notice had been served

In respect of the safety concerns raised by Panel, the Council's Building Control Enforcement Officer had undertaken a site visit and advised that in his opinion, the building did not constitute a dangerous structure. Members were informed that as the applicant had elected to use his own Approved Building Inspector, the Council did not have the ability to become involved in Building Control matters related to this case. Members were also informed that the local residents' association had lodged a complaint with the applicants approved building inspector and this matter was being considered under the organisation's complaints procedure. The Panel noted that although an invitation to the approved building inspector to attend this meeting had been issued, no representative of this organisation was in attendance

Further correspondence from the applicant's legal advisers had also been received in respect of the structure of the building, with Members being informed that a Structural Engineer appointed by the applicant had recently visited the site and had reported that the structure was robust and stable and that there were no reasons to consider it a dangerous structure. The letter also highlighted the inability of a final practical completion certificate being issued due to the complaint which had been lodged

On the issue of taking enforcement action to require the tidying up of the site, Members were informed that if a Section 215 Notice was served, the applicant would have a right of appeal to the Magistrates Court. Furthermore, Section 215 Notices should not relate to works which constituted building works as part of the implementation of a planning permission and accordingly it was not considered appropriate at this stage to serve a Section 215 Notice. To progress this issue, Officers would write to the applicant and request that the site be tidied up. Members were also informed that an application had been received for the works to the TPO trees

Councillor R Grahame joined the meeting at this point

The Chair invited the Building Control Surveyor (Enforcement) who had carried out the survey and the Building Control Manager to address the Panel and respond to questions and comments

The Building Control Surveyor advised that he had visited the site, he was not of the view that it was a dangerous structure and considered there was no reason to take any action in this case

In response to questions from the Panel he advised that he had carried out a visual inspection of the building from the boundary of the property at the front and rear as he did not have any jurisdiction to go on to the land and nobody was on the site to ask if a closer inspection could be made. That said, the Building Control Surveyor reiterated his view that he did not feel it necessary to seek to enter further onto the site as his initial assessment was that the structure did not constitute a danger. For clarification, details were provided of the kind of issues which would be looked for when considering the safety of a building. Members were also informed of the previous involvement of the Health and Safety Executive (HSE) as a complaint had been made by residents relating to the working practices seen on site. As those working on the property were family members rather than employees, the site was not treated as a construction site, however guidance leaflets on safe working had been provided

Concerns continued to be raised about the inspection carried out by the Council's Building Control Surveyor with the Head of Planning Services stressing that the Council was not the approved Inspector for this site; that the assessment had been carried out on the basis of the possibility the building being a dangerous structure and that the conclusion was that this was not the case. In terms of the structural integrity of the building, that would be for the approved, private Building Inspector to assess

For information, the Building Control Manager outlined the process in relation to Building Regulations and the inspections which would be required for an Inspector to issue a final certificate

Discussions then took place on the timescales for the issuing of a certificate in view of information provided at the meeting held on 29<sup>th</sup> October by the applicant's legal representatives that a further certificate could not be issued until the property was essentially habitable on the inside i.e. that there was electric heating and water.

The Head of Service, Strategy and Resources – Legal Services advised that clarification on this issue had been sought from the Council's Building Control Officers following the Panel meeting on 29<sup>th</sup> October who advised that whilst a final certificate would need to deal with the electrical works and making the property habitable, this did not preclude the applicant's Building Inspector issuing a further certificate for the shell only and that legally there was no reason why this could not be done

At this point, having resolved to discuss legal information in private, the public were asked to withdraw from the meeting at this point

Members received information from the Panel's legal adviser relating to the terms of the Unilateral Undertaking; the issuing of a certificate of practical completion and associated issues around this and the possibility of demolition of the property, as allowed for in the agreed Unilateral Undertaking.

The public were then re-admitted to the meeting

The Head of Planning Services stated that the reports before Panel had been provided for noting and to update Members on the current situation; that a full discussion had taken place and that the direction of the Panel had not changed, in that the Council was to proceed with arrangements to effect the demolition of the property. Alongside these arrangements a meeting with the Chair and Officers was proposed with the applicant regarding his future plans for the site; that a close watch would be maintained on the complaint brought by the Residents' Association on how the approved Inspector had dealt with matters. It was also proposed that a meeting take place with the local residents' group around the general way the Council was progressing this and their aims and objectives, with further reports likely to be presented to Panel. A letter would also be sent on behalf of the Chief Planning Officer to the applicant stressing the general desire for the property to be completed and for someone to take up residence in the property and for the site to be tidied up

The need for this matter to remain on the agenda for each North and East Plans Panel meeting until it was satisfactorily resolved was suggested as was the possibility of an item being considered by Joint Plans Panel relating to any other similar cases in the city and to identify a suitable procedure for addressing such issues

The Panel considered how to proceed

**RESOLVED –**

- i) To note the reports
- ii) that the outcome of the complaint made by residents to the applicants approved building inspector be monitored and reported to the Panel in due course
- iii) that the Chair and Officers seek to arrange a meeting with the applicant to establish his future plans for the site and then a meeting be arranged with the local residents' group to update them in relation to this matter and their own representations to the approved Inspector
- iv) for this matter to be retained on the agenda for each North and East Plans Panel meeting until a satisfactory outcome had been achieved
- v) for Joint Plans Panel to consider any similar cases which were ongoing in the city and to identify a suitable procedure for addressing such issues

(Under Council Procedure Rule 16.4, Councillor Cleasby required it to be recorded that he voted against this matter)

During consideration of this matter, Councillor J Procter left the meeting

**101 Date and Time of Next Meeting**

Draft minutes to be approved at the meeting  
to be held on Thursday, 3rd December, 2015

Thursday 3<sup>rd</sup> December 2015 at 1.30pm in the Civic Hall, Leeds