

SUBJECT:	<i>Enforcement Notice Report</i>
SITE ADDRESS:	<i>Land Adjacent to Wapseys Wood Caravan Park, Oxford Road, Gerrards Cross</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
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WARD/S AFFECTED:	<i>Gerrards Cross</i>

1. Purpose of Report

The purpose of this report is to recommend that the Planning Committee delegate authority to the Head of Legal & Democratic Services, in consultation with the Director of Services, to issue and serve an Enforcement Notice in respect of breaches of planning control occurring on Land adjacent to Wapseys Wood Caravan Park, Oxford Road, Gerrards Cross, Buckinghamshire, SL9 8TD shown edged red on the plan attached to this report as Appendix 1 ("the Land").

RECOMMENDATIONS

- 1. That in consultation with the Director of Services, the Head of Legal & Democratic Services be granted authority to issue and serve an Enforcement Notice pursuant to Sections 172 of the Town and Country Planning Act 1990 (as amended) in respect of the unauthorised engineering operation to raise and reconfigure the level of the Land through the importation, deposition and spreading of materials including (but not limited to) hardcore, broken bricks, rubble, stone, gravel and waste materials.**
- 2. In the event that the Enforcement Notice is not complied with, that authority be given to the Head of Legal & Democratic Services to take such legal proceedings as may be considered appropriate to secure compliance therewith.**

2. Executive Summary

- 2.1 Following complaints to the Council, it was confirmed that a breach of planning control comprising of, the unauthorised engineering operation to raise and reconfigure the level of the Land through the importation, deposition and spreading of materials including (but not limited to) hardcore, broken bricks, rubble, stone, gravel and waste materials had been carried out on the Land.
- 2.2 The breach of planning control results in unacceptable planning harm to the Green Belt.
- 2.3 The owners of the Land have not carried out sufficient remedial actions to remedy the harm caused by the breach of planning control. As such, an unacceptable planning harm continues to exist as a result of the breach of planning control.
- 2.4 The recommendations as set out in this report are considered to be appropriate and proportionate in order remedy the harm caused by the unauthorised breach of planning control.

3. Reasons for Recommendations

- 3.1 A breach of planning control has been identified on the Land that results in unacceptable planning harm. The enforcement action recommended by Officers is considered to be a proportionate response to seek to remedy the harm caused by the breach. Lesser steps are not considered reasonably possible other than through the issuing of an Enforcement Notice, and the recommended action should result in an appropriate reduction in the planning harm caused by the breach.

4. Content of Report

Background

- 4.1 Following complaints, the Councils Enforcement Officers visited the Land on 13th June 2017 following a hand over of the case from the County Council who had determined that the unauthorised tipping of materials on the Land was to facilitate an unauthorised change of use of the Land.
- 4.2 A large quantity (several hundred tons) of broken bricks, rubble, stone and gravel have been imported onto the Land and placed between the boundary of the existing lawful caravan site and the adjacent highway (A40 Oxford Road) and to the West of Wapseys Wood Caravan Park. This has resulted in the ground level of the Land being raised by approximately 3 metres at the highest point to level the ground from a hillside/bank, to form a flat area of land at the same level as the existing caravan site. Photographs of the Land showing the imported materials are attached at Appendix 2.
- 4.3 A large digger type machine was operating at the time of the Enforcement Officers site visit in June 2017 and appeared to be levelling the raised ground. It was also noted that no retaining wall or means of enclosure have been erected to contain the raised land which could lead to safety implications for highway users / potential future users of the raised land and impact upon adjacent trees and vegetation.
- 4.4 A Planning Contravention Notice ("PCN") was served on 23rd June 2017 and the Council has not received a reply. No applications for Planning Permission have been submitted and the unauthorised breach continues to cause significant harm to the openness of the Green Belt.
- 4.5 Following consultation with the Planning Consultative Body and the Head of Legal & Democratic Services, the Head of Sustainable Development issued and served a Temporary Stop Notice ("TSN") on 19th June 2017 which expired on 16^h July 2017.
- 4.6 The Owners of the Land did not take (and have not taken) any steps to remedy the breach of planning control and to reduce the harm being caused to the Land despite the serving of a TSN and PCN. Further materials were deposited on the Land and having obtained Counsels advice, a further TSN was issued by the County Council on 25th August 2017 which expired on 22nd September 2017.
- 4.7 Having visited the Land on multiple occasions, most recently on 27th November 2017, Officers confirm that the Unauthorised Development consists of an

engineering operation to raise and reconfigure the level of the Land through the importation, deposition and spreading of materials including (but not limited to) hardcore, broken bricks, rubble, stone, gravel and waste materials ("Unauthorised Development") (beyond the area of land which benefits from a certificate of lawful use or development reference 15/01790/CLUED).

- 4.8 Planning permission is required for the Unauthorised Development. The Land has been raised and levelled through substantial engineering operation and importation of materials. In light of the adjacent caravan site which is under the same ownership as the Land, it is reasonably likely that the intention is to extend the limits of the existing caravan site and create additional pitches.
- 4.9 The Land lies within the Green Belt. Development in the Green Belt is harmful to the openness of the Green Belt, and therefore unacceptable in principal. Without adequate mitigation measures, the Unauthorised Development could have serious impacts upon the local ecology and affect adjacent woodland detrimentally. The Unauthorised Development is also visible from the A40, and creates increased visual impact detrimentally affecting the landscape within the Green Belt. Therefore Officers are recommending the proposed enforcement action.
- 4.10 All interested parties including the Owner and any Occupiers of the Land, and Agents are aware that the Council is considering taking enforcement action regarding the Unauthorised Development having been served with TSNs and a PCN and comments received to date have been taken into consideration when recommending the proposed enforcement action.

The existing level of local provision and need for traveler sites

- 4.11 The Wapseys Wood Caravan Park lawfully counts towards the Council's Gypsy and Traveler housing needs provision. The Council, in partnership with other LPA's in Buckinghamshire has commissioned a report assessing the provision of Gypsy and Traveler Accommodation, which is anticipated to be published soon. Any claim regarding very special circumstances exist, that outweigh the Green Belt Harm the development, would ideally be assessed against this report once published.

Human Rights and the Equalities Act 2010

- 4.12 There are no mobile homes occupying or occupied on the Land that will be the subject of the enforcement action at this current time.
- 4.13 The taking of enforcement action would amount to an interference with the Human Rights of the owners and any occupiers of the Land as set out in the Human Rights Act 1998 this incorporates the European Convention on Human Rights into UK law. The Council must act compatibly with the rights of the owners and any occupiers of the Land and must take into account the impact that a decision to take enforcement action will have on those rights.

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

- 4.14 Article 6: The right to a fair hearing. This is an absolute right. The owners of the Land

are aware that the Unauthorised Development is a breach of planning control and that the Council is considering taking enforcement action in respect thereof and have been given the opportunity of making written representations, respond to the PCN and to make a planning application for the Council to consider 'without prejudice' granting planning permission for the development. The availability of the statutory right of appeal following the issuing of any Enforcement Notice together with the further statutory right of appeal against the decision of the Secretary of State for Communities and Local Government meets the requirements to ensure a fair hearing.

- 4.15 Article 8 and Article 1 of the First Protocol: The right to respect for private/family life and the right to peace and enjoyment of property. These are qualified right and the Council can only interfere with them where it:-
- (a) is in accordance with the law;
 - (b) serves a legitimate aim; and
 - (c) is necessary and proportionate in the particular circumstances of the case.
- 4.16 In respect of (a) above, as long as the decision to take enforcement action is taken pursuant to the provisions of Part VII of the 1990 Act, the action will be taken in accordance with the law.
- 4.17 In respect of (b), taking enforcement action against breaches of planning control serves a legitimate aim, namely the preservation of the environment in the wider public interest. This has been confirmed by decision of the European Court of Human Rights in the cases of *Buckley v United Kingdom* and *Chapman v United Kingdom*.
- 4.18 Thus the only issue left that requires consideration is (c), whether enforcement action is necessary and proportionate in the particular circumstance of the case. In this respect, the Council needs to consider whether the objective can be achieved by a means which interferes less with an individual's rights and whether the measure has an excessive or disproportionate effect on the interests of the affected individual(s). The objective in this case is the proper enforcement of planning control. It is not considered that there is any other means by which this objective can be secured which interferes less with the rights of the owner and any occupant(s). Nor is it considered that the service of an enforcement notice would have an excessive or disproportionate effect on their rights.
- 4.19 Consideration has also been given to the requirements of the Equality Act 2010 ("the EA") and it has been concluded that these requirements do not affect the recommendations in this report. Section 149 (1) of the EA places a duty on the Council to have due regard to "promoting equality of opportunity and good relations between persons of different racial groups". In adopting the policies that form the development plan, long deliberation was given to the impact of those policies with regard to the principals set out in the EA or preceding law. As such, in making a decision giving due regard to the policies of the development plan, that decision is considered to have been made having had due regard to the Section 149 requirements of the EA.

5. Reasons for issuing an Enforcement Notice

- 5.1 It appears to the Council that the Unauthorised Development has occurred within the last 4 years.
- 5.2 The Unauthorised Development is situated within the Metropolitan Green Belt as shown in the South Bucks District Local Plan (adopted March 1999). Within the Green Belt there is a presumption against development other than for a limited number of specified purposes, as stated in paragraphs 89 and 90 of the National Planning Policy Framework or except in Very Special Circumstances. The Unauthorised Development does not constitute one of the specified exceptions and represents inappropriate development in the Green Belt, which by definition is harmful. Furthermore, the Unauthorised Development is harmful to the openness of the Green Belt. It has not been demonstrated that any Very Special Circumstances exist that would outweigh the harm by reason of inappropriateness and any other harm caused by such a development. As such the Unauthorised Development is contrary to the policies of the National Planning Policy Framework, which seek to protect the openness of the Green Belt and to policy GB1 of the South Bucks District Local Plan (adopted March 1999)
- 5.3 The Council does not consider that planning permission should be given because planning conditions could not overcome the objections to the Unauthorised Development.

6. Corporate Implications

- 6.1 Financial – To date, to pursue this matter internal resources have been committed and will continue to be committed to issue and serve the recommended Enforcement Notice. These costs are relatively minor and would be part of the normal work of the enforcement section and legal support. Costs have also been incurred regarding Counsels advice. Serving an Enforcement Notice will likely save the Council significant resources in defending further enforcement actions at appeal, as the scale of unauthorised development being considered will be restrained.
- 6.2 Should the available right of appeal regarding the Enforcement Notice be exercised additional resources and costs would be involved in defending the same. The level of resources and costs involved will depend on whether any appeal is determined by way of written representations, an informal Hearing or a Public Inquiry. If an appeal proceeds to a Public Inquiry or the issues raised at appeal require further Counsels advice/representation then Counsel would be engaged to present the Council's case. Officers expect these costs to be met from within existing budgets.
- 6.3 Legal - Counsels advice was obtained regarding the unlawful activities occurring on the Land. Counsel would be engaged to advise and represent the Council if any appeal against the Enforcement Notice was to be determined at a Public Inquiry or the issues raised at appeal require further Counsels advice/representation.

7. Links to Council Policy Objectives

The recommendations contained in this report are directly linked to the Corporate Service Strategy of upholding the policies in the Development Plan.

8. Next Step

In the event that the recommendations in this report are agreed, an Enforcement Notice will be issued by the Head of Legal & Democratic Services and served by members of the Enforcement Team.

Background Papers:	Temporary Stop Notices dated 19 th June 2017 and 25 th August 2017. Planning Contravention Notice dated 23 rd June 2017.
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