

Classification: OFFICIAL

CHILTERN DISTRICT COUNCIL

PLANNING COMMITTEE - 22 February 2018

INDEX TO APPLICATIONS ON ALLEGED BREACHES OF PLANNING CONTROL REPORT

**Chesham**

**2017/00121/AB**

Ward: St Marys and Waterside

Page 2

Alleged Breach: Material change of use of land for the display and storage of cars for sale.

**112 Latimer Road, Chesham. Buckinghamshire. HP5 1QQ**

# REPORT OF THE HEAD OF PLANNING & ECONOMIC DEVELOPMENT

## Alleged Breaches of Planning Control Applications 22 February 2018

---

### 2017/00121/AB

Case Officer: Miss Kirstie Elliot  
Date received: 05.05.2017  
Parish: Chesham Ward: St Marys And Waterside  
Alleged Breach: Material change of use of land for the display and storage of cars for sale  
Location: 112 Latimer Road  
Chesham  
Buckinghamshire  
HP5 1QQ

### MATTER FOR CONSIDERATION

To consider the expediency of further action in respect of the use of the land for the display and storage of cars for sale.

A site location plan is attached as *Appendix AB.1*

### RELEVANT PLANNING HISTORY

CH/2005/1032/OA: Replacement industrial buildings. Refused due to lack of Flood Risk Assessment. Subsequent appeal dismissed 05.12.05 (paragraph 7 of the decision notes the use of site to be a 'general breakers yard and fabrication site')

CH/2005/1707/OA: Replacement industrial buildings. Refused due to lack of Flood Risk Assessment (officer report states the site is being currently used as a general breakers yard and fabrication site).

CH/2006/1294/BCC: Application for certificate of lawfulness for an existing use relating to the importation, storage and processing of waste. Application site identified as including the dwelling to the east. Certificate not granted by reason of lack of evidence and inclusion of residential property.

CH/2017/1677/FA: Change of use for storage and sale of cars (Use Class Sui Generis) (Retrospective) Permission refused, 02.02.2018. The case officer's report is attached as *Appendix AB.2*

### ALLEGED BREACH

Enforcement Officers from the Council first visited the Land on 18th May 2017 following an allegation made by a member of the public.

At the time of this visit the enforcement officer observed, and was advised by the business owner, that the site was being used for car sales. The majority of the external areas of the site and the access bridge were covered with cars displayed and/or stored for the purpose of being sold.

## REPRESENTATIONS

The business owner made a retrospective planning application to regularise the breach of planning control under reference CH/2017/1677/FA. The agent submitted a statement in support of the application and there were a number of third party representations, these are detailed in the case officer report at **Appendix AB.2**

## CONSULTATIONS

The Highway Authority and Environment Agency were consulted with regard to the retrospective planning application (reference CH/2017/1677/FA). Their responses are detailed in the case officer's report at **Appendix AB.2**

## POLICIES

Core Strategy for Chiltern District - Adopted November 2011. Policies: CS4, CS16, CS20

The Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011. Saved Policies: GC1, GC3, GC10, GC12, GB2, GB29, TR2, TR11 and TR16

## ISSUES

### 1 Is there is a breach of planning control?

1.1 As detailed in the case officer report for retrospective application CH/2017/1677/FA, the site has previously been used as a car breakers yard and a general breakers yard and fabrication site. There are a number of timber structures and shipping containers present on the north-west and west sides of the site and a large area of cement hardstanding present on the central and eastern side of the site. Aerial photographs and the planning history indicate that these buildings/structures and hard standing have been on site for many years. It is not known what the site was being used for immediately prior to the current use for car sales. Notwithstanding this, the use of the site for the display and storage of cars for sale (sui generis use) is a material change of use of the land for which planning permission is required.

### 2 Is it expedient to take enforcement action?

2.1 The breach results in planning harm as set out in the case officer's report for refused retrospective planning application reference CH/2017/1677/FA (see **Appendix AB.2**), and therefore amounts to an unacceptable form of development when considered against the policies in the development plan. It is therefore expedient to consider using formal powers of enforcement to seek the remedy of the breach of planning control in order to remedy the harm caused by the development.

2.2 The harm caused by the unauthorised development specifically results from harm to:

- the openness of the Green Belt through the external display and storage of cars for sale on the site, contrary to saved policies GB2 and GB29 of The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011, and paragraphs 87-90 of the National Planning Policy Framework;

- visual amenity and special landscape quality provided by the Chess riverbank through the external display and storage of cars for sale on the site contrary to saved policies GC1 and GC12 of The Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011; and

- public and highway safety by reason of additional traffic generation, intensification in use of an existing inadequate access with substandard visibility and inadequate provision on site for vehicles to manoeuvre, load and unload clear of the highway, contrary to the aims of Buckinghamshire LTP4, the National Planning Policy Framework and Saved Policies TR2, TR11 and TR16 of The Chiltern Local Plan

Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011.

### **3 Human Rights**

3.1 The taking of enforcement action would amount to an interference with the Human Rights of the owners and/or occupiers of the site as set out in the Human Rights Act 1998 ("the HRA"). The Council must act compatibly with the rights of the owners and occupiers of the site and must take into account the impact that a decision to take enforcement action will have on those rights.

3.2 The relevant Articles of the HRA which need to be considered are:

- Article 6: The right to a fair hearing. This is an absolute right. The owners and occupiers of the land are aware that the unauthorised development is a breach of planning control and that the Council is considering taking enforcement action in respect thereof and have been given the opportunity of making written representations, and to make an application for the Council to consider 'without prejudice' granting planning permission or lawfulness for the development. Any applications made and the relevant decisions have been reported earlier in this report. The availability of the statutory right of appeal following the issuing of any Enforcement Notice together with the further statutory right of appeal against the decision of the Secretary of State for Communities and Local Government meets the requirements to ensure a fair hearing.

- Article 8 and Article 1 of the First Protocol: The right to respect for private/family life and the protection of property. This is a qualified right and the Council can only interfere with this right where this:-

(a) is in accordance with the law;

(b) serves a legitimate aim; and

(c) is necessary and proportionate in the particular circumstances of the case.

3.3 In respect of (a) above, as long as the decision to take enforcement action is taken pursuant to the provisions of Part VII of the 1990 Act, the action will be taken in accordance with the law.

3.4 In respect of (b), taking enforcement action against breaches of planning control serves a legitimate aim, namely the preservation of the environment in the wider public interest. This has been confirmed by decision of the European Court of Human Rights in the cases of *Buckley v United Kingdom* and *Chapman v United Kingdom*.

3.5 Thus the only issue left that requires consideration is (c), whether enforcement action is necessary and proportionate in the particular circumstance of the case. In this respect, the Council needs to consider whether the objective can be achieved by a means which is less interfering with an individual's rights and whether the measure has an excessive or disproportionate effect on the interests of the affected individual(s). The objective in this case is the proper enforcement of planning control. It is not considered that there is any other means by which this objective can be secured which interferes less with the rights of the owner/occupant(s). Nor is it considered that the service of an enforcement notice would have an excessive or disproportionate effect on their rights.

3.6 Given the harm identified in this report that is caused by the development, it is considered appropriate to pursue action in the form of an Enforcement Notice under Section 172 of the Act as a mechanism for resolving the adverse impact that the development has as described above.

**RECOMMENDATION**

1 That the Planning Committee authorises the service of such Enforcement Notices pursuant to Section 172 of the Town and Country Planning Act 1990 (as amended) in respect of remedying the breach of planning control as may be considered appropriate by the Director of Services. The precise steps to be taken, period of compliance and the reasons for serving the Notice to be delegated to the Director of Services. In the event of non-compliance with the Notice, the Director of Services having delegated authority to instigate legal proceedings and/or direct action to secure compliance with the Notice.