

CROOKED HOUSE PLANNING ENFORCEMENT NOTICE

APPEAL BY ATE FARMS LTD

APP/C3430/C/24/3341483

**APPELLANT'S COMMENTS**

November the 29<sup>th</sup> 2024

## 1. INTRODUCTION

- 1.1. This Supplementary Statement is submitted on behalf of the Appellant, ATE Farms Ltd, in response to the Statement of Case of South Staffordshire District Council. It is not the Appellant's intention to reiterate its arguments within this statement and is only responding to certain paragraphs of the statement and comments in order to confirm or clarify its position. Where matters are not responded to in this document, that should not be taken to indicate agreement.
- 1.2. This Supplementary Statement is submitted without prejudice to the Appellant's contention that the hearing of this appeal should be postponed. The cause of the fire which destroyed the Crooked House is an important issue in this appeal. The ongoing criminal investigation means that neither the Appellant nor the Council has yet had access to the primary evidence relating to the cause of the fire. Once that evidence has been made available, it is likely that one or both parties will wish to obtain expert evidence on that issue.

## 2. South Staffordshire District Council Statement

- 2.1 The Appeal is made by ATE Farms Limited, who is the Appellant. The appeal is supported by Mr Adam Taylor and Ms Carly Taylor who were also issued with copies of the Enforcement Notice.

### 6. Summary of events

- 2.2 Paragraphs 6.2 – 6.6 There is a dispute between the parties as to what took place during the conversations and site discussions. This will be dealt with in the Appellant's proofs of evidence.
- 2.3 Paragraph 6.14 Adam Taylor is not and has never been the owner of the land.

### 7. Grounds of appeal

### 8. LPA Response to Appeal under Ground (b)

- 2.4 Paragraphs 8.2 – 8.9 The comments made in the statement that it is 'undeniable that the Building was demolished' and that 'In this case the Crooked House was demolished. This occurred as a matter of fact...' are

disputed. The Appellant's case is that the destruction of the Crooked House was not 'demolition' for the purposes of the Town and Country Planning Act 1990 ('TCPA'). The Council has confirmed that its case is contingent upon a person having been responsible for the deliberate destruction of the building by fire. If the cause is something else, for example, an electrical cable or accident then there would be no 'development' under the legislation. The fact that this is in dispute is supported by the Council's own request for a postponement made on 27th September on the grounds that 'it is the council's view that as both parties are unable to reach agreement that the fire at the Crooked House was caused by person(s) unknown<sup>1</sup>, for the purposes of the Enforcement appeal, we are requesting the appeal to be adjourned until after the police criminal case has concluded. The reason for our position is that it currently could be a key issue at the appeal that the inquiry understands the cause of the fire in so far as human involvement. This could have relevance to whether there has been a breach of planning control.' The Council, itself, has raised a question mark over whether 'demolition' has in fact occurred based upon establishing the cause of the fire. The arguments raised within the Statement of Case all depend upon a person setting the building alight (whether intentionally or otherwise). It does not deal at all with the fire being caused by some other factor.

2.5 Paragraph 8.10 It follows from the above, that should the fire not have been deliberately caused by 'persons unknown' the damage done to the building does not constitute development for the purposes of the TCPA. The Appellant accepts that the works carried out on 7th August in order to make the building safe and which led to the destruction of most of the remainder of the structure amounted to 'demolition'. Simply looking at the end result is entirely unjust, and artificially seeks to create development when none has taken place.

### 9. LPA Response to Appeal under Ground (c)

2.6 Paragraph 9.1 The facts of this case cannot be ignored. In most cases, establishing 'demolition' is straightforward. There is, however, a genuine dispute in this case as to whether 'demolition' has taken place by means of the fire. This a rare arising, as is borne out by the absence of other appeal decisions and case law on this issue.

2.7 Paragraphs 9.2 – 9.3 The key agreement between the parties prior to the works on the 7<sup>th</sup> August was to make the building safe. The remaining structure presented a significant risk and danger. During the discussions

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<sup>1</sup> Which point the appellant sought to characterise as, 'by person **or causes** unknown', to which point the council failed to agree. This point was intended to cover the fact that the fire could certainly have been caused by an event in which humans played no part.

and walkaround between the Appellant's contractor and Council officers, bricks were falling from the building. The priority was to make the building safe. At the time of the in person discussion, it was believed that the work to do so only covered the 'three sections' but it only became clear that the removal of these 3 sections would have a direct and immediate effect upon the stability of the remainder once the work on them was started, by which point officers of the Council had left and an immediate decision was required.

2.8 Paragraph 9.4 – 9.8 Both the Council and the Appellant, through its contractors, were responding to the risk of the remaining building collapsing fully or in part created by the fire. Works had to be completed immediately. Had the risks not been so great, both parties doubtlessly would have engaged suitable experts to review and advise on the remainder of the building. There was no intention by the Appellant or its contractors to demolish the building – it became clear that this was necessary during the works which took place following the discussions. Had the officers remained on the land to observe and view the works they would have been present during the situation which presented itself following the works to the three sections on the first floor. Given the risks observed by the council officers following the fire, the historic works which they had known had been undertaken to the building to stabilise it, it is a mystery to the Appellant why those officers did not remain on the land during the works to observe and advise. The Appellant can in no way be criticised for not consulting the council at a time when the building was collapsing when the officers had chosen to leave the site prior to the works being undertaken.

2.9 The Appellant will submit that the issue of the events after the fire is academic in any event. Pursuant to Section 173(4) TCPA, the lawful purpose of an Enforcement Notice is to remedy the breach of planning control. If the breach is the demolition of those parts of the wall which remained after the fire, that would mean returning it to its condition after it had already been destroyed by fire. That is not the outcome which the Enforcement Notice seeks, nor does anyone consider it to be a sensible outcome. The reality is that the Council's case on this appeal stands or falls on proving that the breach was the deliberate destruction of the property by fire, and that requiring the Appellant to reconstruct the building to its pre-fire condition is the appropriate response.

#### 10. LPA response to appeal under Ground (a)

2.10 Paragraphs 10.9 – 10.16 Policy EV9. The Appellant's position is that the facility cannot be viewed properly as a community facility due to factors such as its remoteness from what could be described as a community, and had

there not been a fire, it would have been appropriate to address these matters in the event of any application for a change of use. The fact that the premises has been in use for a long period as a pub, and that there are others in the wider locality does not provide any evidence to the viability of this premises. The Appellant will provide evidence that goes to this directly at the Inquiry, and firmly disputes that the facility is viable, or that it can be properly considered a community facility.

- 2.11 Paragraphs 10.17 – 10.20 Heritage. The Council argues that the loss of a heritage asset is against Policy EQ3. The Appellant notes that they did not seek the loss of the asset, and that separately they would argue that the context of this asset is at most a minor contributor to its significance. The Appellant will address heritage matters through evidence.

#### 11. LPA response to appeal under Ground (f)

- 2.12 Paragraph 11.2 The Appellant's case is that the fire is only part of the demolition if it were set deliberately; their position is that the origin of the fire is through persons *or causes* unknown, and that they maintain that they are not in any way responsible for the starting of the fire. As such their position is that the fire may well have been due to an accident, and as such cannot be viewed as development, but if it were shown to be the case that the fire was started deliberately, by a unconnected third party, it would be entirely disproportionate to punish the owner by mechanism of requiring a rebuild costing into the millions of pounds to repair an act for which they bore no responsibility.

- 2.13 Paragraph 11.3 Rebuild elsewhere. This is indeed relevant to the Appellant's position on proportionality, and it remains the case that the Appellant may seek consent elsewhere for the rebuild, and the Inspector may have regard to this. There is no objective justification for re-creating the Crooked House pub in its original, remote position, surrounded by landfill and on unstable land, if a better location is available.

#### 12. LPA response to appeal under Ground (g)

- 2.14 Paragraph 12.1 – 12.2 The Appellant will present evidence that goes to the feasibility of the proposed timing of the prospective rebuild; the Appellant will argue that both for reasons of the physical challenges imposed by the site, and the nature of the building, but also with regard to funding, insurance and so on, the three years is indeed insufficient.