

CHILTERN DISTRICT COUNCIL

PLANNING COMMITTEE - 12th July 2018

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Alleged breach: Without planning permission, the erection of a fence.

Bat and Ball Public House, Penfold Lane, Holmer Green, Buckinghamshire, HP15 6XW ("the Land")

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Alleged breach: Without planning permission, the erection of a wall on the Land.

Austenwood Cottage, 39 Austenway, Chalfont St Peter, Buckinghamshire, SL9 8NN ("the Land")

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Alleged breach: Without planning permission, the material change of use of the Land from a mixed use of agriculture and residential use accommodating no more than eight (8) Gypsy & Traveller pitches to use as a Gypsy & Traveller site comprising the laying of hardstanding and the stationing of additional mobile homes resulting in material increase in number of pitches on the Land

Green Park, Copperkins Lane, Amersham, Buckinghamshire, HP6 5SS ("the Land")

Great Missenden

2017/00314/AB Ward: Prestwood and Page No: 53
Heath End

Alleged breach: Without planning permission, the erection of a fence on the Land.

Sellengers Round, 68 High Street, Prestwood, Buckinghamshire HP16 9EN

Little Missenden

2018/00001/AB Ward: Little Missenden Page No: 59

Alleged breach: Without planning permission, the material change of use of the land to residential by the stationing of a caravan in residential occupation.

Land Between Mantles Green Cottage and Mantles Farm Fields, Hyde Heath Road, Hyde Heath, Buckinghamshire ("the Land")

Little Missenden

2017/00314/AB Ward: Little Missenden Page No: 66

Alleged breach: Without planning permission, the erection of a Fence on the Land

Merryhill Farm, Windsor Lane, Little Kingshill, Buckinghamshire

Little Missenden

2018/00023/AB Ward: Holmer Green Page No: 72

Alleged breach: Without planning permission, a material change of use of the Land from amenity land to residential.

2A Browns Road, Holmer Green, Buckinghamshire, HP15 2SL ("the Land")

Chalfont St Peter

EN/18/2036 Ward: Central Page No: 80

Alleged breach: Breach of Condition 2 of Planning Permission CH/2017/0904/FA (delivery outside of hours).

Costa Coffee, 59 - 61 St Peters Court, High Street, Chalfont St Peter, Buckinghamshire, SL9 9QQ ("the Premises")

REPORT OF THE HEAD OF PLANNING & ECONOMIC DEVELOPMENT

Alleged Breaches of Planning Control 12 July 2018

SUBJECT:	<i>Planning Enforcement Report - 2016/00238/AB/1</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Adam Pegley</i>
WARD:	<i>Chesham Bois And Weedon Hill</i>
SITE ADDRESS:	<i>56 Copperkins Lane Amersham Buckinghamshire HP6 5RA</i>
BREACH:	Without planning permission, the construction of a single storey rear extension

1.0 INTRODUCTION & SUMMARY

- 1.1 The site is a residential dwelling situated in Copperkins Lane, located within the Metropolitan Green Belt and Chiltern's Area of Outstanding Natural Beauty.
- 1.2 A single storey rear extension (the subject of this report) has been constructed to the rear of the property without planning permission.

2.0 MAIN ISSUES

- 2.1 Consideration of why the unauthorised extension is not compliant with local and national planning policy allied with the expediency of enforcement action in the public interest.

3.0 RECOMMENDATION SUMMARY

- 3.1 That it is expedient in the public interest to issue an Enforcement Notice requiring the removal of the unauthorised single storey rear extension, as it is contrary to relevant planning policy.

4.0 RELEVANT POLICIES

National and Regional Policies

National Planning Policy Framework (NPPF), 2012.

Local Policies

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4, CS8, CS20, CS24, CS25 and CS26.

The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Saved Policies: GC1, GC3, GC4, H3, H11, H12, TR2, TR3, TR11, TR15 and TR16.

Adopted Council Enforcement Plan.

5.0 RELEVANT PLANNING HISTORY

5.1 CH/2017/0860/FA - Single storey rear extension to garage (retrospective). Application withdrawn.

6.0 BACKGROUND INFORMATION

6.1 Planning permission is required for this single storey rear extension, yet no application has been forthcoming and the unauthorised development remains in situ. This unauthorised development has been witnessed by Council officers who have recorded their findings as part of enforcement case 2016/00238/AB and photographic and other documentary evidence has been saved in the repository attached to this record.

6.2 Contact was made with the owner who has thus far failed to meaningfully engage with the Council.

7.0 CONSULTATIONS AND REPRESENTATIONS

None.

8.0 PLANNING CONSIDERATIONS

The extension measures 8.7 metres in depth, 5 metres in width and is single storey with a flat roof to a height of 2.8 metres.

The Main Issues

- Impact on the openness of the Green Belt
- Whether the development preserves and/or enhances the scenic quality of the Area of Outstanding Natural Beauty
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

8.1 Impact on the openness of the Green Belt

The site is located within the Metropolitan Green Belt. Paragraph 89 and 90 of the National Planning Policy Framework identify development within the Green Belt which is and is not inappropriate. In relation to extensions, paragraph 89 includes the following an exception to inappropriate development, *"the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building"*.

8.2 The unauthorised extension extends some 8.7 metres in depth beyond the rear of the dwelling into the open Green Belt and fields beyond. This has resulted in a significant adverse impact on the openness of the Green Belt by not respecting the provisions of the Framework and including a disproportionate addition over and above the size of the original building. Consequently, the single storey rear extension would constitute inappropriate development which, by definition, is harmful to the Green Belt.

8.3 Local Plan Policy GB13 is clear. Extensions to dwellings will be permitted, but only providing that they are *subordinate to the size and scale of the original dwelling* and *are not intrusive in the landscape*. The intent of this policy is to re-inforce the Council's policy to control the size and scale of extensions to dwellings in the open countryside, in order to achieve consistency with the function of the Green Belt by keeping land open. Therefore, only limited extensions will be permitted to existing dwellings. It cannot be considered that this is a "limited" extension, which at 8.7m in depth goes significantly above

and beyond the "permitted development" allowance for larger home extensions. The extension represents a significant and substantial increase in floor space and as such is not considered subordinate or modest in size. Observation of the plans and photograph of the extension (see Appendix A and B at the end of this report) show a clear alteration to the character of the dwelling by virtue of the extension, which clearly dominates the existing dwelling. As such, the rural appearance of the area has been adversely affected.

- 8.4 Policy LSQ1 is the Chiltern District Local Plan's principal policy in the Area of Outstanding Natural Beauty and states "*the primary objective [with the AONB] is to conserve and enhance the natural beauty of the landscape.*" Development inconsistent with this objective will be refused. Key criteria in order to assess whether development achieves this objective include its design and scale. In this case, as outlined above the extension is considered disproportionately large and out of scale with the remainder of the dwelling. As such, the development does not preserve or enhance the natural beauty of the area and develops the urban environment further into open countryside. The extension is therefore contrary to Local Plan Policies GC1 (design) and LSQ1.
- 8.5 In summary, the unauthorised extension is inappropriate development which would harm the openness of the Green Belt. Objection is also raised to the development on its size, scale and resultant adverse impact on the scenic character and beauty of the Area of Outstanding Beauty. The Framework advises that substantial weight should be given to any harm to the Green Belt and great weight should be given to conserving landscape and scenic beauty in the AONB.
- 8.6 No planning permission has been submitted for the development (planning application CH/2017/0860/FA was withdrawn and despite planning enforcement advising the applicant a further application must be submitted or formal enforcement action would be considered, none have been forthcoming) and no very special circumstances necessary to justify the development exist. The proposal, therefore, conflicts with paragraphs 87 to 89 and paragraph 115 of the National Planning Policy Framework and Local Plan policies GB13 and LSQ1.

9.0 **HUMAN RIGHTS ACT**

The following articles of the Human Rights Act 1998 are considered to be relevant in this case: Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence. Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions. Both of these rights could be outweighed when considering the general interest and the rights and freedoms of others. The addition of this development causes unacceptable harm to the visual interest and the character of the area in which it is located. The need to remedy the breach is in the interest of the wider community and, with the lack of demonstrable information to the contrary, greater than the needs of the individual.

10.0 **EQUALITY IMPACT ASSESSMENT**

The Equality Act 2010, which came into effect on 1st October, includes a new public sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

- 10.1 Part 11, Section 149 provides the following 'Public sector equality duty' on authorities: "(1) – A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant

protected characteristic and persons who do not share it.” It is therefore necessary for the authority, in consideration of this report, as with the consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking the recommended action.

10.2 The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered proportionate and in the public interest in order to uphold the planning laws of the land and harm caused to the amenity of the area.

11 **EXPEDIENCY**

The issue of an Enforcement Notice by Local Planning Authorities is discretionary and it is the Council’s decision to decide whether a notice is expedient in the public interest. In doing so, consideration must be given to all the options:

11.1 **Do nothing or under enforce**

The breach of planning control was brought to the Council’s attention by a concerned resident. To do nothing at all in this case is likely to attract complaints from residents and is, in the circumstances, unjustifiable.

11.2 **Negotiate**

The adopted Enforcement Plan states that wherever possible, officers will negotiate to bring a contravention into compliance but goes on to recognise that sometimes enforcement action is necessary to reach the right outcome.

The owner has offered no comment and has not sought to engage with the LPA. The harm caused by the unauthorised development is demonstrable. There is no reason to invite a planning application as the development would not be supported at officer level. For these reasons, it is considered that in order to remedy the breach in a timely manner there is no scope for further negotiation.

12 **Issue an Enforcement Notice**

The only other option available to the Council is to issue an Enforcement Notice. This would have the benefit of remedying the harm that is being caused. It would also boost public confidence in the integrity of the planning system and the decision making of the Council as local planning authority as there is local objection to the unauthorised development. Given the owner’s attitude, it is likely that an appeal will be forthcoming but the author of this report believes that the Council’s case is sound and any appeal would be likely to be dismissed.

13.0 **CONCLUSIONS**

The Council’s solicitor should be instructed to issue an Enforcement Notice pursuant to Section 172 of the Town and Country Planning Act 1990 requiring, within **Three (3)** months:

Requirements:

- i. Demolish unauthorised the single storey rear extension in its entirety (as shown outlined in blue on the attached plan) and remove any resultant debris from the works from the Land.

The reason for issuing a Notice

It appears to the Council that the above breach of planning control has occurred in the last 4 years.

The unauthorised extension has resulted in a disproportionate addition to the original dwelling, is out of scale and extends into open Green Belt land to the rear of the property, such that it would constitute inappropriate development. The extension represents a substantial increase on residential floor space and is not modest and indeed dominates the rear of the existing dwelling through its size and substantial depth.

The unauthorised development is therefore contrary to Policies GC1, GB13 and LSQ1 of The Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011 and guidance contained in the National Planning Policy Framework.

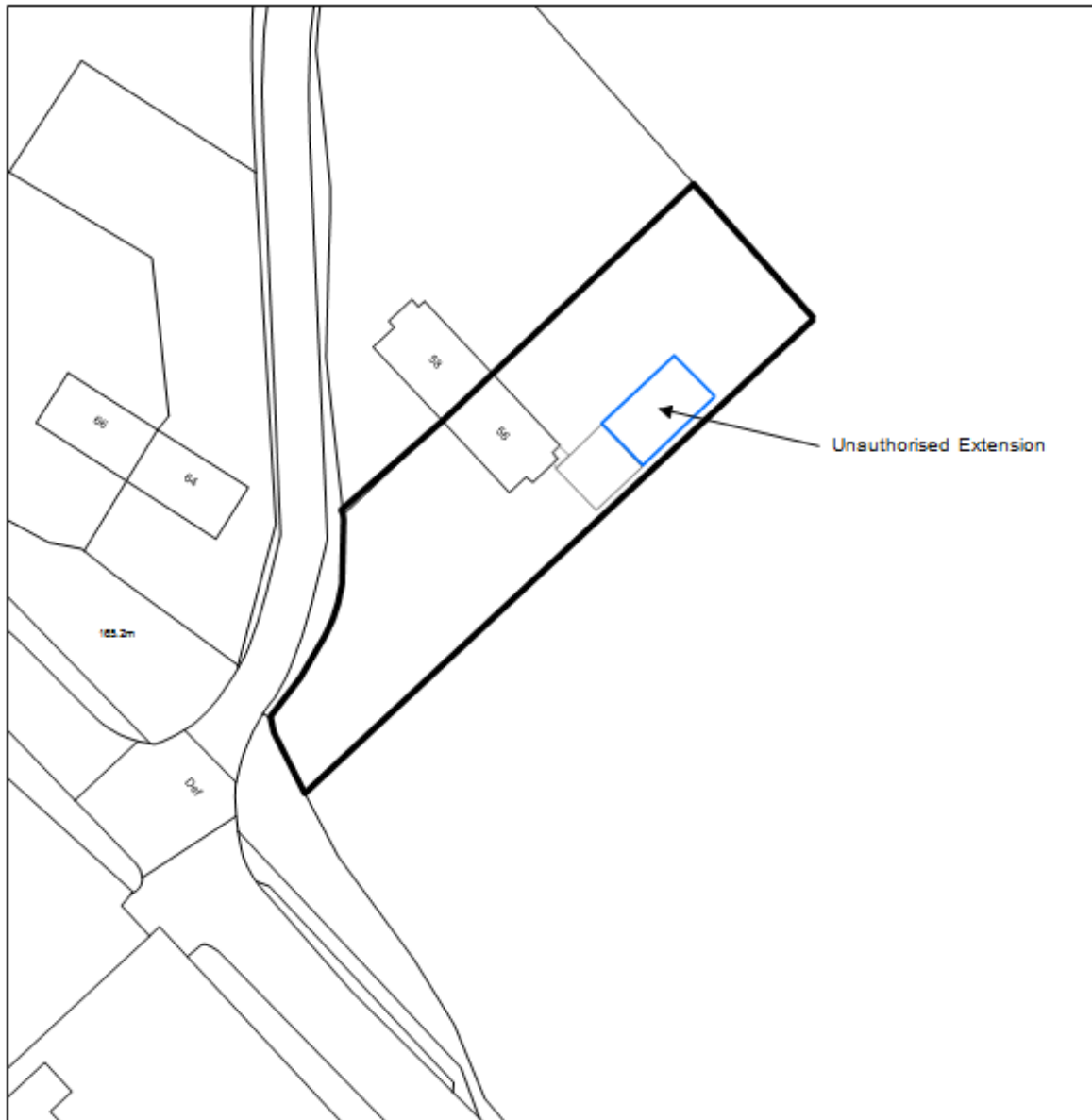
The Council does not consider that planning permission should be given because planning conditions could not overcome these objections to the development.

Copies of the notice should be served on:

Mr Imran Arshad, 56 Copperkins Lane, Amersham, Buckinghamshire, HP6 5RA
The Owner, 56 Copperkins Lane, Amersham, Buckinghamshire, HP6 5RA
The Occupier, 56 Copperkins Lane, Amersham, Buckinghamshire, HP6 5RA

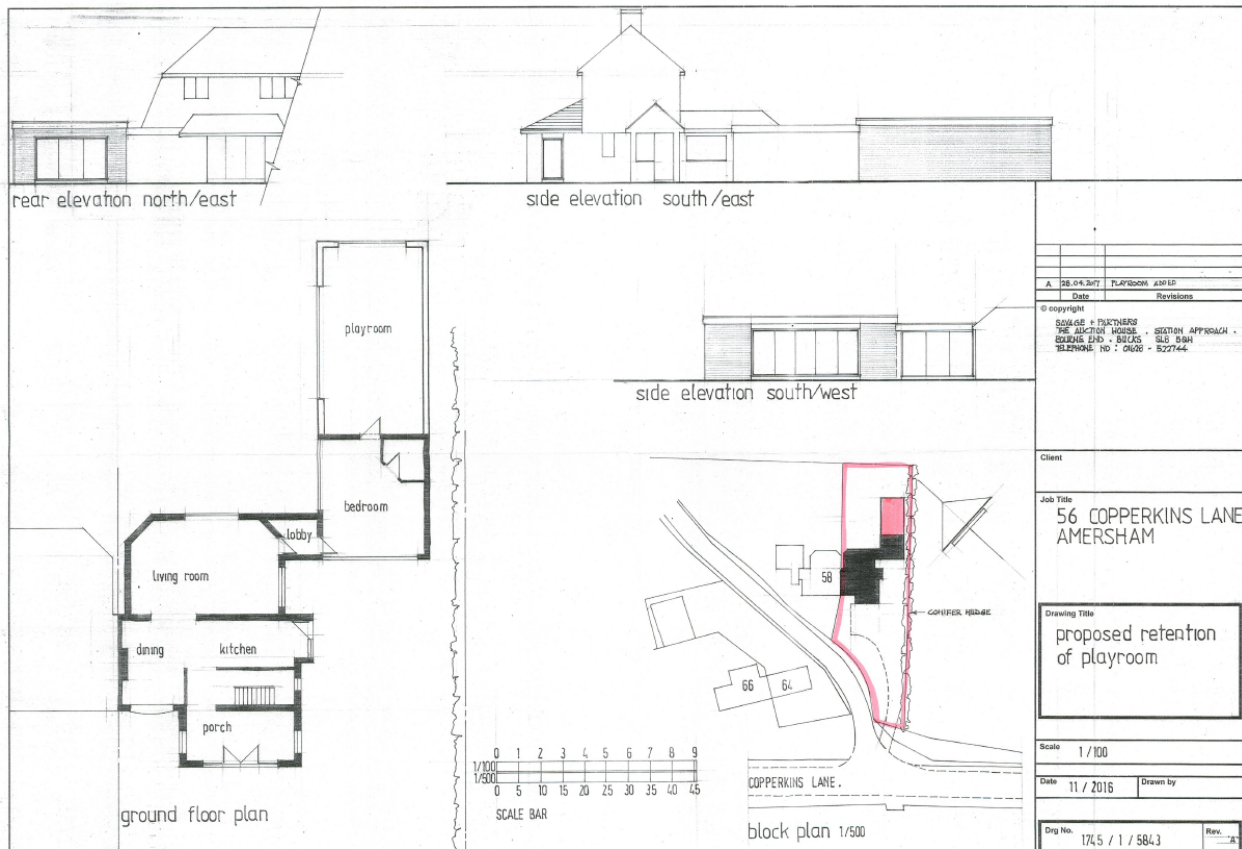
2016/00238/AB - Enforcement Notice 1

56 Copperkins Lane, Amersham,
Buckinghamshire, HP6 5RA



1:500





Signed:
Steve Bambrick – Director of Services

Dated:

Signed:
Joanna Swift – Head of Legal and Democratic Services

Dated:

SUBJECT:	<i>Planning Enforcement Report - 2016/00238/AB/2</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Adam Pegley</i>
WARD:	<i>Chesham Bois and Weedon Hill</i>
SITE ADDRESS:	<i>56 Copperkins Lane Amersham Buckinghamshire HP6 5RA</i>
BREACH:	Without planning permission, the breach of Condition 2 of planning permission AM/46/50 (agricultural occupancy condition)

1.0 INTRODUCTION & SUMMARY

1.1 The site is a residential dwelling situated in Copperkins Lane, located within the Metropolitan Green Belt and Chiltern’s Area of Outstanding Natural Beauty.

1.2 The dwelling is being occupied in breach of condition 2 of planning permission AM/46/50, which restricts the occupation of the dwelling to only persons employed in agriculture or forestry.

2.0 MAIN ISSUES

2.1 Consideration of why the unauthorised breach of condition is not compliant with local and national planning policy allied with the expediency of enforcement action in the public interest.

3.0 RECOMMENDATION SUMMARY

3.1 That it is expedient in the public interest to issue an Enforcement Notice requiring the removal of the unauthorised single storey rear extension.

4.0 RELEVANT POLICIES

National and Regional Policies

National Planning Policy Framework (NPPF), 2012.

Local Policies

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4, CS8, CS20, CS24, CS25 and CS26.

The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Saved Policies: GC1, GC3, GC4, H3, H11, H12, TR2, TR3, TR11, TR15 and TR16.

Adopted Council Enforcement Plan

5.0 RELEVANT PLANNING HISTORY

5.1 CH/2017/1363/EU - Application for a Certificate of Lawfulness for an existing use of the dwelling without compliance with condition 2 of planning permission AM/46/50 restricting the occupation of the dwelling to persons employed in agriculture or forestry. Certificate Refused.

6.0 BACKGROUND INFORMATION

6.1 The occupation of the dwelling in breach of the agricultural tie is unauthorised. The application for a Certificate of Lawfulness, reference CH/2017/1363/EU (applied for on the grounds the occupants of the dwelling have been in breach of the condition for over 10 years) was refused on 22nd November 2017 and no appeal has been forthcoming. This breach of condition has been witnessed by Council officers who have

recorded their findings as part of enforcement case 2016/00238/AB and photographic and other documentary evidence has been saved in the repository attached to this record.

6.2 Contact was made with the owner who has thus far failed to meaningfully engage with the Council.

7.0 CONSULTATIONS AND REPRESENTATIONS

None.

8.0 PLANNING CONSIDERATIONS

The Main Issues

- Whether the occupation of the dwelling, in breach of the agricultural occupancy condition, is acceptable in accordance with planning policy.

8.1 Impact on the openness of the Green Belt

The site is located within the Metropolitan Green Belt. Paragraph 89 and 90 of the National Planning Policy Framework identify development within the Green Belt which is and is not inappropriate. It is not considered the use of the dwelling in breach of the agricultural occupancy condition would cause objection on inappropriateness or impact on the openness of the Green Belt, as there is no physical change.

8.2 However, Local Plan Policy GB20 includes clear provisions for the retention of a dwelling in the Green Belt without compliance with an agricultural occupancy condition. The policy states "*The Council will only grant planning permission for the occupation of a dwelling in the Green Belt without compliance with an agricultural occupancy condition where it can be convincingly demonstrated to the Council that there is no current or longer term requirement for an agricultural worker's dwelling in that particular holding.*" In order to establish this need, the policy outlines two clear considerations – regard to the number of planning applications in the last 5 years for new agricultural dwellings within a 5 mile radius, and that a marketing exercise is carried out for at least 2 years prior to any application, clearly showing a lack of demand for a dwelling with an agricultural occupancy condition in the area.

8.3 In relation to the marketing exercise, this has not been done. It was noted the property was purchased by its current owner at a rate reflective of the restrictive condition, and as such it clear to assume due diligence was made and the owner was aware of the condition. Therefore, given the house was purchased with the condition, the requirements of GB20 (ii) have not been met. Furthermore, there have been 3 applications within a 5 mile radius for permanent or temporary agricultural worker dwellings in the past five years. Whilst this is not a significant demand, it shows there is still a demand for them, and a lack of dwellings with such a condition could necessitate further development in the Green Belt.

8.4 In summary, given the above it is clear the applicant has not "*convincingly demonstrated*" there is no current or long term requirement for agricultural workers dwellings in the area and the guidance in the policy relating to a marketing exercise has not been followed. The proposal is therefore considered harmful to the District's stock of agricultural worker dwellings and against Local Plan Policy.

8.5 No planning permission has been submitted for the development (whilst a Certificate of Lawfulness application reference CH/2017/1363/EU was refused, with no appeal forthcoming). The proposal, therefore, conflicts with Local Plan policy GB20 and planning harm has been identified through this conflict.

9.0 HUMAN RIGHTS ACT

The following articles of the Human Rights Act 1998 are considered to be relevant in this case: Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence. Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions. Both of

these rights could be outweighed when considering the general interest and the rights and freedoms of others. The addition of this development causes unacceptable harm to the visual interest and the character of the area in which it is located. The need to remedy the breach is in the interest of the wider community and, with the lack of demonstrable information to the contrary, greater than the needs of the individual.

10.0 **EQUALITY IMPACT ASSESSMENT**

The Equality Act 2010, which came into effect on 1st October, includes a new public sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

10.1 Part 11, Section 149 provides the following 'Public sector equality duty' on authorities: "(1) – A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it." It is therefore necessary for the authority, in consideration of this report, as with the consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking the recommended action.

10.2 The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered proportionate and in the public interest in order to uphold the planning laws of the land and harm caused to the amenity of the area.

11 **EXPEDIENCY**

The issue of an Enforcement Notice by Local Planning Authorities is discretionary and it is the Council's decision to decide whether a notice is expedient in the public interest. In doing so, consideration must be given to all the options:

11.1 **Do nothing or under enforce**

The breach of planning control was brought to the Council's attention by a concerned resident. To do nothing at all in this case is likely to attract complaints from residents and is, in the circumstances, unjustifiable.

11.2 **Negotiate**

The adopted Enforcement Plan states that wherever possible, officers will negotiate to bring a contravention into compliance but goes on to recognise that sometimes enforcement action is necessary to reach the right outcome.

The owner has offered no comment and has not sought to engage with the LPA. The harm caused by the unauthorised development is demonstrable. There is no reason to invite a planning application as the development would not be supported at officer level. For these reasons, it is considered that in order to remedy the breach in a timely manner there is no scope for further negotiation.

11.3 **Issue an Enforcement Notice**

The only other option available to the Council is to issue an Enforcement Notice. This would have the benefit of remedying the harm that is being caused. It would also boost public confidence in the integrity of the planning system and the decision making of the Council as local planning authority as there is local objection to the unauthorised development. Given the owner's attitude, it is likely that an appeal will be forthcoming

but the author of this report believes that the Council's case is sound and any appeal would be likely to be dismissed.

12.0 CONCLUSIONS

The Council's solicitor should be instructed to issue an Enforcement Notice pursuant to Section 172 of the Town and Country Planning Act 1990 requiring, within **Twelve (12)** months:

Requirements:

i Cease the occupation of 56 Copperkins Lane in breach of the agricultural occupancy condition 2 of planning permission AM/46/50.

The reason for issuing a Notice

It appears to the Council that the above breach of planning control has occurred in the last 10 years.

The Council has a clear policy for retention of a dwelling in the Green Belt without compliance with an agricultural occupancy condition, and the requirements of this policy have not been met. It has not been "convincingly demonstrated" that there is no current or long term requirement for agricultural worker's dwellings in the area. The proposal is therefore considered harmful to the District's stock of agricultural worker dwellings and against Local Plan Policy.

The breach of agricultural occupancy condition 2 of planning permission AM/46/50 is therefore contrary to Policy GB20 of The Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011.

The Council does not consider that planning permission should be given because planning conditions could not overcome these objections to the development.

Copies of the notice should be served on:

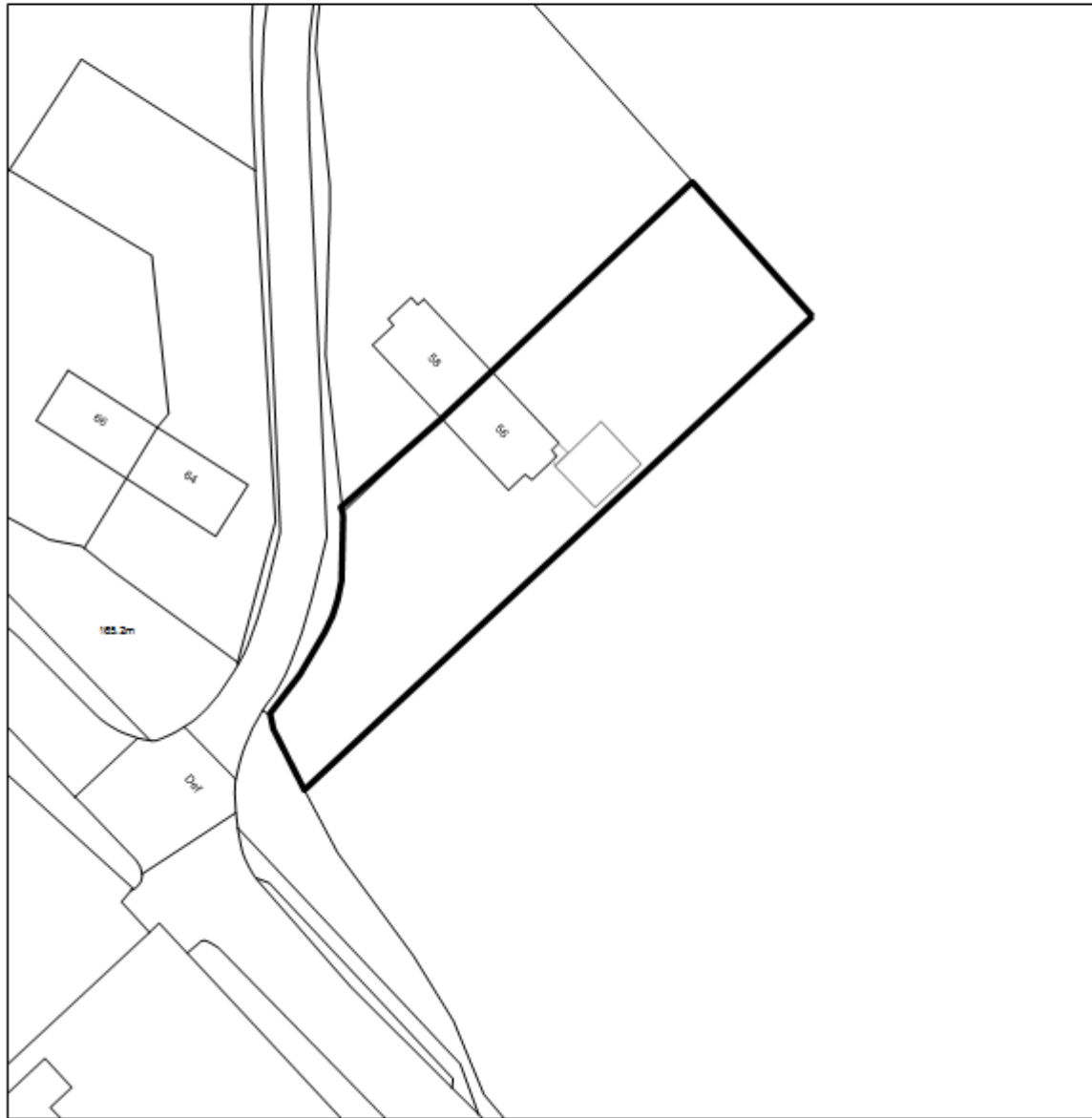
Mr Imran Arshad, 56 Copperkins Lane, Amersham, Buckinghamshire, HP6 5RA

The Owner, 56 Copperkins Lane, Amersham, Buckinghamshire, HP6 5RA

The Occupier, 56 Copperkins Lane, Amersham, Buckinghamshire, HP6 5RA

2017/00341/AB - Enforcement Notice 2

56 Copperkins Lane, Amersham,
Buckinghamshire, HP6 5RA



1:500

Signed:
Steve Bambrick – Director of Services

Dated:

Signed:
Joanna Swift – Head of Legal and Democratic Services

Dated:

SUBJECT:	<i>Planning Enforcement Report - 2017/00341/AB</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Adam Pegley</i>
WARD:	<i>Chesham Bois and Weedon Hill</i>
SITE ADDRESS:	<i>Land Adjacent to 56 Copperkins Lane Amersham Buckinghamshire HP6 5RA</i>
BREACH:	Without planning permission, the construction of hardstanding and extension of the residential use associated with No. 56 Copperkins Lane into open Green Belt.

1.0 INTRODUCTION & SUMMARY

1.1 The site is a small residential field located on the east side of No. 56 Copperkins Lane, located within the Metropolitan Green Belt and Chiltern’s Area of Outstanding Natural Beauty.

1.2 An area of hardstanding (the subject of this report) has been constructed on the land adjacent to No. 56 Copperkins lane, and is currently being used as a turning space. The hardstanding is unauthorised, requires planning permission and also represents the unauthorised change of use of the Land adjoining No. 56 Copperkins Lane to residential use without planning permission.

2.0 MAIN ISSUES

2.1 Consideration of why the unauthorised development is not compliant with local and national planning policy allied with the expediency of enforcement action in the public interest.

3.0 RECOMMENDATION SUMMARY

3.1 That it is expedient in the public interest to issue an Enforcement Notice requiring the removal of the hardstanding and ceasing the residential use of Green Belt agricultural land, as it is contrary to policy.

4.0 RELEVANT POLICIES

National and Regional Policies

The National Planning Policy Framework (NPPF – “the Framework”), 2012

Local Policies

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4, CS8, CS20, CS24, CS25 and CS26.

The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Saved Policies: GC1, GC3, GC4, H3, H11, H12, TR2, TR3, TR11, TR15 and TR16.

Adopted Council Enforcement Plan

5.0 RELEVANT PLANNING HISTORY

5.1 None.

6.0 BACKGROUND INFORMATION

6.1 Planning permission for the hardstanding and change of use of the field to residential use is required, yet no application to regularise has been forthcoming and the unauthorised development remains in situ. This unauthorised development has been witnessed by Council officers who have recorded their findings as part of

enforcement case 2017/00341/AB and photographic and other documentary evidence has been saved in the repository attached to this record.

6.2 Contact was made with the owner who has thus far failed to meaningfully engage with the Council.

7.0 CONSULTATIONS AND REPRESENTATIONS

None.

8.0 PLANNING CONSIDERATIONS

The Main Issues

- Impact on the openness of the Green Belt
- Whether the development preserves and/or enhances the scenic quality of the Area of Outstanding Natural Beauty
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

8.1 Impact on the openness of the Green Belt

The site is located within the Metropolitan Green Belt. Paragraph 89 and 90 of the National Planning Policy Framework identify development within the Green Belt which is and is not inappropriate. Changes of use are not covered by these exceptions.

8.2 The unauthorised change of use has resulted in the encroachment of an adjoining field being used for residential purposes; namely the use of the hardstanding as a turning circle. This directly conflicts with one of the purposes of the Green Belt which is to safeguard the countryside from encroachment, because of this the development results in a loss of rural character and appearance for the area. Consequently, it is inappropriate development which, by definition, is harmful to the Green Belt.

8.3 The unauthorised change of use of this Land is facilitated by the creation of an area of hardstanding approximately 8m by 5m, which has resulted in the urbanisation of this strip of agricultural land and blurs the boundary between Green Belt field and the residential use at 56 Copperkins Lane. Due to its scale and location on the Land, the unauthorised development can clearly be seen from multiple vantages. Notwithstanding this visual intrusion, it is considered this development materially and significantly reduces the openness of the Green Belt by the fact it is replacing open field.

8.4 Local Plan ("the Plan") policy sets out criteria for the extension of residential curtilages in the Green Belt in Local Plan Policy GB16. The requirements for the policy are clear. It states that "*planning permission will not be granted for the extension of an existing residential curtilage onto land in the Green Belt that is in non-residential use*". The reason for this is that it clearly conflicts with the purposes of Green Belt policy and does not protect the countryside from encroachment. It contributes to a loss of rural character and appearance, particularly in this part of Copperkins Lane. The hardstanding which is facilitating the unauthorised residential use would not benefit from "permitted development" rights, given it is outside the curtilage of the dwelling house and is not being used for agricultural purposes whatsoever.

8.5 Policy LSQ1 is the Chiltern District Local Plan's principal policy in the Area of Outstanding Natural Beauty (AONB) and states "*the primary objective [with the AONB] is to conserve and enhance the natural beauty of the landscape.*" Development inconsistent with this objective will be refused. The hardstanding is clearly visible in the locality and is not sympathetic to the natural environment, nor is it considered harmonious with the open fields behind. As such, objections are also raised to the development with regard to the impact on the AONB as well as the Green Belt.

8.6 In summary, the unauthorised development is inappropriate development, which would harm the openness of the Green Belt. There is also a lack of harmonisation with the scenic character and beauty of the Area of Outstanding Beauty. The Framework advises that substantial weight should be given to any harm to the Green Belt and great weight should be given to conserving landscape and scenic beauty in the AONB.

8.7 No planning permission has been submitted for the development and no very special circumstances necessary to justify the development exist. The proposal, therefore, conflicts with paragraphs 87 to 89 and paragraph 115 of the National Planning Policy Framework and Local Plan policies GB16 and LSQ1.

9.0 HUMAN RIGHTS ACT

The following articles of the Human Rights Act 1998 are considered to be relevant in this case: Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence. Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions. Both of these rights could be outweighed when considering the general interest and the rights and freedoms of others. The addition of this development causes unacceptable harm to the visual interest and the character of the area in which it is located. The need to remedy the breach is in the interest of the wider community and, with the lack of demonstrable information to the contrary, greater than the needs of the individual.

10.0 EQUALITY IMPACT ASSESSMENT

The Equality Act 2010, which came into effect on 1st October, includes a new public sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

10.1 Part 11, Section 149 provides the following 'Public sector equality duty' on authorities: "(1) – A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it." It is therefore necessary for the authority, in consideration of this report, as with the consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking the recommended action.

10.2 The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered proportionate and in the public interest in order to uphold the planning laws of the land and harm caused to the amenity of the area.

11 EXPEDIENCY

The issue of an Enforcement Notice by Local Planning Authorities is discretionary and it is the Council's decision to decide whether a notice is expedient in the public interest. In doing so, consideration must be given to all the options:

11.1 Do nothing or under enforce

The breach of planning control was brought to the Council's attention by a concerned resident. To do nothing at all in this case is likely to attract complaints from residents and is, in the circumstances, unjustifiable.

11.2 Negotiate

The adopted Enforcement Plan states that wherever possible, officers will negotiate to bring a contravention into compliance but goes on to recognise that sometimes enforcement action is necessary to reach the right outcome.

The owner has offered no comment and has not sought to engage with the LPA. The harm caused by the unauthorised development is demonstrable. There is no reason to invite a planning application as the development would not be supported at officer level. For these reasons, it is considered that in order to remedy the breach in a timely manner there is no scope for further negotiation.

11.3 Issue an Enforcement Notice

The only other option available to the Council is to issue an Enforcement Notice. This would have the benefit of remedying the harm that is being caused. It would also boost public confidence in the integrity of the planning system and the decision making of the Council as local planning authority as there is local objection to the unauthorised development. Given the owner's attitude, it is likely that an appeal will be forthcoming but the author of this report believes that the Council's case is sound and any appeal would be likely to be dismissed.

12.0 CONCLUSIONS

The Council's solicitor should be instructed to issue an Enforcement Notice pursuant to Section 172 of the Town and Country Planning Act 1990 requiring, within **Two (2)** months:

Requirements:

- i Cease the use of the Land (as shown outlined in black on the plan) for residential purposes
- ii Remove the hardstanding as shown outlined in blue on the plan from the Land, including all associated materials therefrom and restore the Land to its former condition.

The reason for issuing a Notice

It appears to the Council that the above breach of planning control has occurred in the last 10 years.

The unauthorised change of use has resulted in the encroachment of an adjoining field being used for residential purposes; namely the use of the new hardstanding as a turning circle. This directly conflicts with one of the purposes of the Green Belt which is to safeguard the countryside from encroachment, a loss of rural character and appearance. The unauthorised change of use of this Land is facilitated by operational development consisting of the creation of an area of hardstanding approximately 8m by 5m, which has resulted in the urbanisation of this strip of land and blurs the boundary between Green Belt field and the neighbouring residential use.

The unauthorised development is therefore contrary to Policies GB16 and LSQ1 of The Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011 and guidance contained in the National Planning Policy Framework.

The Council does not consider that planning permission should be given because planning conditions could not overcome these objections to the development.

Copies of the notice should be served on:

Mr Imran Arshad, 56 Copperkins Lane, Amersham, Buckinghamshire, HP6 5RA

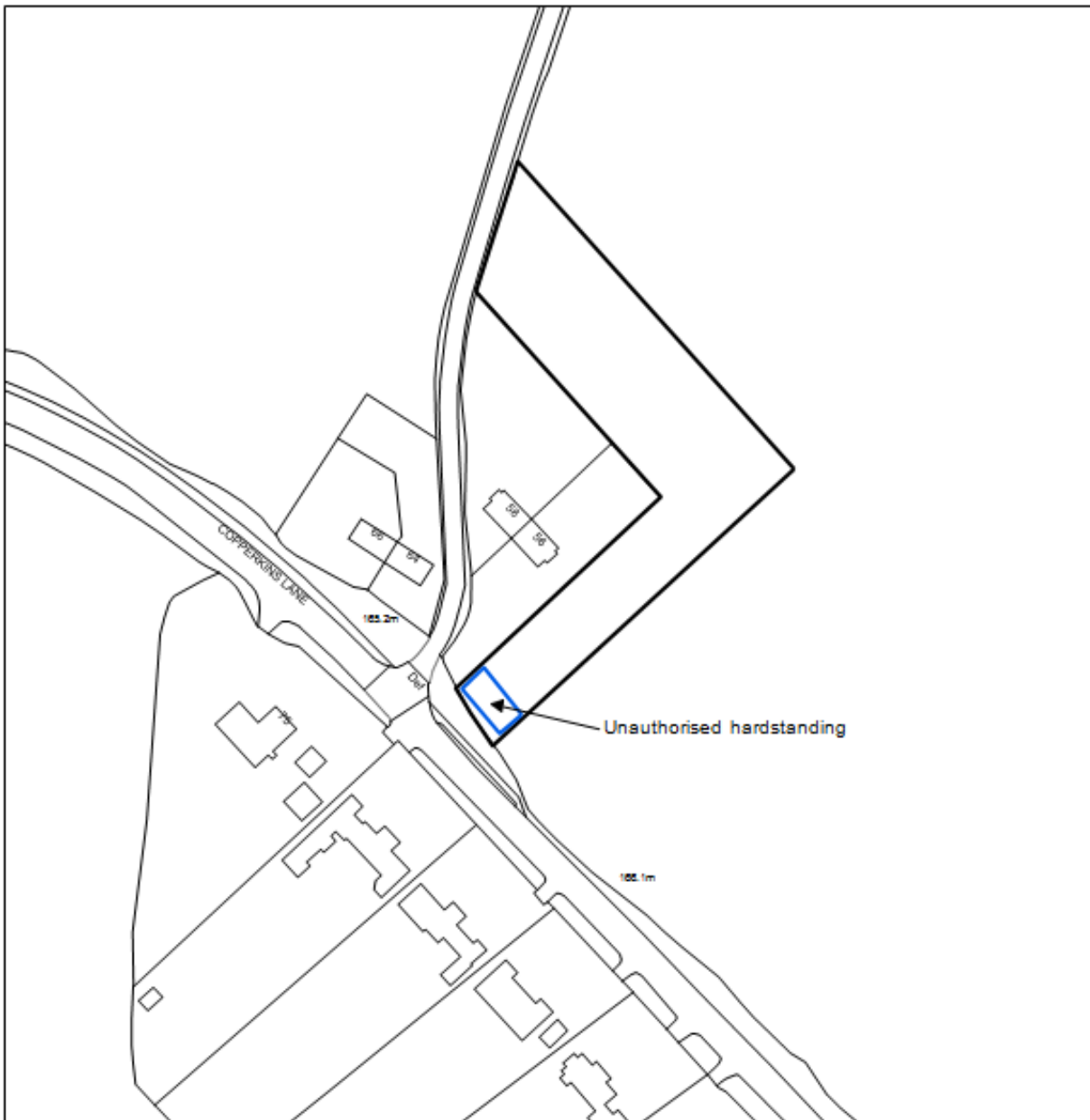
The Owner, Land Adjacent to 56 Copperkins Lane, Amersham, Buckinghamshire, HP6 5RA

The Occupier, Land Adjacent to 56 Copperkins Lane, Amersham, Buckinghamshire, HP6 5RA

The Owner, 56 Copperkins Lane, Amersham, Buckinghamshire, HP6 5RA

2017/00341/AB - Enforcement Notice

Land Adjacent to 56 Copperkins Lane, Amersham,
Buckinghamshire, HP6 5RA



1:500

Appendix A



Signed:
Steve Bambrick – Director of Services

Dated:

Signed:
Joanna Swift – Head of Legal and Democratic Services

Dated:

SUBJECT:	<i>Planning Enforcement Report - 2017/00058/AB</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Adam Pegley</i>
WARD:	<i>Prestwood and Heath End</i>
SITE ADDRESS:	<i>2 Wardes Close Prestwood Buckinghamshire HP16 0SA (“the Land”)</i>
BREACH:	Without planning permission, the erection of a Fence on the Land.

1.0 INTRODUCTION & SUMMARY

1.1 The Land comprises a detached dwelling with associated access onto Wardes Close.

1.2 A fence has been erected where the boundary of the Land meets Wardes close and Wren Road, adjacent to the highway, in excess of 1m in height when measured from highest adjacent ground level.

2.0 MAIN ISSUES

2.1 Consideration of why the unauthorised development is not compliant with local and national planning policy allied with the expediency of enforcement action in the public interest.

3.0 RECOMMENDATION SUMMARY

3.1 In accordance with the Council’s Constitution [delegation 13(a)], that approval is given for the Director of Services exercises his power to issue an Enforcement Notice pursuant to Section 171A of the Town and Country Planning Act 1990 (as amended), following consultation with the Head of Legal & Democratic Services, in respect of remedying the Breach on the Land and that, if necessary, legal proceedings be instituted to secure compliance.

4.0 RELEVANT POLICIES

National and Regional Policies

The National Planning Policy Framework (NPPF – “the Framework”), 2012

Local Policies

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4, CS8, CS20, CS24, CS25 and CS26.

The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Saved Policies: GC1, GC3, GC4, H3, H11, H12, TR2, TR3, TR11, TR15 and TR16.

Adopted Council Enforcement Plan

5.0 RELEVANT PLANNING HISTORY

5.1 CH/2017/1600/FA - Erection of attached two storey dwelling, with 2 metre timber fencing to boundary. *Refused Permission.*

(1) Harm to the character and appearance of the area.

(2) Harm to the amenities of the area due to the dwelling being dominant and overbearing.

(3) The provision of rear amenity space being inadequate.

5.2 CH/2014/0872/FA - Boundary fence to replace existing wall.

A fence has been erected but not in the correct location.

5.3 CH/1976/0780/DE - Proposed residential development comprising 329 dwelling units, estate roads, garages, car parking spaces and ancillary works. *Conditional Permission*.

Condition 3 grassed areas, brick walls and fences to be in accordance with Drg. No 360/85.

Condition 4 PD rights removed for the erection of extensions, fences and walls.

6.0 BACKGROUND INFORMATION

6.1 Planning permission for the development is required, yet no application to regularise has been forthcoming and the unauthorised development remains in situ. This unauthorised development has been witnessed by Council officers who have recorded their findings as part of enforcement case 2017/00058/AB and photographic and other documentary evidence has been saved in the repository attached to this record.

6.2 Contact was made with the owner who has thus far failed to meaningfully engage with the Council.

7.0 CONSULTATIONS AND REPRESENTATIONS

None.

8.0 PLANNING CONSIDERATIONS

The Main Issues

- Whether the fence is "permitted development".
- Effect of the unauthorised development on the character and appearance of the area in conjunction with quality of design.

8.1 *Whether the fence is "permitted development".*

No planning permission has been sought from or granted by the Council for the wall, and the therefore consideration is given as to whether it benefits from the planning permission available within Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

8.2 Class A permits a gate, fence, wall or other means of enclosure adjacent to a highway used by vehicular traffic. However, other than in the case of schools the permission is limited by virtue of A.1 (a)(ii) to fencing that does not exceed 1 metre in height above ground level.

The key issue therefore is whether the fencing is "adjacent" or not to the highway. 9. The meaning of the word "adjacent" is not defined in the GPDO or in the Act, and therefore the Council relies on its literal meaning. "Adjacent" is defined in the dictionary as meaning being near or close to, next to, or contiguous. "Contiguous" is so defined as sharing a boundary or touching each other physically, or continuous. However, the case law has established that the meaning of "adjacent" in the context of the GPDO does not mean "contiguous" or "abutting". It is clear from this that a wall does not have to adjoin a highway to be "adjacent" to it; it is a matter of judgement, and of fact and degree in each case, as to whether a fence is perceived to define the boundary of a property from the highway edge, and hence whether it is "adjacent" to the highway.

8.3 When viewed in the context of the street scene the wall appears as forming the boundary of the Land with the highway. Given its height and stark, opaque appearance when contrasted against the more open areas of surrounding countryside, the viewer's eye is immediately drawn to it, and so even to a casual observer it would be perceived as being a boundary separating the Land from the highway. As a matter of fact and degree, the fencing is "adjacent" to the highway and, as such, it does not benefit from the planning permission within the GPDO and hence constitutes a breach of planning control.

8.4 *Effect of the unauthorised development on the character and appearance of the area.*

Saved LP policy GC1, aims to secure satisfactory standards of design that relate sympathetically to the character and appearance of the surrounding area. The wall, due to its height, length, colour and position adjacent to the footway, is a visually prominent addition where it has a hard and stark appearance, at odds with the softer and more open treatment of nearby built form. As such, it presents a visually jarring addition to the street scene, in context. Moreover, the position of the wall prevents the strip of land now enclosed from performing an amenity role within the development which is harmful to the character and appearance of the area.

8.5 Amenity land features are an attractive and fundamental addition to the streetscape and influence the make-up of its character which is why permission for the enclosure of such land into gardens or indeed other uses is not usually given. Those approved schemes that do erode amenity land are unusually conditioned to include substantial soft landscaping to mitigate the loss by softening the edges of built development. However, here, by virtue of the built mass that runs along the edge of the Land adjacent to Wardes Close and Wren Road, built at the point where the pavement ends, offers no opportunity for any soft landscaping to reduce the harsh visual impact caused by the unauthorised development. Due to its height, mass and scale in conjunction with its situational relationship in context, the wall predominates to the detriment of the area in which it is located. Whilst one would reasonably expect to see a wall in such a location, the fact that there is no (soft) material-interruption between the highway and the wall, as it has been built hard to existing highway that surrounds the Land, the unauthorised development offers a visually intrusive and therefore unwelcome departure from the established rhythm and form of wider contextual development, thus detracting from its overall appearance and legibility, increasing the impact of the built form and creating a perceived addition in density of the area.

8.6 It is clear that the Land has changed in character from public amenity land to residential due to the presence of residential paraphernalia present on the Land.

9.0 HUMAN RIGHTS ACT

The following articles of the Human Rights Act 1998 are considered to be relevant in this case: Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence. Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions. Both of these rights could be outweighed when considering the general interest and the rights and freedoms of others. The addition of this development causes unacceptable harm to the visual interest and the character of the area in which it is located. The need to remedy the breach is in the interest of the wider community and, with the lack of demonstrable information to the contrary, greater than the needs of the individual.

10.0 EQUALITY IMPACT ASSESSMENT

The Equality Act 2010, which came into effect on 1st October, includes a new public-sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

10.1 Part 11, Section 149 provides the following 'Public sector equality duty' on authorities: "(1) – A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it." It is therefore necessary for the authority, in consideration of this report, as with the consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking the recommended action.

10.2 The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered proportionate and in the public interest in order to uphold the planning laws of the land and harm caused to the amenity of the area.

11 **EXPEDIENCY**

The issue of an Enforcement Notice by Local Planning Authorities is discretionary, and it is the Council's decision to decide whether a notice is expedient in the public interest. In doing so, consideration must be given to all the options:

11.1 **Do nothing or under enforce**

The breach of planning control was brought to the Council's attention by a concerned resident. To do nothing at all in this case is likely to attract complaints from residents and is, in the circumstances, unjustifiable.

11.2 **Negotiate**

The adopted Enforcement Plan states that wherever possible, officers will negotiate to bring a contravention into compliance but goes on to recognise that sometimes enforcement action is necessary to reach the right outcome.

The owner has offered no comment and has not sought to engage with the LPA. The harm caused by the unauthorised development is demonstrable. There is no reason to invite a planning application as the development would not be supported at officer level. For these reasons, it is considered that in order to remedy the breach in a timely manner there is no scope for further negotiation.

11.3 **Issue an Enforcement Notice**

The only other option available to the Council is to issue an Enforcement Notice. This would have the benefit of remedying the harm that is being caused. It would also boost public confidence in the integrity of the planning system and the decision making of the Council as local planning authority as there is local objection to the unauthorised development. Given the owner's attitude, it is perhaps likely that an appeal will be forthcoming but the author of this report believes that the Council's case is sound and any appeal would be likely to be dismissed.

12.0 **CONCLUSIONS**

The Council's solicitor should be instructed to issue an Enforcement Notice pursuant to Section 172 of the Town and Country Planning Act 1990 requiring, within **Three (3)** months:

Requirements:

i Remove the close boarded fence (as shown in the Photographs at Appendix 'A') of this notice from the Land, including all associated fixtures, fittings and waste materials therefrom.

The reason for issuing a Notice

It appears to the Council that the above breach of planning control has occurred in the last 4 years.

The erection of the fence on the Land has resulted in the loss of an area of soft-landscaping and, by virtue of its design and location on the Land; it presents an overly dominant and visually oppressive addition to the street scene. The loss of the amenity land in conjunction with the poor quality of the design of the fence detracts from the character and visual interest of wider public realm.

Classification: OFFICIAL

The unauthorised development is therefore contrary to Policy CS20 of the Adopted Core Strategy 2011; Policies GC1 of the Chiltern Local Plan 1999 and polices contained in the National Planning Policy Framework.

The Council does not consider that planning permission should be given because planning conditions could not overcome these objections to the development.

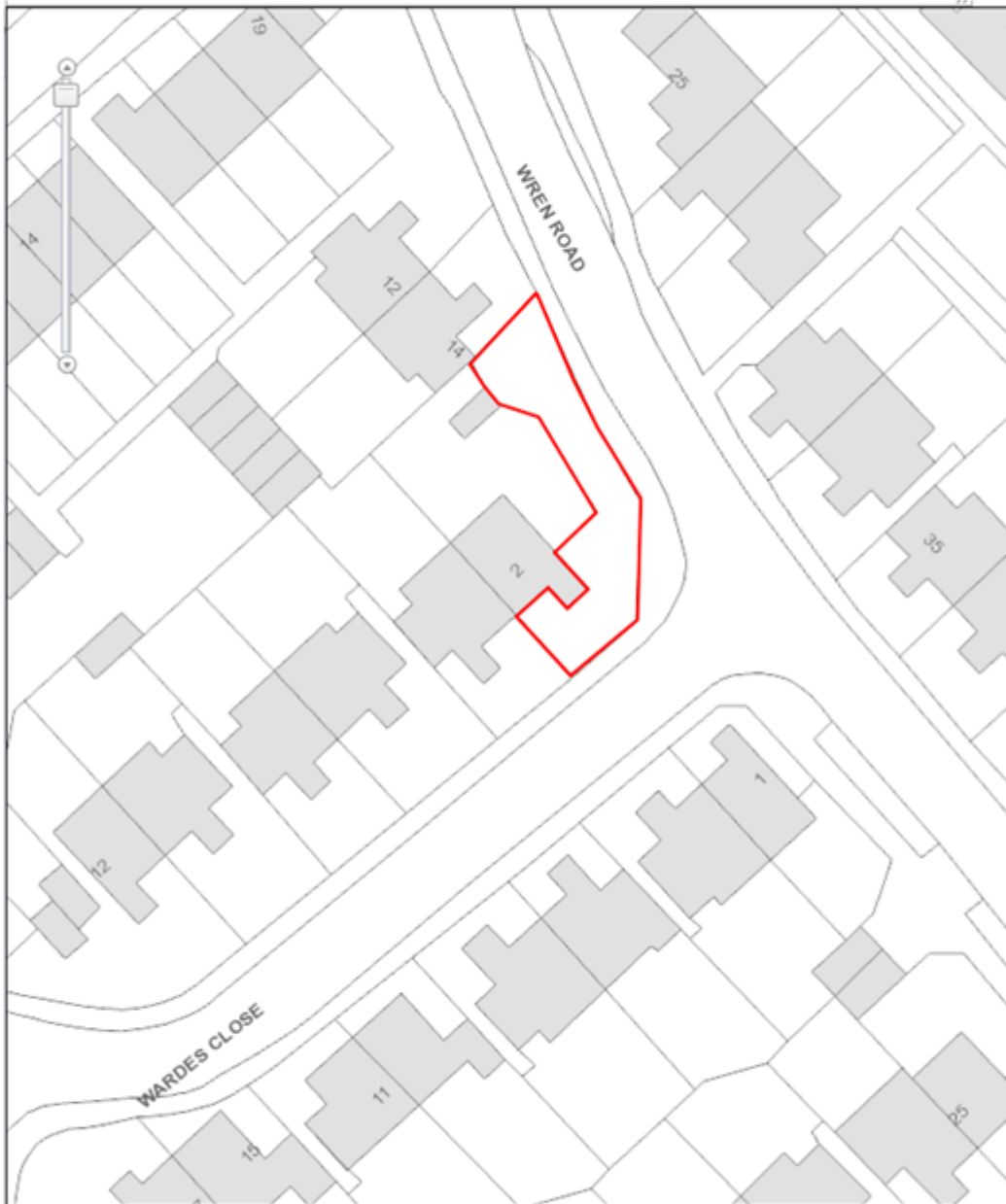
Copies of the notice should be served on:

The Owner(s)/Occupier(s) - 2 Wardes Close, Prestwood, Buckinghamshire, HP16 0SA

Classification: OFFICIAL

Location Plan

2 Wardes Close, Prestwood, Buckinghamshire, HP16 0SA



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1: 500

Appendix A





Signed:

Dated:

Steve Bambrick – Director of Services

Signed:

Dated:

Joanna Swift – Head of Legal and Democratic Services

SUBJECT:	<i>Planning Enforcement Report - 2017/00127/AB</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Adam Pegley</i>
WARD:	<i>Holmer Green</i>
SITE ADDRESS:	<i>Bat and Ball Public House Penfold Lane Holmer Green Buckinghamshire HP15 6XW (“the Land”)</i>
BREACH:	Without planning permission, the erection of a fence.

1.0 INTRODUCTION & SUMMARY

- 1.1 The Land comprises a Public House fronting onto both Penfold Land & Sheepcote Dell Road.
- 1.3 Erection of close-boarded fencing in excess of 1m adjacent to highway

2.0 MAIN ISSUES

- 2.1 Consideration of why the unauthorised development is not compliant with local and national planning policy allied with the expediency of enforcement action in the public interest.

3.0 RECOMMENDATION SUMMARY

- 3.1 In accordance with the Council’s Constitution [delegation 13(a)], that approval is given for the Director of Services exercises his power to issue an Enforcement Notice pursuant to Section 171A of the Town and Country Planning Act 1990 (as amended), following consultation with the Head of Legal & Democratic Services, in respect of remedying the Breach on the Land and that, if necessary, legal proceedings be instituted to secure compliance.

4.0 RELEVANT POLICIES

National and Regional Policies

The National Planning Policy Framework (NPPF – “the Framework”), 2012

Local Policies

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4, CS8, CS20, CS24, CS25 and CS26.

The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Saved Policies: GC1, GC3, GC4, H3, H11, H12, TR2, TR3, TR11, TR15 and TR16.

Adopted Council Enforcement Plan

5.0 RELEVANT PLANNING HISTORY

- 5.1 Nothing relevant.

6.0 BACKGROUND INFORMATION

- 6.1 Planning permission for the development is required, yet no application to regularise has been forthcoming and the unauthorised development remains in situ. This unauthorised development has been

witnessed by Council officers who have recorded their findings as part of enforcement case 2017/00127/AB and photographic and other documentary evidence has been saved in the repository attached to this record.

6.2 Contact was made with the owner who has thus far failed to meaningfully engage with the Council.

7.0 CONSULTATIONS AND REPRESENTATIONS

None.

8.0 PLANNING CONSIDERATIONS

The Main Issues

- Whether the fencing is “permitted development”.
- Effect of the unauthorised development on the character and appearance of the area in conjunction with quality of design.

8.1 Whether the fencing is “permitted development”.

No planning permission has been sought from or granted by the Council for the fencing, and the therefore consideration is given as to whether it benefits from the planning permission available within Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

8.2 Class A permits a gate, fence, wall or other means of enclosure adjacent to a highway used by vehicular traffic. However, other than in the case of schools the permission is limited by virtue of A.1 (a)(ii) to fencing that does not exceed 1 metre in height above ground level.

The key issue therefore is whether the fencing is “adjacent” or not to the highway. 9. The meaning of the word “adjacent” is not defined in the GPDO or in the Act, and therefore the Council relies on its literal meaning. “Adjacent” is defined in the dictionary as meaning being near or close to, next to, or contiguous. “Contiguous” is so defined as sharing a boundary or touching each other physically, or continuous. However, the case law has established that the meaning of “adjacent” in the context of the GPDO does not mean “contiguous” or “abutting”. It is clear from this that a fence does not have to adjoin a highway to be “adjacent” to it; it is a matter of judgement, and of fact and degree in each case, as to whether a fence is perceived to define the boundary of a property from the highway edge, and hence whether it is “adjacent” to the highway.

8.3 When viewed in the context of the street scene the fencing appears as forming the boundary of the Land with the highway. Given its height and stark appearance when contrasted against the more open areas of surrounding countryside, the viewer’s eye is immediately drawn to it, and so even to a casual observer it would be perceived as being a boundary fence separating the Land from the highway. As a matter of fact and degree, the fencing is “adjacent” to the highway and, as such, it does not benefit from the planning permission within the GPDO and hence constitutes a breach of planning control.

8.4 Effect of the unauthorised development on the character and appearance of the area.

Saved LP policy GC1, aims to secure satisfactory standards of design that relate sympathetically to the character and appearance of the surrounding area. The fence, due to its height, length and position adjacent to the footway, is visually prominent on approach along The Common and Sheepcote Lane from both directions where it has a hard and stark appearance, at odds with the softer and more open treatment of nearby built form. As such it presents a visually jarring addition to the street scene, in context. Moreover, the position of the fence prevents the strip of land now enclosed from performing an amenity role within the development which is harmful to the character and appearance of the area.

8.5 Amenity land features are an attractive and fundamental addition to the streetscape and influence the make-up of its character which is why permission for the enclosure of such land into gardens or indeed other

uses is not usually given. Those approved schemes that do erode amenity land are unusually conditioned to include substantial soft landscaping to mitigate the loss by softening the edges of built development. However, here, by virtue of the mass of fencing that runs the edge of the of the Land adjacent to Sheepcote Lane, built at the point where the pavement ends, offers no opportunity for any soft landscaping to reduce the harsh visual impact caused by the unauthorised development. Due to its height, mass and scale in conjunction with its situational relationship in context, the fence predominates to the detriment of the area in which it is located. Moreover, its presence draws the eye away from the attractive architectural features of the parent property on the Land. Whilst such fencing can reasonably expect to be seen in such a location, the fact that there is no (soft) material-interruption between the highway and the fence, as it has been built hard to existing highway that surrounds the Land, the unauthorised development offers a visually intrusive and therefore unwelcome departure from the established rhythm and form of the contextual development, thus detracting from its overall appearance and legibility, increasing the impact of the built form and creating a perceived addition in density of the area.

9.0 HUMAN RIGHTS ACT

The following articles of the Human Rights Act 1998 are considered to be relevant in this case: Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence. Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions. Both of these rights could be outweighed when considering the general interest and the rights and freedoms of others. The addition of this development causes unacceptable harm to the visual interest and the character of the area in which it is located. The need to remedy the breach is in the interest of the wider community and, with the lack of demonstrable information to the contrary, greater than the needs of the individual.

10.0 EQUALITY IMPACT ASSESSMENT

The Equality Act 2010, which came into effect on 1st October, includes a new public-sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

10.1 Part 11, Section 149 provides the following 'Public sector equality duty' on authorities: "(1) – A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it." It is therefore necessary for the authority, in consideration of this report, as with the consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking the recommended action.

10.2 The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered proportionate and in the public interest in order to uphold the planning laws of the land and harm caused to the amenity of the area.

11 EXPEDIENCY

The issue of an Enforcement Notice by Local Planning Authorities is discretionary, and it is the Council's decision to decide whether a notice is expedient in the public interest. In doing so, consideration must be given to all the options:

11.1 **Do nothing or under enforce**

The breach of planning control was brought to the Council's attention by a concerned resident. To do nothing at all in this case is likely to attract complaints from residents and is, in the circumstances, unjustifiable.

11.2 **Negotiate**

The adopted Enforcement Plan states that wherever possible, officers will negotiate to bring a contravention into compliance but goes on to recognise that sometimes enforcement action is necessary to reach the right outcome.

The owner has offered no comment and has not sought to engage with the LPA. The harm caused by the unauthorised development is demonstrable. There is no reason to invite a planning application as the development would not be supported at officer level. For these reasons, it is considered that in order to remedy the breach in a timely manner there is no scope for further negotiation.

11.3 **Issue an Enforcement Notice**

The only other option available to the Council is to issue an Enforcement Notice. This would have the benefit of remedying the harm that is being caused. It would also boost public confidence in the integrity of the planning system and the decision making of the Council as local planning authority as there is local objection to the unauthorised development. Given the owner's attitude, it is perhaps likely that an appeal will be forthcoming but the author of this report believes that the Council's case is sound and any appeal would be likely to be dismissed.

12.0 **CONCLUSIONS**

The Council's solicitor should be instructed to issue an Enforcement Notice pursuant to Section 172 of the Town and Country Planning Act 1990 requiring, within **Two (2)** months:

Requirements:

i Remove the fencing as shown in the approximate position 'A' to 'B' to 'C' on the Plan (and shown in the Photograph at Appendix 'A' of this notice) from the Land, including all associated fixtures, fittings and waste materials therefrom.

The reason for issuing a Notice

It appears to the Council that the above breach of planning control has occurred in the last 4 years.

The erecting of the fencing on the Land has resulted in the loss of an area of soft-landscaping and, by virtue of its design and location on the Land; it presents an overly dominant and visually oppressive addition to the street scene. The loss of the amenity land in conjunction with the addition of the fencing detracts from the character and visual interest of wider public realm.

The unauthorised development is therefore contrary to Policy CS20 of the Adopted Core Strategy 2011; Policies GC1 of the Chiltern Local Plan 1999 and policies contained in the National Planning Policy Framework.

The Council does not consider that planning permission should be given because planning conditions could not overcome these objections to the development.

Copies of the notice should be served on:

The Owner(s)/Occupier(s) - Bat and Ball Public House, Penfold Lane, Holmer Green, Buckinghamshire, HP15 6XW.

Classification: OFFICIAL

The Company Secretary - Bat and Ball Public House, Penfold Lane, Holmer Green, Buckinghamshire, HP15 6XW.

The Company Secretary - WESTSIDE ESTATES LIMITED (Co. Regn. No. 4982596) of Sixth Floor, Holborn Hall, 100 Grays Inn Road, London WC1V 8BZ.

MICHAEL CRAIG JACKSON - Bat & Ball, Penfold Lane, Holmer Green, High Wycombe, Buckinghamshire HP15 6XW.

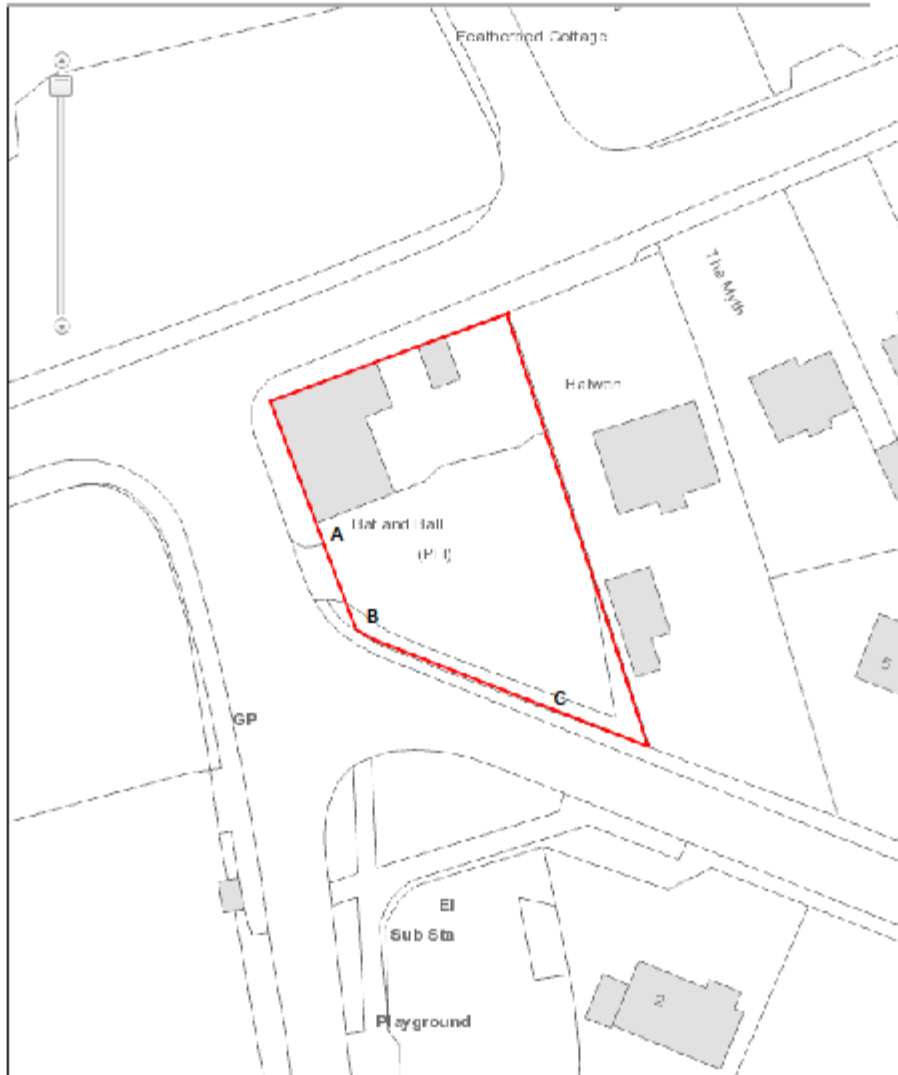
YVONNE PATRICIA JACKSON - Bat & Ball, Penfold Lane, Holmer Green, High Wycombe, Buckinghamshire HP15 6XW.

Classification: OFFICIAL

Classification: OFFICIAL-SENSITIVE

Location Plan

Bat and Ball Public House, Penfold Lane, Holmer Green, Buckinghamshire, HP15 6XW



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1: 500

Classification: OFFICIAL-SENSITIVE



Classification: OFFICIAL

Signed:

Dated:

Steve Bambrick – Director of Services

Signed:

Dated:

Joanna Swift – Head of Legal and Democratic Services

Classification: OFFICIAL

SUBJECT:	<i>Planning Enforcement Report - 2017/00232/AB</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Suleman Uddin</i>
WARD:	<i>Austenwood</i>
SITE ADDRESS:	<i>Austenwood Cottage 39 Austenway Chalfont St Peter Buckinghamshire SL9 8NN (“the Land”)</i>
BREACH:	Without planning permission, the erection of a wall on the Land.

1.0 INTRODUCTION & SUMMARY

1.1 The Land comprises a detached dwelling with associated access onto Austenway.

1.2 A wall has been erected where the boundary of the Land meets Austenwood Lane, adjacent to the highway, in excess of 1m in height when measured from highest adjacent ground level.

2.0 MAIN ISSUES

2.1 Consideration of why the unauthorised development is not compliant with local and national planning policy allied with the expediency of enforcement action in the public interest.

3.0 RECOMMENDATION SUMMARY

3.1 In accordance with the Council’s Constitution [delegation 13(a)], that approval is given for the Director of Services exercises his power to issue an Enforcement Notice pursuant to Section 171A of the Town and Country Planning Act 1990 (as amended), following consultation with the Head of Legal & Democratic Services, in respect of remedying the Breach on the Land and that, if necessary, legal proceedings be instituted to secure compliance.

4.0 RELEVANT POLICIES

National and Regional Policies

The National Planning Policy Framework (NPPF – “the Framework”), 2012

Local Policies

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4, CS8, CS20, CS24, CS25 and CS26.

The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Saved Policies: GC1, GC3, GC4, H3, H11, H12, TR2, TR3, TR11, TR15 and TR16.

Adopted Council Enforcement Plan

5.0 RELEVANT PLANNING HISTORY

5.1 Nothing relevant.

6.0 BACKGROUND INFORMATION

6.1 Planning permission for the development is required, yet no application to regularise has been forthcoming and the unauthorised development remains in situ. This unauthorised development has been

witnessed by Council officers who have recorded their findings as part of enforcement case 2017/00232/AB and photographic and other documentary evidence has been saved in the repository attached to this record.

6.2 Contact was made with the owner who has thus far failed to meaningfully engage with the Council.

7.0 CONSULTATIONS AND REPRESENTATIONS

None.

8.0 PLANNING CONSIDERATIONS

The Main Issues

- Whether the wall is "permitted development".
- Effect of the unauthorised development on the character and appearance of the area in conjunction with quality of design.

8.1 Whether the wall is "permitted development".

No planning permission has been sought from or granted by the Council for the wall, and the therefore consideration is given as to whether it benefits from the planning permission available within Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

8.2 Class A permits a gate, fence, wall or other means of enclosure adjacent to a highway used by vehicular traffic. However, other than in the case of schools the permission is limited by virtue of A.1 (a)(ii) to fencing that does not exceed 1 metre in height above ground level.

The key issue therefore is whether the fencing is "adjacent" or not to the highway. 9. The meaning of the word "adjacent" is not defined in the GPDO or in the Act, and therefore the Council relies on its literal meaning. "Adjacent" is defined in the dictionary as meaning being near or close to, next to, or contiguous. "Contiguous" is so defined as sharing a boundary or touching each other physically, or continuous. However, the case law has established that the meaning of "adjacent" in the context of the GPDO does not mean "contiguous" or "abutting". It is clear from this that a wall does not have to adjoin a highway to be "adjacent" to it; it is a matter of judgement, and of fact and degree in each case, as to whether a fence is perceived to define the boundary of a property from the highway edge, and hence whether it is "adjacent" to the highway.

8.3 When viewed in the context of the street scene the wall appears as forming the boundary of the Land with the highway. Given its height and stark, opaque appearance when contrasted against the more open areas of surrounding countryside, the viewer's eye is immediately drawn to it, and so even to a casual observer it would be perceived as being a boundary separating the Land from the highway. As a matter of fact and degree, the fencing is "adjacent" to the highway and, as such, it does not benefit from the planning permission within the GPDO and hence constitutes a breach of planning control.

8.4 The Council realise that the wall replaces a wall that occupied a similar location on the Land previously. However, it appears that in terms of its height massing and scale and the materials used in its construction the new wall is not a 'replacement' for the purposes of the GPDO but is considered new development.

8.4 Effect of the unauthorised development on the character and appearance of the area.

Saved LP policy GC1, aims to secure satisfactory standards of design that relate sympathetically to the character and appearance of the surrounding area. The wall, due to its height, length, colour and position adjacent to the footway, is a visually prominent addition where it has a hard and stark appearance, at odds with the softer and more open treatment of nearby built form. As such, it presents a visually jarring addition to the street scene, in context. Moreover, the position of the wall prevents the strip of land now enclosed from

performing an amenity role within the development which is harmful to the character and appearance of the area.

8.5 Amenity land features are an attractive and fundamental addition to the streetscape and influence the make-up of its character which is why permission for the enclosure of such land into gardens or indeed other uses is not usually given. Those approved schemes that do erode amenity land are unusually conditioned to include substantial soft landscaping to mitigate the loss by softening the edges of built development. However, here, by virtue of the built mass that runs along the edge of the of the Land adjacent to Austenwood Lane , built at the point where the pavement ends, offers no opportunity for any soft landscaping to reduce the harsh visual impact caused by the unauthorised development. Due to its height, mass and scale in conjunction with its situational relationship in context, the wall predominates to the detriment of the area in which it is located. Moreover, its presence draws the eye away from the more attractive architectural features of the parent property on the Land. Whilst an effort has been made to integrate the wall and reinforce its relationship to the parent property by painting it the same colour, this does nothing to reduce its visual impact. Whilst one would reasonably expect to see a wall in such a location, the fact that there is no (soft) material-interruption between the highway and the wall, as it has been built hard to existing highway that surrounds the Land, the unauthorised development offers a visually intrusive and therefore unwelcome departure from the established rhythm and form of wider contextual development, thus detracting from its overall appearance and legibility, increasing the impact of the built form and creating a perceived addition in density of the area.

9.0 HUMAN RIGHTS ACT

The following articles of the Human Rights Act 1998 are considered to be relevant in this case: Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence. Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions. Both of these rights could be outweighed when considering the general interest and the rights and freedoms of others. The addition of this development causes unacceptable harm to the visual interest and the character of the area in which it is located. The need to remedy the breach is in the interest of the wider community and, with the lack of demonstrable information to the contrary, greater than the needs of the individual.

10.0 EQUALITY IMPACT ASSESSMENT

The Equality Act 2010, which came into effect on 1st October, includes a new public-sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

10.1 Part 11, Section 149 provides the following 'Public sector equality duty' on authorities: "(1) – A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it." It is therefore necessary for the authority, in consideration of this report, as with the consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking the recommended action.

10.2 The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered proportionate and in the public interest in order to uphold the planning laws of the land and harm caused to the amenity of the area.

11 EXPEDIENCY

The issue of an Enforcement Notice by Local Planning Authorities is discretionary, and it is the Council's decision to decide whether a notice is expedient in the public interest. In doing so, consideration must be given to all the options:

11.1 Do nothing or under enforce

The breach of planning control was brought to the Council's attention by a concerned resident. To do nothing at all in this case is likely to attract complaints from residents and is, in the circumstances, unjustifiable.

11.2 Negotiate

The adopted Enforcement Plan states that wherever possible, officers will negotiate to bring a contravention into compliance but goes on to recognise that sometimes enforcement action is necessary to reach the right outcome.

The owner has offered no comment and has not sought to engage with the LPA. The harm caused by the unauthorised development is demonstrable. There is no reason to invite a planning application as the development would not be supported at officer level. For these reasons, it is considered that in order to remedy the breach in a timely manner there is no scope for further negotiation.

11.3 Issue an Enforcement Notice

The only other option available to the Council is to issue an Enforcement Notice. This would have the benefit of remedying the harm that is being caused. It would also boost public confidence in the integrity of the planning system and the decision making of the Council as local planning authority as there is local objection to the unauthorised development. Given the owner's attitude, it is perhaps likely that an appeal will be forthcoming but the author of this report believes that the Council's case is sound and any appeal would be likely to be dismissed.

12.0 CONCLUSIONS

The Council's solicitor should be instructed to issue an Enforcement Notice pursuant to Section 172 of the Town and Country Planning Act 1990 requiring, within **Three (3)** months:

Requirements:

i Remove the wall as shown in the approximate position 'A' to 'B' on the Plan (and shown in the Photograph at Appendix 'A' of this notice) from the Land, including all associated fixtures, fittings and waste materials therefrom.

The reason for issuing a Notice

It appears to the Council that the above breach of planning control has occurred in the last 4 years.

The erection of the wall on the Land has resulted in the loss of an area of soft-landscaping and, by virtue of its design and location on the Land; it presents an overly dominant and visually oppressive addition to the street scene. The loss of the amenity land in conjunction with the poor quality of the design of the wall detracts from the character and visual interest of wider public realm.

The unauthorised development is therefore contrary to Policy CS20 of the Adopted Core Strategy 2011; Policies GC1 of the Chiltern Local Plan 1999 and polices contained in the National Planning Policy Framework.

Classification: OFFICIAL

The Council does not consider that planning permission should be given because planning conditions could not overcome these objections to the development.

Copies of the notice should be served on:

The Owner(s)/Occupier(s) - Austenwood Cottage, 39 Austenway, Chalfont St Peter, Buckinghamshire, SL9 8NN

Classification: OFFICIAL

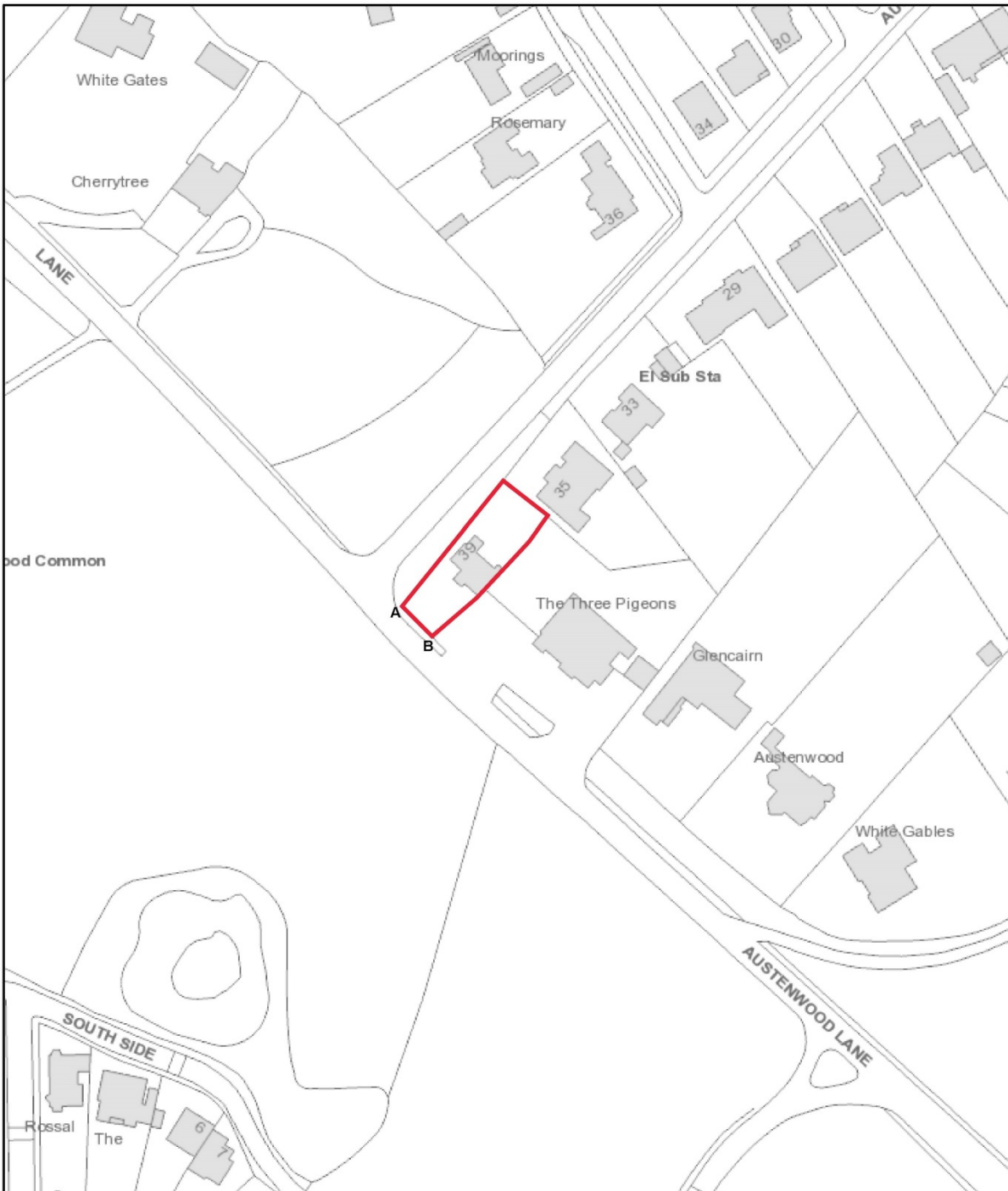
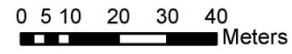
2017/00232/AB

Austenwood Cottage
39 Austenway
Chalfont St Peter
Buckinghamshire
SL9 8NN



Enforcement Notice Plan

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Appendix A



Signed:

Dated:

Steve Bambrick – Director of Services

Signed:

Dated:

Joanna Swift – Head of Legal and Democratic Services

SUBJECT:	<i>Planning Enforcement Report - 2017/0242/AB</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Kirstie Elliot</i>
WARD:	<i>Chesham Bois & Weedon Hill</i>
SITE ADDRESS:	<i>Green Park Copperkins Lane Amersham Buckinghamshire HP6 5SS (“the Land”)</i>
BREACH:	Without planning permission, the material change of use of the Land from a mixed use of agriculture and residential use accommodating no more than eight (8) Gypsy & Traveller pitches to use as a Gypsy & Traveller site comprising the laying of hardstanding and the stationing of additional mobile homes resulting in material increase in number of pitches on the Land

1.0 INTRODUCTION & SUMMARY

1.1 The majority of the Land enjoys an approved use for eight gypsy and traveller pitches with associated amenity blocks, hardstanding and access to Copperkins Lane. However the recognised boundaries of the Land have been extended into the countryside surrounding the site with the addition of more hardstanding and extra static and mobile caravans. The number of static caravans has been increased to 24 in all (at the point of the most recent visit) and are interspersed between the recognised site and the encroachment.

1.2 The Land is located within the Metropolitan Green Belt and within Chiltern AONB.

2.0 MAIN ISSUES

2.1 Consideration of why the unauthorised development is not compliant with local and national planning policy allied with the expediency of enforcement action in the public interest.

3.0 RECOMMENDATION SUMMARY

3.1 In accordance with the Council’s Constitution [delegation 13(a)], that approval is given for the Director of Services exercises his power to issue an Enforcement Notice pursuant to Section 171A of the Town and Country Planning Act 1990 (as amended), following consultation with the Head of Legal & Democratic Services, in respect of remedying the Breach on the Land and that, if necessary, legal proceedings be instituted to secure compliance..

4.0 RELEVANT POLICIES

National and Regional Policies

The National Planning Policy Framework (NPPF – “the Framework”), 2012

Local Policies

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4, CS8, CS20, CS24, CS25 and CS26.

The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Saved Policies: GC1, GC3, GC4, H3, H11, H12, TR2, TR3, TR11, TR15 and TR16.

Local Government Planning Policy for Traveller Sites 2015 (PPTS)

Adopted Council Enforcement Plan

5.0 RELEVANT PLANNING HISTORY

5.1 CH/2015/1702/EU – Application for Certificate of Lawfulness for an existing use of the site for eight Gypsy & Traveller pitches with associated amenity blocks, hardstanding and access from Copperkins Lane for more than 10 years – Approved on 6th Nov 2015

6.0 BACKGROUND INFORMATION

6.1 Planning permission for the activity described above is required, yet no application to regularise the activity has been forthcoming and the unauthorised development remains in situ. This unauthorised development has been witnessed by Council officers who have recorded their findings as part of enforcement case 2017/00242/AB and photographic and other documentary evidence has been saved in the repository attached to this record.

6.2 Contact was made with the owner who has thus far failed to meaningfully engage with the Council.

7.0 CONSULTATIONS AND REPRESENTATIONS

None.

8.0 PLANNING CONSIDERATIONS

8.1 The Main Issues

Change of use through intensification and alteration of land character .

Whether the development is inappropriate development

The effect of the development on the openness of the Green Belt

The effect of the development on visual amenities, the landscape character of the area and whether the development is sustainable

The existing level of local provision and need for traveller sites

The degree of compliance with locally specific policy criteria for assessment of traveller sites

Totality of the harm to the Green Belt and any other harm, are clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the developments

8.2 Development has taken place that is defined as is inappropriate development in the Green Belt within the terms of the National Planning Policy Framework (the Framework). By definition inappropriate development is harmful to the Green Belt.

8.3 The certificate of lawfulness (2015/1702/EU) clearly grants approval on the Land for "gypsy caravan site for the stationing of caravans/mobile homes for residential purposes on 8 pitches", it is the Council's position that it is lawful for the site to be used for the stationing of 16 caravans (a pitch being recognised as a static and a mobile-caravan) for residential use. Such controls are reflected in the caravan site licence which has been issued for 16 caravans on the Land.

8.4 The definition of a "caravan site", for purposes of planning control, can be found in s29(1) of the Caravan Sites and Control of Development Act 1960 which in turn refers to s1(4) of the same Act. A caravan site is defined as "land on which a caravan is stationed for purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed." It may be noted that the definition can apply to land used for the stationing of no more than one caravan. By virtue of s336 of the 1990 Act, this definition is transposed into the 1990 Act. The land surrounding the original site, as defined by the map attached to the certificate of lawfulness has been encroached and expanded on by the laying of hard standing

and the inclusion of mobile and static caravans. Thus, using the aforesaid definition, what has been established on the wider Land (now included and indicated on the notice plan), is a caravan site. This not appropriate use of Land the reasons for which will be discussed later in this report.

8.5 The Council contends that the increase in the number of caravans on the Land in conjunction with further unauthorised development in respect of additional hardstanding, amounts to a material change of use by way of intensification coupled with an alteration in land character, as part of the Land was outside of the boundary as shown delineated on the certificate of lawfulness plan. Therefore, this in turn and in the round amounts to development requiring planning permission. The Council point to the case of *John Childs v FSS and Test Valley DC [2005] EWHC 2369 (Admin)* as the authority for the view that an increase in the number of caravans on land beyond that certified by a certificate of lawfulness is capable of constituting a material change of use. In the case of Childs, the certified use was for the siting of 4 caravans but the Inspector faced appeals in respect of a refusal to grant a certificate in respect of increases to 8, 15, 30 and 50 caravans. The Inspector concluded that a material change of use occurred with an increase to as few as 8 caravans. An increase, of itself, does not automatically give rise to such a change of use; the increase has to be such that there is a change in the character of the use of the land.

8.6 The test attribute to the change in character is addressed later in the report and does not rely on intensification alone to include in the affirmative that there has been a definite change in land character.

8.7 The Land occupies a relatively modest plot within the Metropolitan Green Belt outside the settlement boundary of Amersham. It is bounded to the south by Copperkins Lane and surrounded by agricultural land from all other aspects

8.8 The site has been further developed to include a large area of gravel hardstanding and additional static and touring caravans. The further development of the site has eroded the open countryside and reduced the open green gap and thus the openness of the Green Belt. There is no definition of openness in the Framework but, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. Bullet point 2 of paragraph 90 of the Framework provides that engineering operations (of which the laying of hardstanding would generally fall to be considered) is not inappropriate development provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. Given the amount of development that has taken place on the previously open and undeveloped aspects of the plot of land, the development has a significant adverse impact on the openness of the Green Belt and the encroachment into the countryside of urbanising features.

8.9 Whilst hidden from wider view, in general terms, the site presents itself as a dense and forbidding enclosure that is out of keeping with the predominantly rural and undeveloped area in which it is located. There are substantial buildings on the nearby residential fringe on the border with a notable strategic-gap that arguably do not necessarily contribute in a particularly positive way to the rural setting but these developments have the benefit of planning approval. The additional static caravans, whilst not necessarily exposed to wider views, are a predominate feature and therefore their prominence in the landscape is enhanced by their number. The site is not within any settlement boundary and because the development of the site encroaches into the countryside it does not comply with one of the purposes of including land within the Green Belt, which is to assist in safeguarding the countryside from encroachment. The fact that the site may not be exposed to wider view does not mean that there has not been encroachment into the Green Belt and therefore associated planning harm.

8.10 The landscape character of this area of the Chilterns ANOB is generally of sweeping views of open countryside, with the boundary treatment along the roadside in the area comprise native planting with permeable views into the adjoining paddocks. Despite the existing roadside screening of the site, the

proliferation of caravans leads to a cluttered appearance which is at odds with the landscape character of the area and its overall visual interest, and neither conserves or enhances the special landscape quality and scenic beauty of the AONB of which the Land forms a part.

8.11 The Framework advises that there are three elements of sustainable development which are economic, social and environmental. In addition, the PPTS sets out criteria to ensure that traveller sites are sustainable in all three respects. As mentioned, the appeal site is outside the settlement boundary but it is in relative proximity to services and facilities in Amersham. In this respect the development is perhaps socially, economically and environmentally sustainable, but the environmental role also includes the contribution of the planning system to protecting and enhancing the natural and built environment. For the reasons above, the development of the site does not contribute to the protection or enhancement of the natural and built environment and it does not comply with the environmental element of sustainability.

8.12 The Council recognises that that planning permission may be granted for additional gypsy and traveller pitches where a number of specific criteria can be demonstrated. However, no such criteria have been demonstrated and the Council has been informed that certain of the pitches on the site have been 'let' to non gypsy/travellers. This issue is still being explored at the time of writing this report and may be re-examined in the event of an appeal and/or a subsequent demonstration of 'very special circumstances'. The site is not located within an existing settlement and has an impact on the identity of the settlement of Amersham in that it does not reflect the character or appearance of the permanent residential and other building types within the settlement and displays unacceptable impacts on the character and appearance of the surrounding landscape because of an over proliferation of caravans.

8.13 The development that has taken place is inappropriate development in the Green Belt and, as such, is by definition harmful and should not be approved except in very special circumstances. The identified harm arising from the loss of openness and the adverse impact on landscape character and visual amenity. The development is not sustainable and does not comply with local or national planning policy. The totality of the harm occasioned by the development is therefore substantial. Planning policy advises, particularly in the case of Green Belt, that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. It therefore cannot be ignored that the development of the Land has been undertaken in advance of obtaining planning permission and there was no opportunity to appropriately limit or mitigate the harm that has already taken place, which adds weight to the substantial harm. However, weighing against that substantial harm is the unmet need for gypsy and traveller sites locally, the lack of alternative or available accommodation and the personal circumstances of those occupying the Land. Notwithstanding, Policy E of the PPTS states that 'personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances'. In the absence of information to the contrary, the totality of the harm to the Green Belt and any other harm, is not clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

8.14 There is little doubt the occupants' Article 8 Convention 12 rights to respect for private and family life and the home would be engaged as enforcement action may result in the loss of the family's home because of the terms of the enforcement notice. Article 8 is a qualified right that requires a balance between the rights of the individual and the needs of the wider community or state interest. However, no specific interest in this regard has been demonstrated and said interest is not determinative of the planning issue and may be outweighed by the cumulative effect of other considerations already identified

9.0 HUMAN RIGHTS ACT

The following articles of the Human Rights Act 1998 are considered to be relevant in this case: Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence. Part 2 Article 1 of the

First Protocol - the right to protection of property, including peaceful enjoyment of possessions. Both of these rights could be outweighed when considering the general interest and the rights and freedoms of others. The addition of this development causes unacceptable harm to the open character of the Green Belt character. The need to remedy the breach is in the interest of the wider community and, with the lack of demonstrable information to the contrary, greater than the needs of the individual.

10.0 EQUALITY IMPACT ASSESSMENT

The Equality Act 2010, which came into effect on 1st October, includes a new public-sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

10.1 Part 11, Section 149 provides the following 'Public sector equality duty' on authorities: "(1) – A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it." It is therefore necessary for the authority, in consideration of this report, as with the consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking the recommended action.

10.2 The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered proportionate and in the public interest in order to uphold the planning laws of the land and harm caused to the amenity of the area.

11 EXPEDIENCY

The issue of an Enforcement Notice by Local Planning Authorities is discretionary, and it is the Council's decision to decide whether a notice is expedient in the public interest. In doing so, consideration must be given to all the options:

11.1 Do nothing or under enforce

The breach of planning control was brought to the Council's attention by a concerned resident. To do nothing at all in this case is likely to attract complaints from residents and is, in the circumstances, unjustifiable.

11.2 Negotiate

The adopted Enforcement Plan states that wherever possible, officers will negotiate to bring a contravention into compliance but goes on to recognise that sometimes enforcement action is necessary to reach the right outcome.

The owner has offered no comment and has not sought to engage with the LPA. The harm caused by the unauthorised development is demonstrable. There is no reason to invite a planning application as the development would not be supported at officer level. For these reasons, it is considered that in order to remedy the breach in a timely manner there is no scope for further negotiation.

11.3 Issue an Enforcement Notice

The only other option available to the Council is to issue an Enforcement Notice. This would have the benefit of remedying the harm that is being caused. It would also boost public confidence in the integrity of the planning system and the decision making of the Council as local planning authority as there is local objection to the unauthorised development. Given the owner's attitude, it is likely that an appeal will be forthcoming

but the author of this report believes that the Council's case is sound and any appeal would be likely to be dismissed.

12.0 CONCLUSIONS

The Council's solicitor should be instructed to issue an Enforcement Notice pursuant to Section 172 of the Town and Country Planning Act 1990 requiring, within Six (6) months:

Requirements:

- 1 Cease the use of the Land (as shown shaded in the location between the red and blue lines on the Plan) for the stationing of caravans and mobile homes for residential purposes.
- 2 Remove all static caravans from the Land, including all associated fixtures, fittings and waste materials therefrom, so that no more than eight (8) pitches remain (one pitch being one static and one mobile caravan) on the Land
- 3 Take up and remove the Hardstanding from the Land (the position of which is shown shaded in the location between the red and blue lines on the Plan);
- 4 Rip the soil from the part of the Land where the hardstanding has been removed to alleviate pressure;
- 5 Where the Hardstanding formerly stood restore the Land to its level prior to the laying of the Hardstanding (commensurate with adjacent ground level);
- 6 Remove from the Land all debris and materials arising as a result of compliance with steps 3-5.

The reason for issuing a Notice

It appears to the Council that the above breach of planning control has occurred in the last 4 years.

The change of use of land surrounding the existing lawful site, the laying of hardstanding on this land and the stationing of additional static caravans onto the Land is inappropriate development which erodes the openness of the Green Belt and conflicts with the purposes of including the Land within it. The proliferation of caravans on the Land does not conserve or enhance the special landscape character and scenic beauty of the AONB. Furthermore, the development does not protect or enhance the natural, built and historic environment and is therefore not sustainable. No 'very special circumstances' have been demonstrated that would outweigh this harm.

The unauthorised development is therefore contrary to Policies CS4, CS14 and CS22 of the Core Strategy for Chiltern District (Adopted November 2011), Saved Policies GC1, GB2 and LSQ1 of the Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 20 May 2011) Consolidated September 2007 and November 2011 and policies contained in the National Planning Policy Framework and the Local Government Planning policy for traveller sites.

The Council does not consider that planning permission should be given because planning conditions could not overcome these objections to the development.

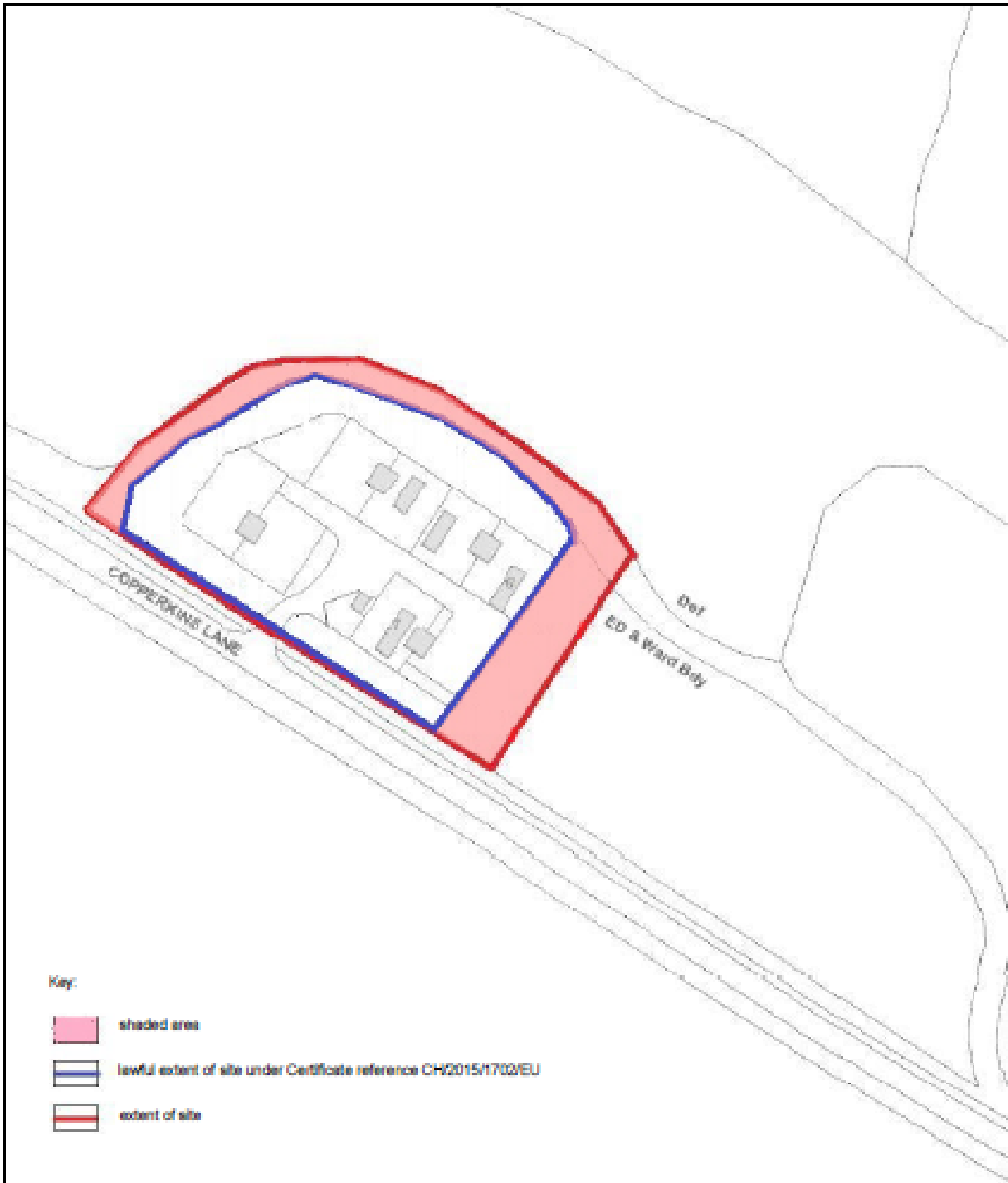
Copies of the notice should be served on:

The Owner(s)/Occupier(s) - Green Park, Copperkins Lane, Amersham, Buckinghamshire
HP6 5SS ("the Land")

2017/00242/AB
Green Park
Copperkins Lane
Amersham
Buckinghamshire
HP8 5SS



Location Plan
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Signed:

Dated:

Steve Bambrick – Director of Services

Signed:

Dated:

Joanna Swift – Head of Legal and Democratic Services

SUBJECT:	<i>Planning Enforcement Report - 2017/00314/AB</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Suleman Uddin</i>
WARD:	<i>Prestwood and Heath End</i>
SITE ADDRESS:	<i>Sellengers Round 68 High Street Prestwood Buckinghamshire HP16 9EN</i>
BREACH:	Without planning permission, the erection of a fence on the Land.

1.0 INTRODUCTION & SUMMARY

1.1 The Land comprises a detached dwelling with associated access onto Sellengers Round.

1.2 A fence has been erected where the boundary of the Land adjacent to the highway, in excess of 1m in height when measured from highest adjacent ground level.

2.0 MAIN ISSUES

2.1 Consideration of why the unauthorised development is not compliant with local and national planning policy allied with the expediency of enforcement action in the public interest.

3.0 RECOMMENDATION SUMMARY

3.1 In accordance with the Council’s Constitution [delegation 13(a)], that approval is given for the Director of Services exercises his power to issue an Enforcement Notice pursuant to Section 171A of the Town and Country Planning Act 1990 (as amended), following consultation with the Head of Legal & Democratic Services, in respect of remedying the Breach on the Land and that, if necessary, legal proceedings be instituted to secure compliance.

4.0 RELEVANT POLICIES

National and Regional Policies

The National Planning Policy Framework (NPPF – “the Framework”), 2012

Local Policies

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4, CS8, CS20, CS24, CS25 and CS26.

The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Saved Policies: GC1, GC3, GC4, H3, H11, H12, TR2, TR3, TR11, TR15 and TR16.

Adopted Council Enforcement Plan

5.0 RELEVANT PLANNING HISTORY

5.1 Nothing relevant.

6.0 BACKGROUND INFORMATION

6.1 Planning permission for the development is required, yet no application to regularise has been forthcoming and the unauthorised development remains in situ. This unauthorised development has been

witnessed by Council officers who have recorded their findings as part of enforcement case 2017/00314/AB and photographic and other documentary evidence has been saved in the repository attached to this record.

6.2 Contact was made with the owner who has thus far failed to meaningfully engage with the Council.

7.0 CONSULTATIONS AND REPRESENTATIONS

None.

8.0 PLANNING CONSIDERATIONS

The Main Issues

- Whether the fence is “permitted development”.
- Effect of the unauthorised development on the character and appearance of the area in conjunction with quality of design.

8.1 Whether the fence is “permitted development”.

No planning permission has been sought from or granted by the Council for the fence, and the therefore consideration is given as to whether it benefits from the planning permission available within Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

8.2 Class A permits a gate, fence, wall or other means of enclosure adjacent to a highway used by vehicular traffic. However, other than in the case of schools the permission is limited by virtue of A.1 (a)(ii) to fencing that does not exceed 1 metre in height above ground level.

The key issue therefore is whether the fencing is “adjacent” or not to the highway. 9. The meaning of the word “adjacent” is not defined in the GPDO or in the Act, and therefore the Council relies on its literal meaning. “Adjacent” is defined in the dictionary as meaning being near or close to, next to, or contiguous. “Contiguous” is so defined as sharing a boundary or touching each other physically, or continuous. However, the case law has established that the meaning of “adjacent” in the context of the GPDO does not mean “contiguous” or “abutting”. It is clear from this that a fence does not have to adjoin a highway to be “adjacent” to it; it is a matter of judgement, and of fact and degree in each case, as to whether a fence is perceived to define the boundary of a property from the highway edge, and hence whether it is “adjacent” to the highway.

8.3 When viewed in the context of the street scene the fence appears as forming the boundary of the Land with the highway. Given its height and stark, opaque appearance when contrasted against the more open areas of surrounding countryside, the viewer’s eye is immediately drawn to it, and so even to a casual observer it would be perceived as being a boundary separating the Land from the highway. As a matter of fact and degree, the fencing is “adjacent” to the highway and, as such, it does not benefit from the planning permission within the GPDO and hence constitutes a breach of planning control.

8.4 The Council realise that the fence replaces a low wall that occupied a similar location on the Land previously. However, it appears that in terms of its height massing and scale and the materials used in its construction the new fence is not a ‘replacement’ for the purposes of the GPDO but is considered new development.

8.5 Effect of the unauthorised development on the character and appearance of the area.

Saved LP policy GC1, aims to secure satisfactory standards of design that relate sympathetically to the character and appearance of the surrounding area. The fence, due to its height, length, colour and position adjacent to the footway, is a visually prominent addition where it has a hard and stark appearance, at odds with the softer and more open treatment of nearby built form and landscaping. As such, it presents a visually jarring addition to the street scene, in context.

8.6 Due to its height, mass and scale in conjunction with its situational relationship in context, the fence predominates to the detriment of the area in which it is located. Moreover, its presence draws the eye away from the more attractive features of the wider area. No effort has been made to integrate the fence within its surroundings and therefore reinforce its relationship to the parent property which does nothing to reduce its visual impact. Whilst one would reasonably expect to see a fence in such a location, the fact that there is no (soft) material-interruption between the highway and the fence, as it has been built hard to existing highway that surrounds the Land, means that the unauthorised development offers a visually intrusive and therefore unwelcome departure from the established rhythm and form of wider contextual development, thus detracting from its overall appearance and legibility, increasing the impact of the built form and creating a perceived addition in density of the area.

9.0 HUMAN RIGHTS ACT

The following articles of the Human Rights Act 1998 are considered to be relevant in this case: Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence. Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions. Both of these rights could be outweighed when considering the general interest and the rights and freedoms of others. The addition of this development causes unacceptable harm to the visual interest and the character of the area in which it is located. The need to remedy the breach is in the interest of the wider community and, with the lack of demonstrable information to the contrary, greater than the needs of the individual.

10.0 EQUALITY IMPACT ASSESSMENT

The Equality Act 2010, which came into effect on 1st October, includes a new public-sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

10.1 Part 11, Section 149 provides the following 'Public sector equality duty' on authorities: "(1) – A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it." It is therefore necessary for the authority, in consideration of this report, as with the consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking the recommended action.

10.2 The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered proportionate and in the public interest in order to uphold the planning laws of the land and harm caused to the amenity of the area.

11 EXPEDIENCY

The issue of an Enforcement Notice by Local Planning Authorities is discretionary, and it is the Council's decision to decide whether a notice is expedient in the public interest. In doing so, consideration must be given to all the options:

11.1 Do nothing or under enforce

The breach of planning control was brought to the Council's attention by a concerned resident. To do nothing at all in this case is likely to attract complaints from residents and is, in the circumstances, unjustifiable.

11.2 Negotiate

The adopted Enforcement Plan states that wherever possible, officers will negotiate to bring a contravention into compliance but goes on to recognise that sometimes enforcement action is necessary to reach the right outcome.

The owner has offered no comment and has not sought to engage with the LPA. The harm caused by the unauthorised development is demonstrable. There is no reason to invite a planning application as the development would not be supported at officer level. For these reasons, it is considered that in order to remedy the breach in a timely manner there is no scope for further negotiation.

11.3 Issue an Enforcement Notice

The only other option available to the Council is to issue an Enforcement Notice. This would have the benefit of remedying the harm that is being caused. It would also boost public confidence in the integrity of the planning system and the decision making of the Council as local planning authority as there is local objection to the unauthorised development. Given the owner's attitude, it is perhaps likely that an appeal will be forthcoming but the author of this report believes that the Council's case is sound and any appeal would be likely to be dismissed.

12.0 CONCLUSIONS

The Council's solicitor should be instructed to issue an Enforcement Notice pursuant to Section 172 of the Town and Country Planning Act 1990 requiring, within **Two (2)** months:

Requirements:

i Remove the fence as shown in the approximate position 'A' to 'B' on the Plan (and shown in the Photograph at Appendix 'A' of this notice) from the Land, including all associated fixtures, fittings and waste materials therefrom.

The reason for issuing a Notice

It appears to the Council that the above breach of planning control has occurred in the last 4 years.

By virtue of its design and location on the Land, the fence is visually jarring addition to the street scene and the poor quality of its design from the character and visual interest of wider public realm.

The unauthorised development is therefore contrary to Policy CS20 of the Adopted Core Strategy 2011; Policies GC1 of the Chiltern Local Plan 1999 and polices contained in the National Planning Policy Framework.

The Council does not consider that planning permission should be given because planning conditions could not overcome these objections to the development.

Copies of the notice should be served on:

The Owner(s)/Occupier(s) - Sellengers Round, 68 High Street, Prestwood, Buckinghamshire, HP16 9EN

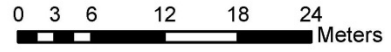
2017/00314/AB

Sellengers Round
68 High Street
Prestwood
Buckinghamshire
HP16 9EN



Enforcement Notice Plan

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Appendix A



Signed:

Dated:

Steve Bambrick – Director of Services

Signed:

Dated:

Joanna Swift – Head of Legal and Democratic Services

SUBJECT:	<i>Planning Enforcement Report – 2018/00001/AB</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Kirstie Elliot</i>
WARD:	<i>Little Missenden</i>
SITE ADDRESS:	<i>Land Between Mantles Green Cottage and Mantles Farm Fields Hyde Heath Road Hyde Heath Buckinghamshire (“the Land”)</i>
BREACH:	<i>Without planning permission, the material change of use of the land to residential by the stationing of a caravan in residential occupation.</i>

1.0 INTRODUCTION & SUMMARY

1.1 The Land is a square-shaped plot located on the south side of Hyde Heath Road, approximately 200m to the east of the junction with Bullbaiters Lane. The Land is located within the open Green Belt and the Chilterns AONB. There is a public footpath to the west of the Land.

2.0 MAIN ISSUES

2.1 Consideration of why the unauthorised development is not compliant with local and national planning policy allied with the expediency of enforcement action in the public interest.

3.0 RECOMMENDATION SUMMARY

3.1 In accordance with the Council’s Constitution [delegation 13(a)], that the Director of Services exercises his power to issue an Enforcement Notice pursuant to Section 171A of the Town and Country Planning Act 1990 (as amended), following consultation with the Head of Legal & Democratic Services, in respect of remedying the Breach on the Land and that, if necessary, legal proceedings be instituted to secure compliance.

4.0 RELEVANT POLICIES

National and Regional Policies

The National Planning Policy Framework (NPPF – “the Framework”), 2012

Local Policies

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4, CS8, CS20, CS24, CS25 and CS26.

The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Saved Policies: GC1, GC3, GC4, H3, H11, H12, TR2, TR3, TR11, TR15 and TR16.

Sustainable Construction & Renewable Energy SPD (2015)

The Chalfont St Peter Neighbourhood Plan: Examination Draft 2013- 2028 – Policy VC4

Adopted Council Enforcement Plan

5.0 RELEVANT PLANNING HISTORY

5.1 There is no planning history for the Land.

6.0 BACKGROUND INFORMATION

6.1 Concerns were raised with the Council by a member of the public that a caravan and car were present on the land and that the caravan was being lived in. An enforcement officer has subsequently visited on a number of occasions and whilst the gate to the site has been locked, it was observed from the public footpath and highway that present on the Land is a touring caravan, a tent. An electricity generator has also been heard and a car parked on the land. There is no evidence of any operational development on the Land.

6.2 A Planning Contravention Notice (PCN) was served on the owner/occupier of the Land with the response confirming that the occupier is living on the Land in a caravan with the permission of the land owner.

6.3 The breach of planning control has occurred in the last 10 years.

7.0 CONSULTATIONS AND REPRESENTATIONS

Legal Services.

8.0 PLANNING CONSIDERATIONS

8.1 The Main Issues:

8.2 (i) Whether the development is inappropriate development within the Green Belt; (ii) the effect of the development on the character and appearance of the area which is within the Chilterns Area of Outstanding Natural Beauty (AONB); (iii) if the development is inappropriate, whether there are any special circumstances which would outweigh the harm the harm; (iv) whether the development is sustainable; (v) impact on amenities of neighbouring residential occupiers.

Inappropriate Development:

8.3 Paragraph 80 of the NPPF states that the Green Belt serves five purposes, namely

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land

8.4 Most development within the Green Belt is inappropriate save for a closed list of 10 exceptions as stated at paragraphs 89 and 90 of the NPPF. The change of use of land is not one of these exceptions as such, the unauthorised use of the Land for the stationing of a caravan in residential occupation is inappropriate development. The stationing of the caravan on the land, including associated domestic paraphernalia is considered to affect the openness of the Green Belt and results in encroachment into the countryside. Policy GB2 of the Adopted Local Plan does allow for the change of use of land within the green belt provided openness is maintained. Policy GB2 is out of step with the NPPF in this respect and as such the NPPF as the most up to date policy takes precedence.

Character and appearance of the AONB:

8.5 The Land is located within the Chilterns AONB where the primary objective is to conserve and enhance the natural beauty of the landscape. The unauthorised use, with the stationing of the caravan and associated residential paraphernalia has a significant urbanising impact on the character of the area and is considered harmful to the AONB and does not conserve or enhance it. It is acknowledged that the Land is screened to some extent due to existing hedging and trees. However, this natural screening is only effective during the summer months and will not necessarily be present in perpetuity. As such, the unauthorised change of use is

contrary to paragraph 115 of the NPPF, Policy CS22 of the Core Strategy for Chiltern District and Policy LSQ1 of the Adopted Local Plan.

Special Circumstances:

8.6 It is considered that the change of use of the Land is inappropriate development which harms the openness of the Green Belt and harms the character and appearance of the AONB. There have been no very special circumstances identified which outweigh this harm to justify the change of use of the Land.

Sustainable Development:

8.7 The Land is located on the outskirts of the village of Hyde Heath and some 4 miles (approximately) from the settlement of Amersham. The Land is therefore located in an isolated location in the countryside which has poor transport links and limited access to amenities and services. Accordingly, the unauthorised use of the Land is not considered a sustainable form of development as defined in the NPPF and is contrary to Policy CS4 of the Core Strategy for Chiltern District.

Impact on amenities of neighbours:

8.8 The Land is located a considerable distance from existing residential properties, the dwelling at Mantles Green Cottage being located some 70 metres (approximately) to the east of the Lane. Given the distances involved, it is not considered that the unauthorised development has a direct impact upon the living conditions of occupiers of neighbouring residential properties, by reason of loss of privacy or an overbearing development.

9.0 HUMAN RIGHTS ACT

The following articles of the Human Rights Act 1998 are considered to be relevant in this case: Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence. Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions. Both of these rights could be outweighed when considering the general interest and the rights and freedoms of others. The unauthorised change of use of the Land causes unacceptable harm to the visual interest and the character of the area in which it is located. The need to remedy the breach is in the interest of the wider community and, with the lack of demonstrable information to the contrary, greater than the needs of the individual.

10.0 EQUALITY IMPACT ASSESSMENT

The Equality Act 2010, which came into effect on 1st October, includes a new public sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

10.1 Part 11, Section 149 provides the following 'Public sector equality duty' on authorities: "(1) – A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it." It is therefore necessary for the authority, in consideration of this report, as with the consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking the recommended action.

10.2 The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered proportionate and in the public interest in order to uphold the planning laws of the land and harm caused to the amenity of the area.

11 EXPEDIENCY

The issue of Enforcement Notices by Local Planning Authorities is discretionary and it is the Council's decision to decide whether a notice is expedient in the public interest. In doing so, consideration must be given to all the options:

11.1 Do nothing or under enforce

The breach of planning control was brought to the Council's attention by a concerned resident. To do nothing at all in this case is likely to attract complaints from residents and, given the harm caused, is, in the circumstances, unjustifiable.

11.2 Negotiate

The adopted Enforcement Plan states that wherever possible, officers will negotiate to bring a contravention into compliance but goes on to recognise that sometimes enforcement action is necessary to reach the right outcome.

The occupier of the Land has stated that he does not see the need for planning permission in respect of the breach and has taken no steps, when requested, to voluntarily cease the unauthorised use and vacate the Land. The harm caused by the unauthorised development is demonstrable. There is no reason to invite a planning application as the development would not be supported at officer level. For these reasons, it is considered that in order to remedy the breach in a timely manner there is no scope for further negotiation.

11.3 Issue an Enforcement Notice

The only other option available to the Council is to issue an Enforcement Notice. This would have the benefit of remedying the harm that is being caused. It would also boost public confidence in the integrity of the planning system and the decision making of the Council as local planning authority as there is local objection to the unauthorised development. Given the owner's attitude, it is likely that an appeal will be forthcoming but the author of this report believes that the Council's case is sound and any appeal would be likely to be dismissed.

12.0 CONCLUSIONS

The Council's solicitor should be instructed to issue an Enforcement Notice pursuant to Section 172 of the Town and Country Planning Act 1990 requiring, within **Six (6)** months:

Requirements:

1. Use. Cease the Unauthorised use of the Land for the stationing of a caravan for residential purposes;
2. Remove from the Land the caravan and other domestic paraphernalia associated with the Unauthorised

The reason for issuing a Notice

It appears to the Council that the above breach of planning control has occurred in the last 10 years.

The unauthorised use of the Land is inappropriate development which harms the openness of the Green Belt and is detrimental to the visual interest of the local area. The Land is located in an isolated position with poor transport links and limited access to services and amenities and is not a sustainable form of development. It has not been demonstrated that 'very special circumstances' exist that would outweigh the demonstrable planning harm caused by the development.

The unauthorised development is therefore contrary to Saved Policies GB2 and LSQ1 of The Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007

& November 2011, Policies CS4 and CS22 of the Core Strategy for Chiltern District - Adopted November 2011 and policies contained in the National Planning Policy Framework.

The Council does not consider that planning permission should be given because planning conditions could not overcome these objections to the development.

Copies of the notice should be served on:

Karl Warne, Land Between Mantles Green Cottage and Mantles Farm Fields, Hyde Heath Road, Hyde Heath, Buckinghamshire

Keith Alcrow, Land Between Mantles Green Cottage and Mantles Farm Fields, Hyde Heath Road, Hyde Heath, Buckinghamshire

The Occupier, Land Between Mantles Green Cottage and Mantles Farm Fields, Hyde Heath Road, Hyde Heath, Buckinghamshire

The Owner, Land Between Mantles Green Cottage and Mantles Farm Fields, Hyde Heath Road, Hyde Heath, Buckinghamshire

Land between Mantles Green Cottage and Mantles Farm Fields
Hyde Heath Road
Hyde Heath
Buckinghamshire
HP6 5RW

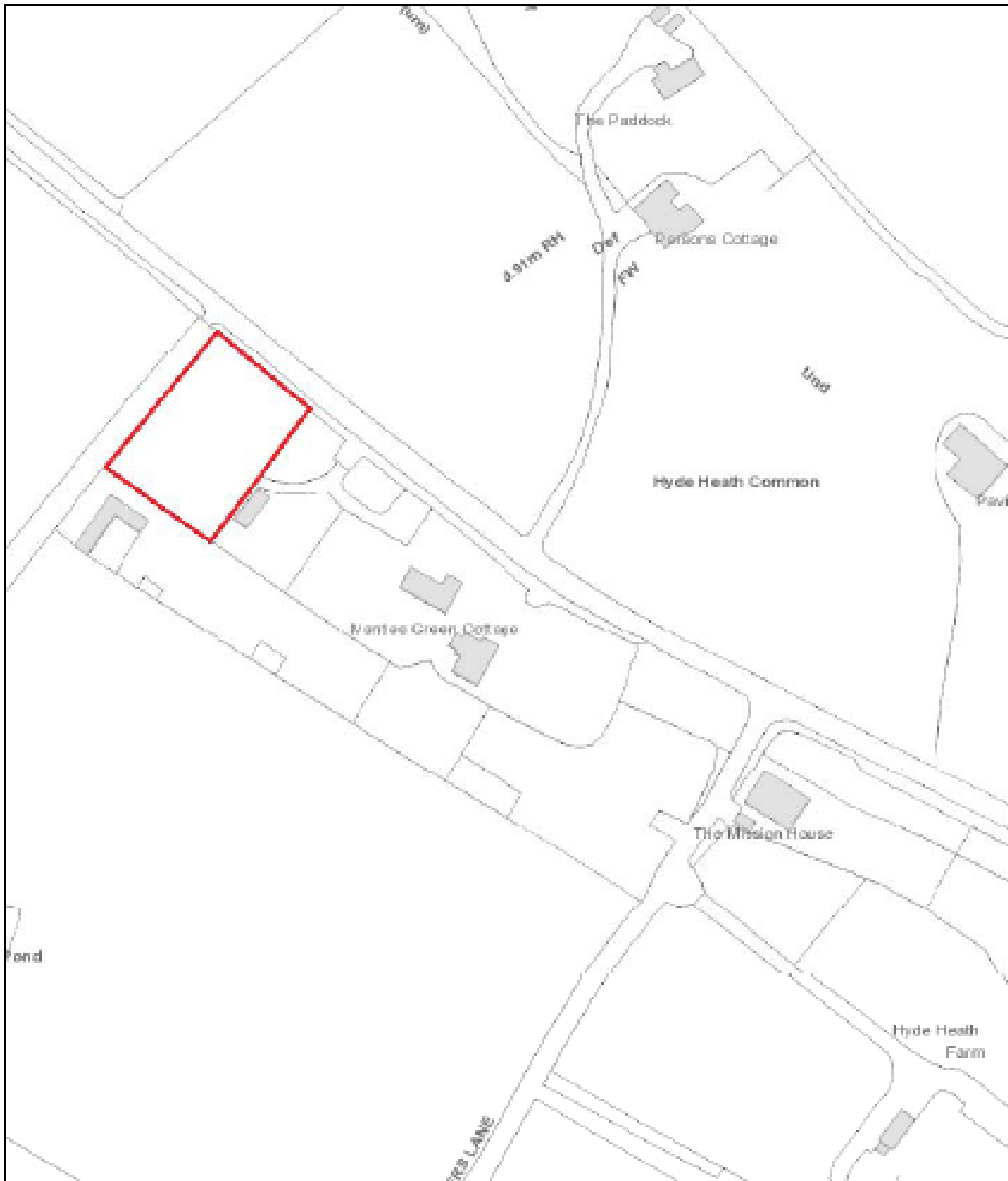
2018/00001/AB

Location Plan
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100025874.



CHILTERN
District Council

0 5 10 20 30 40 Metres

Signed:

Steve Bambrick – Director of Services

Dated:

Signed:

Joanna Swift – Head of Legal and Democratic Services

Dated:

SUBJECT:	<i>Planning Enforcement Report - 2018/00006/AB</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Adam Pegley</i>
WARD:	<i>Little Missenden</i>
SITE ADDRESS:	<i>Merryhill Farm Windsor Lane Little Kingshill Buckinghamshire</i>
BREACH:	Without planning permission, the erection of a Fence on the Land.

1.0 INTRODUCTION & SUMMARY

1.1 The Land comprises of an area of open agricultural land with associated access off of Windsor Lane.

1.2 A fence has been erected where the boundary of the Land meets the greenbelt land to the rear of Savanna, Windsor Lane, Little Kingshill, Buckinghamshire, HP16 ODP, and is in excess of 1m in height when measured from highest adjacent ground level.

2.0 MAIN ISSUES

2.1 Consideration of why the unauthorised development is not compliant with local and national planning policy allied with the expediency of enforcement action in the public interest.

3.0 RECOMMENDATION SUMMARY

3.1 In accordance with the Council’s Constitution [delegation 13(a)], that approval is given for the Director of Services exercises his power to issue an Enforcement Notice pursuant to Section 171A of the Town and Country Planning Act 1990 (as amended), following consultation with the Head of Legal & Democratic Services, in respect of remedying the Breach on the Land and that, if necessary, legal proceedings be instituted to secure compliance.

4.0 RELEVANT POLICIES

National and Regional Policies

The National Planning Policy Framework (NPPF – “the Framework”), 2012

Local Policies

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4, CS8, CS20, CS24, CS25 and CS26.

The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Saved Policies: GC1, GC3, GC4, H3, H11, H12, TR2, TR3, TR11, TR15 and TR16.

Adopted Council Enforcement Plan

5.0 RELEVANT PLANNING HISTORY

None.

6.0 BACKGROUND INFORMATION

6.1 Planning permission for the development is required, yet no application to regularise has been forthcoming and the unauthorised development remains in situ. This unauthorised development has been

witnessed by Council officers who have recorded their findings as part of enforcement case 2018/00006/AB and photographic and other documentary evidence has been saved in the repository attached to this record.

6.2 Contact was made with the owner who has thus far failed to meaningfully engage with the Council.

7.0 CONSULTATIONS AND REPRESENTATIONS

None.

8.0 PLANNING CONSIDERATIONS

The Main Issues

- Whether the fence is "permitted development".
- Effect of the unauthorised development on the character and appearance of the area in conjunction with quality of design.

8.1 Whether the fence is "permitted development".

No planning permission has been sought from or granted by the Council for the fence, and the therefore consideration is given as to whether it benefits from the planning permission available within Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

8.2 Class A permits a gate, fence, wall or other means of enclosure should it not exceed 2 meters above ground level, by virtue of A.1 (a)(ii). The key issue is therefore whether the fencing is above 2m, and as such it measured 2.8m in height, therefore it does not benefit from the planning permission within the GPDO and hence constitutes a breach of planning control.

8.3 Effect of the unauthorised development on the character and appearance of the area.

Saved LP policy GC1, aims to secure satisfactory standards of design that relate sympathetically to the character and appearance of the surrounding area. The fence, due to its height, mass, scale and position within the Greenbelt and Area of Outstanding Natural Beauty (AONB), is a visually prominent addition where it has a hard and stark appearance, at odds with the softer and more open treatment of nearby built form. By virtue of the height, mass and scale in conjunction with its situational relationship, it does not harmonise with the scenic AONB. It also restricts view into and out of the AONB and adversely impacts the openness of the greenbelt. A close boarded fence of this height is not of a character or design reflective of its rural surroundings, and contrary to policies GC1, LSQ1 and GB2, therefore predominates to the detriment of the area in which it is located.

9.0 HUMAN RIGHTS ACT

The following articles of the Human Rights Act 1998 are considered to be relevant in this case: Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence. Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions. Both of these rights could be outweighed when considering the general interest and the rights and freedoms of others. The addition of this development causes unacceptable harm to the visual interest and the character of the area in which it is located. The need to remedy the breach is in the interest of the wider community and, with the lack of demonstrable information to the contrary, greater than the needs of the individual.

10.0 EQUALITY IMPACT ASSESSMENT

The Equality Act 2010, which came into effect on 1st October, includes a new public-sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

10.1 Part 11, Section 149 provides the following 'Public sector equality duty' on authorities: "(1) – A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it." It is therefore necessary for the authority, in consideration of this report, as with the consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking the recommended action.

10.2 The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered proportionate and in the public interest in order to uphold the planning laws of the land and harm caused to the amenity of the area.

11 EXPEDIENCY

The issue of an Enforcement Notice by Local Planning Authorities is discretionary, and it is the Council's decision to decide whether a notice is expedient in the public interest. In doing so, consideration must be given to all the options:

11.1 Do nothing or under enforce

The breach of planning control was brought to the Council's attention by a concerned resident. To do nothing at all in this case is likely to attract complaints from residents and is, in the circumstances, unjustifiable.

11.2 Negotiate

The adopted Enforcement Plan states that wherever possible, officers will negotiate to bring a contravention into compliance but goes on to recognise that sometimes enforcement action is necessary to reach the right outcome.

The owner has offered no comment and has not sought to engage with the LPA. The harm caused by the unauthorised development is demonstrable. There is no reason to invite a planning application as the development would not be supported at officer level. For these reasons, it is considered that in order to remedy the breach in a timely manner there is no scope for further negotiation.

11.3 Issue an Enforcement Notice

The only other option available to the Council is to issue an Enforcement Notice. This would have the benefit of remedying the harm that is being caused. It would also boost public confidence in the integrity of the planning system and the decision making of the Council as local planning authority as there is local objection to the unauthorised development. Given the owner's attitude, it is perhaps likely that an appeal will be forthcoming but the author of this report believes that the Council's case is sound and any appeal would be likely to be dismissed.

12.0 CONCLUSIONS

The Council's solicitor should be instructed to issue an Enforcement Notice pursuant to Section 172 of the Town and Country Planning Act 1990 requiring, within **Three (3)** months:

Requirements:

i Remove the fence as shown in the approximate position 'A' to 'B' on the Plan (and shown in the Photograph at Appendix 'A' of this notice) from the Land, including all associated fixtures, fittings and waste materials therefrom.

The reason for issuing a Notice

It appears to the Council that the above breach of planning control has occurred in the last 4 years.

The erection of the fence on the Land has resulted in the loss of openness of the Greenbelt and AONB, by virtue of its design and size on the Land; it presents an overly dominant and visually oppressive addition to the Greenbelt and AONB. The loss of this openness in conjunction with the design of the fence detracts from the character and visual interest of the wider public realm.

The unauthorised development is therefore contrary to Policy CS20 of the Adopted Core Strategy 2011; Policies GC1, LSQ1 and GB2 of The Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011: Saved Policies, and policies contained in the National Planning Policy Framework.

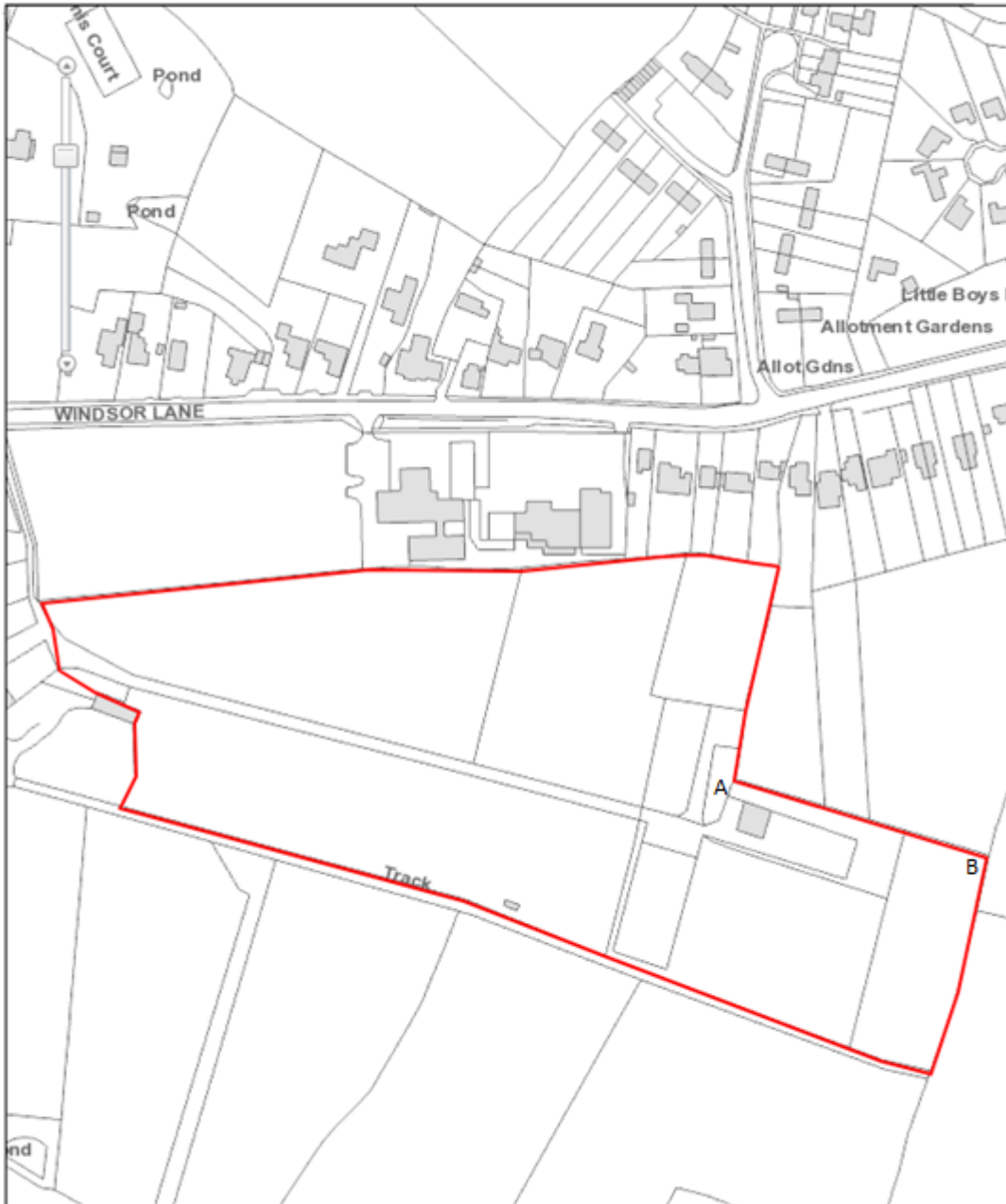
The Council does not consider that planning permission should be given because planning conditions could not overcome these objections to the development.

Copies of the notice should be served on:

The Owner(s)/Occupier(s) - A & D DOWDY (PROPERTIES) LIMITED (Co. Regn. No. 10449542) of Ivy Cottage, Green Lane, Radnage, High Wycombe HP14 4DJ.

Location Plan

Merry Hill Farm, Windsor Lane, Little Kingshill, Buckinghamshire



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1: 2500

Appendix A



Signed:

Dated:

Steve Bambrick – Director of Services

Signed:

Dated:

Joanna Swift – Head of Legal and Democratic Services

SUBJECT:	<i>Planning Enforcement Delegated Report - 2018/00023/AB</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Adam Pegley</i>
WARD:	<i>Holmer Green</i>
SITE ADDRESS:	<i>2A Browns Road Holmer Green Buckinghamshire HP15 2SL (“the Land”)</i>
BREACH:	Without planning permission, a material change of use of the Land from amenity land to residential.

1.0 INTRODUCTION & SUMMARY

- 1.1 The site comprises a detached residential dwelling with access via Browns Road.
- 1.2 A fence has been erected on amenity land beyond where the boundary of the Land meets Parish Piece, adjacent to and immediately abutting a highway. The fence that has been erected is unauthorised, required planning permission and due to its location also represents the unauthorised change of use of Parish Piece to residential use by the Land, without planning permission.

2.0 MAIN ISSUES

- 2.1 Consideration of why the unauthorised development is not compliant with local and national planning policy allied with the expediency of enforcement action in the public interest.

3.0 RECOMMENDATION SUMMARY

- 3.1 That it is expedient in the public interest to issue an Enforcement Notice requiring the removal fence and ceasing the residential use of highway amenity land.

4.0 RELEVANT POLICIES

National and Regional Policies

The National Planning Policy Framework (NPPF – “the Framework”), 2012

Local Policies

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4, CS8, CS20, CS24, CS25 and CS26.

The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Saved Policies: GC1, GC3, GC4, H3, H11, H12, TR2, TR3, TR11, TR15 and TR16.

Adopted Council Enforcement Plan

5.0 RELEVANT PLANNING HISTORY

- 5.1 CH/2016/0067/FA Replacement dwelling (changes to design of new dwelling approved under planning permission CH/2015/1438/FA) - *Permitted*

6.0 BACKGROUND INFORMATION

- 6.1 Planning permission for the fence directly abutting the highway and change of use of the field to residential is required, yet no application to regularise has been forthcoming and the unauthorised development remains in situ. This unauthorised development has been witnessed by Council officers

who have recorded their findings as part of enforcement case 2018/00023/AB and photographic and other documentary evidence has been saved in the repository attached to this record.

6.2 Contact was made with the owner who has thus far failed to meaningfully engage with the Council.

7.0 CONSULTATIONS AND REPRESENTATIONS

None.

8.0 PLANNING CONSIDERATIONS

The Main Issues

- Whether the fence directly abutting the highway is "permitted development"
- The effect of the unauthorised change of use on the character and appearance of the area in conjunction with quality of design.

8.1 *Whether the fence is "permitted development"*

No planning permission has been sought from or granted by the Council for the fence in this position and the associated change of use and therefore consideration is given as to whether it benefits from the planning permission available within Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO)

8.2 Class A permits a gate, fence, wall or other means of enclosure adjacent to a highway used by vehicular traffic. However, other than in the case of schools the permission is limited by virtue of A.1 (a)(ii) to fencing that does not exceed 1 metre in height above ground level.

The key issue therefore is whether the fencing is "adjacent" or not to the highway. The meaning of the word "adjacent" is not defined in the GPDO or in the Act, and therefore the Council relies on its literal meaning. "Adjacent" is defined in the dictionary as meaning being near or close to, next to, or contiguous. "Contiguous" is so defined as sharing a boundary or touching each other physically, or continuous. However, the case law has established that the meaning of "adjacent" in the context of the GPDO does not mean "contiguous" or "abutting". It is clear from this that a wall does not have to adjoin a highway to be "adjacent" to it; it is a matter of judgement, and of fact and degree in each case, as to whether a fence is perceived to define the boundary of a property from the highway edge, and hence whether it is "adjacent" to the highway.

8.3 When viewed in the context of the street scene the fence appears as forming the boundary of the Land with the highway. Given its height and stark, opaque appearance when contrasted against the more open areas of surrounding countryside, the viewer's eye is immediately drawn to it, and so even to a casual observer it would be perceived as being a boundary separating the Land from the highway. As a matter of fact and degree, the fencing is "adjacent" to the highway and, as such, it does not benefit from the planning permission within the GPDO and hence constitutes a breach of planning control. The council acknowledges that a section of the fence located closest to the junction of Parish Piece and Browns Road was reduced to the height of 1m for Highway Safety reasons.

8.4 *The effect of the unauthorised change of use on the character and appearance of the area*

Saved LP policy GC1, aims to secure satisfactory standards of design that relate sympathetically to the character and appearance of the surrounding area. The wall, due to its height, length, colour and position adjacent to the footway, is a visually prominent addition where it has a hard and stark appearance, at odds with the softer and more open treatment of nearby built form. As such, it presents a visually jarring addition to the street scene, in context. Moreover, the position of the wall prevents the strip of land now enclosed from performing an amenity role within the development which is harmful to the character and appearance of the area.

8.5 Amenity land features are an attractive and fundamental addition to the streetscape and influence the make-up of its character which is why permission for the enclosure of such land into gardens or indeed other uses is not usually given. Those approved schemes that do erode amenity land are unusually conditioned to include substantial soft landscaping to mitigate the loss by softening the edges of built development. However, here, by virtue of the built mass that runs along the edge of the of the Land adjacent to Wardes Close and Wren Road , built at the point where the pavement ends, offers no opportunity for any soft landscaping to reduce the harsh visual impact caused by the unauthorised development. Due to its height, mass and scale in conjunction with its situational relationship in context, the wall predominates to the detriment of the area in which it is located. Whilst one would reasonably expect to see a wall in such a location, the fact that there is no (soft) material-interruption between the highway and the wall, as it has been built hard to existing highway that surrounds the Land, the unauthorised development offers a visually intrusive and therefore unwelcome departure from the established rhythm and form of wider contextual development, thus detracting from its overall appearance and legibility, increasing the impact of the built form and creating a perceived addition in density of the area.

8.6 The unauthorised change of use has resulted in the encroachment of the adjacent highway pavement reducing the access for the public along Parish Piece, which is access to a School and accommodation for the Elderly.

9.0 HUMAN RIGHTS ACT

The following articles of the Human Rights Act 1998 are considered to be relevant in this case: Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence. Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions. Both of these rights could be outweighed when considering the general interest and the rights and freedoms of others. The addition of this development causes unacceptable harm to the visual interest and the character of the area in which it is located. The need to remedy the breach is in the interest of the wider community and, with the lack of demonstrable information to the contrary, greater than the needs of the individual.

10.0 EQUALITY IMPACT ASSESSMENT

The Equality Act 2010, which came into effect on 1st October, includes a new public sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

10.1 Part 11, Section 149 provides the following 'Public sector equality duty' on authorities: "(1) – A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it." It is therefore necessary for the authority, in consideration of this report, as with the consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking the recommended action.

10.2 The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered

proportionate and in the public interest in order to uphold the planning laws of the land and harm caused to the amenity of the area.

11 **EXPEDIENCY**

The issue of an Enforcement Notice by Local Planning Authorities is discretionary and it is the Council's decision to decide whether a notice is expedient in the public interest. In doing so, consideration must be given to all the options:

11.1 **Do nothing or under enforce**

The breach of planning control was brought to the Council's attention by a concerned resident. To do nothing at all in this case is likely to attract complaints from residents and is, in the circumstances, unjustifiable.

11.2 **Negotiate**

The adopted Enforcement Plan states that wherever possible, officers will negotiate to bring a contravention into compliance but goes on to recognise that sometimes enforcement action is necessary to reach the right outcome.

The owner has offered no comment and has not sought to engage with the LPA. The harm caused by the unauthorised development is demonstrable. There is no reason to invite a planning application as the development would not be supported at officer level. For these reasons, it is considered that in order to remedy the breach in a timely manner there is no scope for further negotiation.

13.3 **Issue an Enforcement Notice**

The only other option available to the Council is to issue an Enforcement Notice. This would have the benefit of remedying the harm that is being caused. It would also boost public confidence in the integrity of the planning system and the decision making of the Council as local planning authority as there is local objection to the unauthorised development. Given the owner's attitude, it is likely that an appeal will be forthcoming but the author of this report believes that the Council's case is sound and any appeal would be likely to be dismissed.

14.0 **CONCLUSIONS**

The Council's solicitor should be instructed to issue an Enforcement Notice pursuant to Section 172 of the Town and Country Planning Act 1990 requiring, within **Three (3)** months:

Requirements:

- i Cease the use of the Land (as shown outlined in black on the plan) for residential purposes
- ii Remove the fence shown in the approximate position 'A' to 'B' as shown on the Plan (and shown in the Photographs at Appendix 'A' of this notice) from the Land, including all associated fixtures, fittings and waste materials therefrom.

The reason for issuing a Notice

It appears to the Council that the above breach of planning control has occurred in the last 10 years.

The unauthorised change of use has resulted in the reduction in size of public pavement, this pavement being along Parish Piece, which is an access to a School and accommodation for the elderly.

The erection of the fence on the Land has resulted in the loss of an area of soft-landscaping and, by virtue of its design and location on the Land; it presents an overly dominant and visually oppressive

addition to the street scene. The loss of the amenity land in conjunction with the poor quality of the design of the fence detracts from the character and visual interest of wider public realm.

The unauthorised development is therefore contrary to Policy CS20 of the Adopted Core Strategy 2011; Policies GC1 of the Chiltern Local Plan 1999 and policies contained in the National Planning Policy Framework

The Council does not consider that planning permission should be given because planning conditions could not overcome these objections to the development.

Copies of the notice should be served on:

Owner(s)/Occupier(s) - ROSEMARY ANN GRAHAM of 2a Browns Road, Holmer Green, High Wycombe HP15 6SL

Location Plan

2A Browns Road, Holmer Green, High Wycombe, Buckinghamshire, HP15 6SL



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1: 1250

Appendix A





Signed:
Steve Bambrick – Director of Services

Dated:

Signed:
Joanna Swift – Head of Legal and Democratic Services

Dated:

SUBJECT:	<i>Planning Enforcement Report - EN/18/2036</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Lyana Radzif</i>
WARD:	<i>Central</i>
SITE ADDRESS:	<i>Costa Coffee 59 - 61 St Peters Court High Street Chalfont St Peter Buckinghamshire SL9 9QQ (“the Premises”)</i>
BREACH:	Breach of Condition 2 of Planning Permission CH/2017/0904/FA (delivery outside of hours).

1.0 INTRODUCTION & SUMMARY

1.1 The Premises is a ground floor commercial unit located on the Eastern aspect of St Peters Court. The Premises accommodates customer parking within the communal parking area to the front. There is a significant amount of residential accommodation occupying the upper floors of the Court.

2.0 MAIN ISSUES

2.1 Consideration of why the unauthorised development is not compliant with local and national planning policy allied with the expediency of enforcement action in the public interest.

3.0 RECOMMENDATION SUMMARY

3.1 In accordance with the Council’s Constitution [delegation 13(a)], that approval is given for the Director of Services exercises his power to issue a Breach of Condition Notice pursuant to Section 187A of the Town and Country Planning Act 1990 (as amended), following consultation with the Head of Legal & Democratic Services, in respect of remedying the Breach on the Land and that, if necessary, legal proceedings be instituted to secure compliance.

4.0 RELEVANT POLICIES

National and Regional Policies

The National Planning Policy Framework (NPPF – “the Framework”), 2012

Local Policies

Core Strategy for Chiltern District - Adopted November 2011: Policies CS4, CS8, CS20, CS24, CS25 and CS26.

The Chiltern District Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Saved Policies: GC1, GC3, GC4, H3, H11, H12, TR2, TR3, TR11, TR15 and TR16.

The Chalfont St Peter Neighbourhood Plan: Examination Draft 2013- 2028 – Policy VC4

Adopted Council Enforcement Plan

5.0 RELEVANT PLANNING HISTORY

5.1 Full Planning Application CH/2017/0904/FA – ‘Change of use to coffee shop (A3 use) with the siting of external seating on the public highway – Conditionally Approved on 4th July 2017.

5.2 Condition 2 of Planning Permission CH/2017/0904/FA 'The Class A3 use hereby permitted shall only take place between the hours of 6:30 to 20:00 Mondays to Saturdays and 8:00 to 18:30 on Sundays and Bank Holidays and no delivery or collection vehicle shall service the site outside of these hours.'

6.0 BACKGROUND INFORMATION

6.1 A breach of condition concerning out of hours deliveries has been witnessed by a member of the public, who noted deliveries taking place as early as 1.30am, and this information was passed to the Council by way of a complaint. These findings form part of enforcement case EN/18/2036 and the photographic and other documentary evidence has been saved in the repository attached to this record.

7.0 CONSULTATIONS AND REPRESENTATIONS

Legal Services.

8.0 PLANNING CONSIDERATIONS

8.1 The Main Issues:

8.2 Whether condition 2 meets the tests applied by the National Planning Policy Framework (NPPF) and meets its purpose of protecting the amenity values of neighbouring occupiers in terms of privacy.

8.3 Paragraph 206 of the National Planning Policy Framework states "Planning conditions should only be imposed where they are:

- Necessary;
- Relevant to planning and to the development to be permitted;
- Precise and enforceable;
- Reasonable in all other respects.

8.4 *Necessary.*

The residential properties most likely to be affected by any noise generated by the movements of delivery vehicles to and from the Premises are those situated above and adjacent to it and most likely but not exclusive to, those located the rear. The aforementioned are the most sensitive locations for noise disturbance emanating from the delivery operations to the store. In these positions, background noise is dominated by the ambient noise levels generated by High Street traffic and other local traffic movements. No noise survey or assessment has been conducted with respect to internal noise levels from delivery events. However, an out-of-hours delivery event is the worst case scenario given the generally negligent level of ambient noise occurring in the early hours of the morning.

Deliveries occurring outside of the hours stipulated by the planning condition have a pronounced material effect on the living conditions of the adjoining residents in terms of disturbance by noise intrusion. Further, if there is an associated increase in the number of vehicles visiting the site, this would further impact the quality of life of nearby occupants, increasing their overall expose to such a disturbance. However, it is recognised that there is no restriction on the number of deliveries to the store that could take place within the permitted hours. It is therefore reasonable to assume that, given the lack of current restriction on a maximum number of deliveries to the Premises, and then more deliveries within the approved timings would satisfy the overall demand for delivered goods and should not necessitate a demand determined by the times at which they can take place. For the above reasons, failure to adhere to the recognised delivery times compromises the amenity interests of the residents of the neighbouring dwellings. Accordingly, there is a definite planning reason for the imposition of condition 2 in that it primarily seeks to limit disturbance in order that the retail and residential uses can co-exist in harmony.

8.5 *Relevant to planning and to the development to be permitted.*

The condition relates to planning objectives in that it seeks to protect privacy and avoid unnecessary disturbance, thus preserving wider amenity values. The condition is relevant to the development permitted by planning consent CH/2017/0904/FA and fairly and reasonably relates to it. Indeed, the absence of this condition may have led to the application being refused for reasons of the likely intrusion on amenity interests that the condition was put in place to mitigate.

8.6 *Precise & Enforceable.*

It is practicably possible to enforce the condition of relevance as it is precise in its wording, being free from ambiguity, and clear in its instruction and intent. The breach has been detected and the relevant evidence gathered and recorded. Moreover, the applicant has not demonstrated that they cannot reasonably or practically comply with the condition. All that is required is for deliveries to the Premises to occur within the stipulated hours of operation. No explanation has been forthcoming as to why this is not practically possible and nor has the applicant provided any extenuating circumstances as to why this cannot or should not happen in future

8.7 Reasonable.

For the reasons above, the Condition does not place an unjustifiable or disproportionate burden on the applicant as steps taken in order to comply with the requirement(s) of the condition are relatively straightforward and inexpensive. Moreover, the applicant will be aware that the condition was imposed to protect the privacy of the occupants who live nearby to the Premises and have a reasonable expectation that their peace will not be unnecessarily disturbed in the early hours of the morning.

9.0 **HUMAN RIGHTS ACT**

The following articles of the Human Rights Act 1998 are considered to be relevant in this case: Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence. Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions. Both of these rights could be outweighed when considering the general interest and the rights and freedoms of others. The breach of planning control has caused unacceptable harm to the amenity interest of the occupants of nearby dwellings. The need to remedy the breach is in the interest of the wider community and, with the lack of demonstrable information to the contrary, greater than the needs of the individual to service the business at unsocial hours.

10.0 **EQUALITY IMPACT ASSESSMENT**

The Equality Act 2010, which came into effect on 1st October, includes a new public sector Equality Duty, replacing the separate public sector equality duties relating to race, disability and sex, and also covering age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

10.1 Part 11, Section 149 provides the following 'Public sector equality duty' on authorities: "(1) – A public authority must, in the exercise of its functions, have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it." It is therefore necessary for the authority, in consideration of this report, as with the consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking the recommended action.

10.2 The breaches of planning control and action to resolve the breaches have been assessed in the context of the Human Rights Act and Equalities Act, and action to resolve the breaches is considered proportionate and in the public interest in order to uphold the planning laws of the land and harm caused to the amenity of the area.

11 **EXPEDIENCY**

The issue of Breach of Condition Notices by Local Planning Authorities is discretionary and it is the Council's decision to decide whether a notice is expedient in the public interest. In doing so, consideration must be given to all the options:

11.1 **Do nothing or under enforce**

The breach of planning control was brought to the Council's attention by a concerned resident. To do nothing at all in this case is likely to attract complaints from residents and, given the harm caused, is, in the circumstances, unjustifiable.

11.2 **Negotiate**

The adopted Enforcement Plan states that wherever possible, officers will negotiate to bring a contravention into compliance but goes on to recognise that sometimes enforcement action is necessary to reach the right outcome.

The owner has offered no explanation as to why the breach has occurred and the harm caused is clearly demonstrable. There is no reason to invite a planning application to vary or remove the condition as extended hours of operation are unlikely to be supported at officer level. For these reasons, it is considered that in order to remedy the breach in a timely manner there is no scope for negotiation and control should be forthcoming to try and prevent a repeat of the breach occurring.

11.3 **Issue a Breach of Condition Notice**

The most appropriate option available to the Council is to issue a Breach of Condition Notice. This would have the benefit of quickly remedying the harm that is being caused. It would also boost public confidence in the integrity of the planning system and the decision making of the Council as local planning authority as there is local objection to the current breach of condition.

12.0 **CONCLUSIONS**

It is respectfully requested that the Planning Committee instruct the Council's Director of Services, in consultation with the Head of Legal & Democratic Services, to exercise his power to issue a Breach of Condition Notice pursuant to Section 1 Section 187A of the Town and Country Planning Act 1990 (the Act 1990) requiring, from the date of service:

Requirements:

i Deliveries carried out in connection with the approved use of the Premises shall only take place between the hours of 6:30 to 20:00 Mondays to Saturdays and 8:00 to 18:30 on Sundays and Bank Holidays.

The reason for issuing a Notice

It appears to the Council that the above breach of planning control has occurred in the last 10 years.

The Notice is served by the Council, under section 187A of the Act 1990, because it considers that condition 2 of Planning Approval CH/2017/0904/FA - *'The Class A3 use hereby permitted shall only*

take place between the hours of 6:30 to 20:00 Mondays to Saturdays and 8:00 to 18:30 on Sundays and Bank Holidays and no delivery or collection vehicles.' - has not been complied with.

The Council considers that you should be required to comply with the aforesaid condition as specified in the Notice to protect the amenity interests of neighbouring occupiers in respect of their private enjoyment of their properties without unreasonable noise and disturbance.

Copies of the notice should be served on:

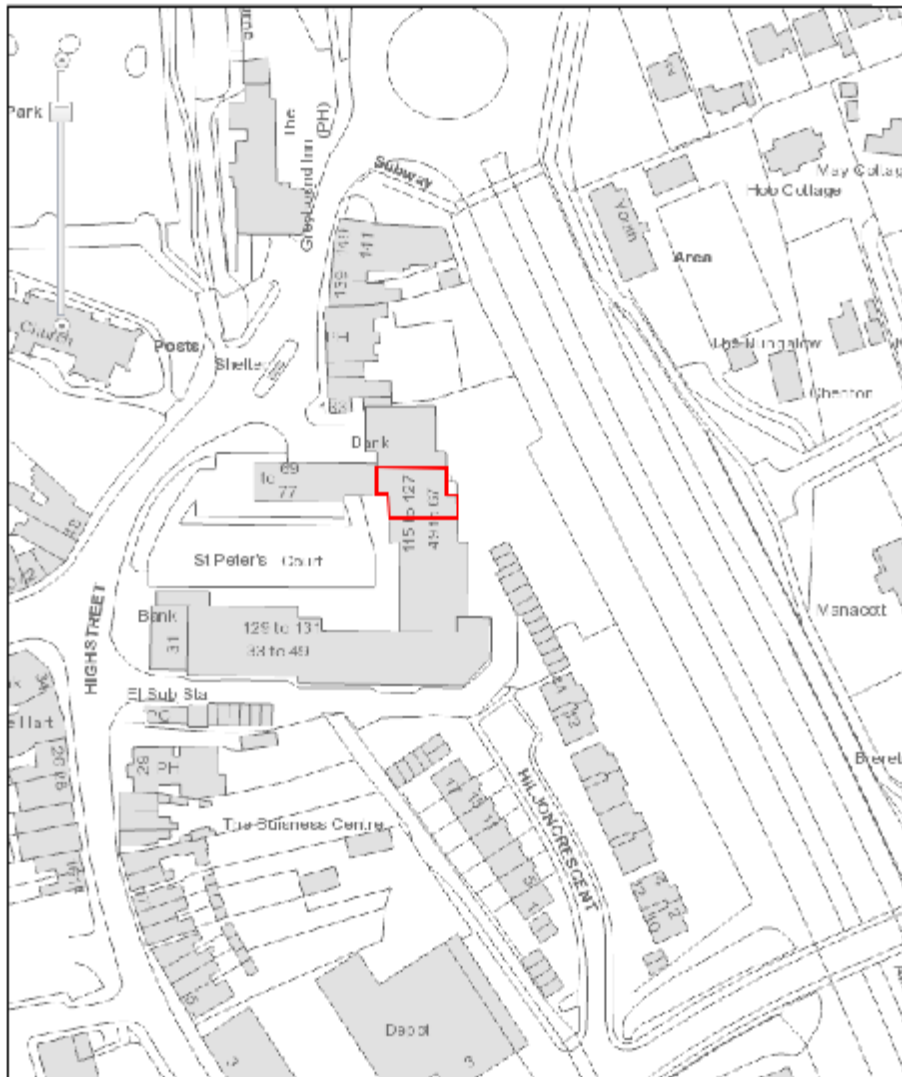
The Owner(s)/Occupier(s), Costa Coffee, 59 - 61 St Peters Court, High Street, Chalfont St Peter, Buckinghamshire, SL9 9QQ

The Company Secretary, COSTA LIMITED (Co. Regn. No. 01270695) of Whitbread Court, Porz Avenue, Houghton Hall Park, Houghton Regis, Dunstable, LU5 5XE.

Classification: OFFICIAL

Location Plan

Costa Coffee 59 - 61 St Peters Court High Street Chalfont St Peter Buckinghamshire
SL9 9QQ



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Scale 1:1250

Classification: OFFICIAL

Classification: OFFICIAL

Signed:
Steve Bambrick – Director of Services

Dated:

Signed:
Joanna Swift – Head of Legal and Democratic Services

Dated:

The End

Classification: OFFICIAL