DACORUM BOROUGH COUNCIL

DEVELOPMENT MANAGEMENT COMMITTEE MEETING JULY 23RD 2020

GABLE END, FELDEN

ENFORCEMENT NOTICE, 26TH FEBRUARY 2010

A STATEMENT ON BEHALF OF MR & MRS PITBLADO

This report relates to a long running case which has featured for many years in the quarterly enforcement reports to this committee.

For the first time, Mr and Mrs Pitblado have been asked if they would like to put their views on the case to the committee. We are grateful for the opportunity to put the key facts, as we see them, to the committee.

We would like to apologise for the length of the report and ask for members' understanding of the fact that in a matter that has been live for over 10 years, there have been many occurrences.

In this report we would like to bring to the committee's attention three matters: first, what are the key facts, second, what is the result of the Crown Court hearing, which should really be the last word on the subject in terms of legal proceedings and, finally, what the options are now? It should be stated at the outset that we believe there is only one reasonable outcome and that is that the enforcement notice must now be withdrawn. For a matter that is based on a mistake of fact, that is the only fair outcome.

<u>Part 1 – the facts</u>

1. Many of the important facts in this unusual case are set out in the Crown Court judgment, which is also available for committee members to read. Many of the key facts are known to all parties and we believe that they are not in dispute.
2. First of all, Gable End is located in the Green Belt, like much of the area in Dacorum BC.
3. The site where Gable End now stands has been built on since the 1920s or 1930s at the latest, and it has been a residential site since the 1960s. The site itself and the building on it had residential use before Gable End was built as a conversion but not as a separate dwelling.
4. As Gable End was considered unauthorised development in the Green Belt, Dacorum BC issued an enforcement notice in February 2010 requiring demolition of the house and the cessation of the use of the garden.
5. Gable End is an end of terrace house and in February 2010 similar enforcement notices were also issued in relation to the other four houses in the terrace. The difference in the notice against Gable End was that only the owners of Gable End were required to demolish a so-called boundary wall around the small settlement.
6. Mr and Mrs Pitblado took professional advice and appealed to the planning inspector, as did the owner / occupiers of all the other houses in the terrace. All of them were advised by the

same planning consultant and it is common knowledge that this consultant also worked for the developer of the site.

7. The appeal took place in October 2010. It was an informal hearing and there were no legal representatives present, and like the other appellants, Mr and Mrs Pitblado were asked by their professional advisor not to attend. Clearly this advice was questionable. The Inspector quashed the appeals against the middle three houses in the terrace, Meadow View, April Cottage and Woodside. New enforcement notices were issued later and in 2014 appeals against them were dismissed. These enforcement notices are only in respect of the height of the buildings. However, the Inspector dismissed the appeals against Gable End and xxxxx, the house at the other end. The Inspector believed that both of these were new dwellings and that they had been built on a cleared site. The upshot was that Gable End and Birch Cottage were still subject to enforcement action, and were to be demolished.

8. Birch Cottage was demolished in 2015. This could be accomplished without any difficulty because it was built close to the terrace but it was not actually attached to the rest of the terrace. This was not the case with Gable End.

9. Mr and Mrs Pitblado went to court to appeal against the Inspector's decision. It is easy to say with hindsight but, again, the Pitblados received poor advice and did not appeal against the inspector's finding that Gable End was built on a cleared site, even though this finding is demonstrably incorrect.

10. Instead, the Pitblados were distracted by the strict time limit enforced by the notice for compliance. This troubled them because they wanted more time to take action against their conveyancing solicitor who had misled them, in their view. Whilst they had instructed him to carry out a planning search, the Council's enforcement action clearly showed that he had not carried out his duty to them. The plan the Pitblados had was to seek compensation from the solicitor or from the solicitor's insurer to enable compliance with the enforcement notice. Unfortunately, while the case against the solicitor was being prepared, both the solicitor and their insurer went into liquidation. This plan, therefore, ran into the ground and nothing more could be done.

11. Once the notice came into force, in December 2013, the Council's enforcement officers began to focus on the case and Mr Pitblado attended to PACE interviews. He wanted to explain the situation he had been left in. He explained his circumstances to Mr Stanley, who was leading the investigation. The last PACE interview took place in late 2014, but the Council only initiated prosecution action in 2017. For all that time, the Pitblados were left in uncertainty about what would happen.

12. Before the case was heard at the Magistrates Court Mr and Mrs Pitblado, now advised by a different professional team, sought to make clear to Council officers that the inspector had made a mistake. In an email, the Council's head of planning, Mr Doe has also stated that he is aware that part of the original building remains. It was the case of the Pitblados at the Magistrates Court that the prosecution should not be brought as the Council now knew that the inspector had been wrong to assert that the site was cleared before Gable End was built. Mr Stanley stated under oath that the original brickwork was still visible and that it was not a new building. However, the District Judge did not accept that this was a defence against non - compliance with the enforcement notice. He convicted Mr and Mrs Pitblado and fined them approximately £600 each and ordered them to pay costs.

Part 2 - The Crown Court Case

13. Mr & Mrs Pitblado appealed to the Crown Court. They accepted that the facts of the case, ie. the existence of part of the building on the site long before the notice was served, could not, legally, be a defence at Court.

14. Unlike the Magistrates Court case which was over in one day, the Crown Court ensured that both the Pitblados and the Council could take their time putting forward their respective cases, and that each would have the opportunity to cross examine thoroughly.

15. The Pitblados defence was to explain that it was impossible to carry out the requirements of the notice. This was mainly because the demolition is an extremely expensive job and it could not be carried out unaided. At the lowest end, the Council's witness stated that the work would cost close to £100,000, but the Pitblado's witness said the cost would be nearer £150,000. It is not a free standing building. It is attached to the rest of the terrace, with a flimsy wall between them, making demolition a far more difficult task than the demolition of a free standing house. In addition, work of this nature to the house would mean that under the terms of the mortgage contract, also examined by the Court, the Pitblado's mortgage would fall due. There have also been the legal fees for fighting this case so that altogether it was estimated by the Crown Court that the cost to the Pitblados of carrying out the necessary work would be well in excess of £650,000. They are a working family, and they simply cannot raise the income on their wages. Obviously, they cannot borrow against their only asset, their house, as that would be demolished.

16. It is clear from his judgement and from the sentencing remarks that the Judge found particularly that in the circumstances that this case was disturbing for him. He was adamant that going to court was not the correct way forward. He said

17. "it is the courts very considered opinion that the litigation about this particular building and all that has gone on in relation to it, has reached a point where neither of the parties nor the court ought to be troubled further about it. Later he says there can be no doubt about the views of the court in relation to this matter. We have reached an end".

18. The Crown Court distilled the main facts of the case in the following way:

a) Gable End was and is being rented to a family with children and the rental monies are used to discharge the mortgage liability and the mortgage is being served by those rental payments. The mortgage has now some 12 years to run. He found no fault in this.

b) The Pitblados followed a reasonable course of action in seeking to pursue litigation against both their conveyancing solicitors and their insurers. However, both the solicitors and the solicitors insurers had gone into liquidation, so there was no recourse to be had to either.

c) The Pitblados have been left in the position of owning a property that has no value as a result of the enforcement notice requiring demolition of the property, and which is subject to a sizable mortgage.

d) Although the case law envisages the possibility of selling as a reasonable step forward towards addressing impecuniosity, it is self evident that as far as Gable End itself is concerned it has no capital raising value because of the enforcement notice.

e) Simply handing back the keys to the mortgage company and bringing about insolvency (and the wide ranging and long lasting effects on the Pitblados and their children) is not in the court's view a reasonable course of action.

f) Having examined the Pitblados bank statements over the past years in exhaustive detail, it was clear that they spent their money on daily necessities, not on luxuries, but even if cash had been saved for years, (and the family had scrimped and saved and gone without proper food or clothes) even this would not have been close to sufficient to comply with the notice and raise the amount of money needed for that.

g) It was also found that the boundary wall mentioned in the enforcement notice was not in the ownership of Mr and Mrs Pitblado and therefore the notice could not be enforced against them and they could not be compelled to demolish the boundary wall.

h) There was a substantial conflict of professional views as to whether the notice could be enforced without causing damage to adjoining (lawful) residential buildings, Meadow View. If agents of the council did cause damage when they were seeking to enforce the notice, the Council would be liable in damages. They would also be liable in any event for the additional costs of rehousing the families affected while corrective work is undertaken to Meadow View which of course would have to be rebuilt with weather resistant outer walls where currently there is only a thinner, non-load bearing internal wall.

i) As a result, although the Court said that the Pitblado were liable under the terms of the notice because of their continued use of their garden for residential purposes and for their failure to cease mowing the lawn (the court said that there was no defence to these aspects of the enforcement notice) this is the sole basis upon which the court found in the Council's favour.

j) Mrs Pitblado was given an absolute discharge. Mr Pitblado was fined £120. Unusually, the Council were not awarded their costs, so it has to foot the bill which it stated in Court was in excess of £40,000.

Part 3 – Next steps

19. It has been stated that this is the worst case of a breach of the Green Belt that officers have encountered; that cannot be the case, given the facts as they are now known and admitted. It is a very small property and known not to have been built from a completely cleared site. The reality is that the enforcement notice no longer serves the purpose for which it was served over 10 years ago. The reason for issuing the notice in 2010 was the alleged impact on the openness of the Green Belt and the alleged urbanising effect on visual impact on the area. Residential uses though are well established and lawful in the area and the immediate surroundings. As stated above, even the adjoining houses in the terrace have lawful residential use.

20. The situation in the area has simply moved on and other prominent residential development has been permitted by the Council for many years, including one new house some ten or so feet from the other end of this terrace.

21. The options for dealing with the notice are stark:

- The Council has the legal power to demolish Gable End. The main question to be answered here is – what purpose would demolition serve?

  It is for the committee to decide whether this would be worthwhile. The Pitblados would be bankrupt and destitute, with lasting effects on their family life and professional careers.

- The Council could choose to simply "wait it out" until the mortgage falls due, which is simply to delay the bankruptcy.

- The Council has the power to withdraw the notice. This is the only fair course of action. It should also be noted that not only do the Pitblados have school age children, there is also currently a child living at the premises and this would need to be taken into account if any action Is taken to demolish Gable End.

- There may still be a view that demolishing Gable End would enable Council to proceed against the remaining three properties in the terrace. This is far from certain; the Council is in possession of a barrister's Advice that this would be highly unlikely and probably impossible to achieve.

Conclusion

22. This case is very unusual. At its heart is an Inspector's decision that is flawed. All the parties now accept this – Council officers, including Mr Stanley, have seen the building with their own eyes. They have seen that the brickwork dates from the same time as the brickwork in all the other buildings in the terrace. It is a quirk of the planning system that an Inspector's decision, upheld in the High Court, cannot be challenged (here the Pitblados were refused leave to appeal to the Court of Appeal).

23. The only solution for the Pitblados to obtain funds to comply with the notice might have been through the route of suing the solicitor who did not carry out an adequate planning search at the time the property was bought. This case collapsed. However, it is testimony to the Pitblados that they made this effort, and this was also recognised in the Crown Court.

24. It has been alleged against the Pitblados that they moved into the house in order somehow to gain some advantage over the planning system, and that they knew that there was a problem with the planning situation. However, their own actions in pursuing the solicitor demonstrate that this is not the case. Again, having heard extensive evidence, the Crown Court agreed that the Pitblados had made an effort to find the funds to comply with the notice, but the efforts had been thwarted.

25. The Council did not appeal against the decision of the Crown Court, so it must be assumed that it is accepted. The committee is asked to do everything possible to avoid bringing this matter back to court again, just as the Judge has said.

26. With this in mind the Council is reminded of the powers under section 173 A of the Town and Country Planning Act which enables the Council to withdraw this enforcement notice. The committee is asked to support officers in taking this action.

Thank you for reading this report which, it is hoped, can give some insight into this situation, and point out the way forward.