

PAP/2018/0716

Land to the Rear of 1 to 6 Copeland Close, Warton

SUPPLEMENTARY REPORT

Introduction

Members will be aware for the report on tonight's agenda, that we were waiting for the receipt of legal Advice and that an additional report would be circulated once this was received. This Advice was received on Monday morning – the 2nd September.

The Advice

This is attached in full at Appendix A.

It can be clearly seen from Paragraph 9 that the advice is very strongly that it would not be expedient to take enforcement action.

Observations

As reported, the application has now been withdrawn and thus there is no planning application to determine. The Council has to decide whether it is expedient or not to pursue enforcement action in respect of the alleged breach of planning control. Officer advice is that is not and the Advice now received from Counsel is also that it would not be expedient to do so. This Advice has been received from a different Chambers than that sought by the applicant, in order to receive a wholly independent view. It is of substantial weight that neither of the Opinions received support enforcement action. The recommendation below thus follows the advice.

The application was withdrawn because the Advice the applicant received, concluded that there had been no breach of planning control. The same issue was referred to Counsel for the Council. The Advice is that there is no breach - para 16. The issue was that there are two approved plans relating to levels. As a consequence, building out of either of those approved would be lawful. Common sense suggests that the more detailed plan should be the one that is followed and that is what has happened here. The Advice at para 22.4, says that as a consequence, there was no error on the part of the Council.

Notwithstanding the recommendation below, Members will be aware that the Advice has been received at very short notice and that as such the local residents will not have had the opportunity to review its content. As such the Board may wish to defer the matter and receive the residents' comments at its next meeting.

Recommendation

That it is not considered expedient to commence enforcement action in this case for the reasons set out in Appendix A.