

**TITLE OF REPORT:** Proposed S102 Modification Order – Bank Top, Swalwell Bank, Whickham.

**REPORT OF:** Anneliese Hutchinson, Service Director, Climate Change, Compliance Planning and Transport

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## **1.0 Purpose of the Report**

1.1 To update Committee about the progress of the order under section 102 of the Town and Country Planning Act 1990 requiring the alteration of an existing unfinished house which was granted planning permission in 1998 on the site known as Bank Top, Swalwell Bank, Whickham.

## **2.0 Background**

- 2.1 This issue has been ongoing since April 1998 when the Council granted planning permission for the building of a detached house on Bank Top, Swalwell Bank, Gateshead. When under construction it became evident that the approved house would have an unacceptable impact on neighbouring properties.
- 2.2 After many years of negotiation which struggled to find a way forward, on 26<sup>th</sup> February 2020, Planning and Development Committee resolved to serve a S102 order. This would amend the planning permission to a new design (agreed with the Landowner) which would overcome the impact on the neighbouring properties by lowering the height, obscuring glazing windows and providing landscaping to prevent overlooking.
- 2.3 As required by legislation, the s102 notice was submitted to the Secretary of State for confirmation and, at the same time, notice was served on both the owner of the land and immediate neighbouring properties inviting them to make any comments to the Planning Inspectorate.
- 2.4 The Planning Inspectorate held an Inquiry on 22-24<sup>th</sup> February 2022, which included two visits to the property and surrounding area. This was a hybrid Inquiry with residents from neighbouring properties and a Ward Councillor attending and giving evidence virtually.

## **3.0 Section 102 Legislation**

3.1 Under section 102 of the Town and Country Planning Act 1990 the Council may make an order requiring the alterations of a building on the grounds that it is expedient in the interests of proper planning of the area.

- 3.2 An order made by the Council under section 102 does not take effect until confirmed by the Secretary of State, either with or without modification as the Secretary of State considers expedient.
- 3.4 When an order has been confirmed by the Secretary of State, the landowner can seek compensation payable by the Council. Compensation is payable only if and when an appropriate claim is made within a 12-month period after the order is confirmed.
- 3.5 The Committee should note that the exercise of the Council's powers under section 102 is a serious matter and is a measure only to be taken as a last resort to remedy harmful planning issues. The order deprives the landowner of the benefit of the planning permission which they lawfully applied for and granted in 1998.
- 3.6 An order under section 102 should be made in exceptional circumstances and only when there is a clear case that it is expedient to do so in the interests of the proper planning of the area.

#### **4.0 Decision**

- 4.1 On 2<sup>nd</sup> August 2022, the Secretary of State (DLUHC) confirmed the Order as submitted by the Council subject to the following modifications:
- the timescale for the alterations to be completed has been extended from 1 year to 2 years.
  - the requirement to undertake planting proposals/landscaping has been removed as these were not considered to be necessary.
  - a new condition preventing any new windows at first or second floor level on the north and west elevations.

#### **5.0 Next Steps**

- 5.1 The Landowner has 2 years in which to implement the alterations to the property, namely:
- to remove the pitched roof and replace with a flat roofed design and,
  - to alter the windows in the north and west elevations to provide obscure glazed windows, stained glass obscure glazed windows and to remove an existing window.
- 5.2 Officers will monitor the property over the next 2 years to ensure that the works are being undertaken in accordance with the requirements of the order.

#### **6.0 Conclusion**

- 6.1 This is a longstanding matter with considerable local interest. Officers are pleased that, after full and careful consideration of all interested parties' views, the Secretary of State has agreed to confirm the order which will enable the landowner to finally complete the development.

## **7.0 Recommendations**

7.1 The Committee is requested to note this report for information.

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**1. FINANCIAL IMPLICATIONS**

The landowner is entitled to seek compensation payable by the Council under the Town and Country Planning Act 1990.

The Council holds insurance policies that provide cover in the event of a claim for compensation arising from the making and confirmation of an order under section 102 of the Town and Country Planning Act 1990. It is likely that a claim for compensation will be sought and any such claim will be passed to the Council's insurers who will be responsible for determining its outcome.

**2. RISK MANAGEMENT IMPLICATIONS**

Nil.

**3. HUMAN RESOURCES IMPLICATIONS**

Nil

**4. EQUALITY AND DIVERSITY IMPLICATIONS**

Nil

**5. CRIME AND DISORDER IMPLICATIONS**

Nil

**6. SUSTAINABILITY IMPLICATIONS**

Nil.

**7. HUMAN RIGHTS IMPLICATIONS**

The subject matter of the report touches upon three human rights issues:

- The right to peaceful enjoyment of property (Article 1 of Protocol 1)
- The right of an individual to a fair trial (Article 6)
- The right to private and family life and home (Article 8)

As far as Article 6 is concerned the section 102 regime is outside of the Council's control being administered and confirmed by the Secretary of State and/or The Planning Inspectorate.

With regards to the First Protocol: Article 1 and Article 8 – the operation of planning law represents an interference with the right of every person to the peaceful enjoyment of his/her possessions and their home. Such interference is deemed necessary to control the use of land in the public interest. The rights of the individual have to be balanced against the interests of the wider community

**8. WARD IMPLICATIONS**

Whickham North

**9. BACKGROUND INFORMATION**

Application case file ref 208/98/S102 .