

SUBJECT:	<i>Planning Enforcement Report to Planning Committee</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Ciaran Cleeve, 01895 837272, Ciaran.cleeve@southbucks.gov.uk</i>
WARD:	<i>Burnham Beeches</i>
SITE ADDRESS:	<i>Grenville Lodge, Hawthorn Lane, Burnham, Buckinghamshire, SL2 3TE.</i>
BREACH:	<i>Prolonged period of inactivity since the commencement of works and the continued residential occupation of 'chalet' despite no further works occurring.</i>

1. Purpose of Report

For the Planning Committee to consider the harm caused by a breach of planning control identified at the above site, and determine whether to authorise the Head of Democratic and Legal Services in consultation with the Director of Services, to take appropriate enforcement action (which may include the issue of a Completion Notice by way of application to the Secretary of State ("SoS")) in accordance with the recommendation in this report.

RECOMMENDATIONS

1. **That the Planning Committee authorise: The Head of Legal and Democratic Services, in consultation with the Director of Services, to take appropriate enforcement action, to include the issue and service of any Notices, the precise wording and period of compliance with the Notice(s) to be delegated to the Head of Legal and Democratic Services in consultation with the Director of Services.**
2. **In the event that any Notice or Notices issued are not complied with, that authority be delegated to the Head of Legal and Democratic Services in consultation with the Director of Services to take such legal proceedings as may be considered appropriate to secure compliance therewith.**

3. Executive Summary

- 3.1 Reports have been made to the Council regarding the prolonged period of inactivity since the commencement and subsequent cessation of works (in approximately February 2014) in connection with PP ref: 08/00295/FUL for "Detached dwelling and garage", 10/02043/XFUL for "Extension of time limit" and 16/00592/CLOPED for "Application for a Certificate of Lawfulness for proposed: Building operations to complete the redevelopment of site to provide a detached dwelling and garage in accordance with planning permission 10/02043/XFUL" at Grenville Lodge, Hawthorn Lane, Burnham, Buckinghamshire, SL2 3TE. Notwithstanding the cessation of the works there continues to be present on the site storage containers, site office, site hoarding and mobile home/chalet, which is residentially occupied.
- 3.2 The owners/occupiers of the site have not, when given the opportunity to, continued with the development allowed under the Planning Permission and there is no evidence that the development will be resumed and/or carried through to completion within a reasonable time period.

- 3.3 Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 permits the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of works to implement a planning permission, such as the development which has been approved under 08/00295/FUL, 10/02043/XFUL, and which the Council has recognised as lawfully implemented by virtue of the Certificate of Lawfulness ref: 16/00592/CLOPED. As no building operations are occurring the temporary housing, site hoarding, storage containers and site office are not, therefore, considered to be reasonably required. As such, the Council would seek to consider the planning harm resulting from the continued presence of these buildings/structures on the site.
- 3.4 The erection of a site hoarding and the placement of several metal shipping storage containers around the site, the placement of a site office within the site and the residential occupation of two temporary structures 'required' for the duration of the build including a mobile home and a linked timber built chalet to the rear of the site represent a continued unplanned development which may remain on site for an unknown period, until such time the building operations have been carried out results in harm to the openness of the green belt, and harm to the visual amenity of the area as an incongruous addition to the street scene.

4. Reasons for Recommendations

- 4.1 An ongoing harm to the visual amenity of the area from the temporary development has been identified, that results in unacceptable planning harm. Enforcement action, which may include the issue of a Completion Notice is considered to be a proportionate response to seek to remedy the harm caused by the lack of progress towards completing the development granted planning permission, and the subsequent removal of the temporary buildings and structures. Lesser steps have not resulted in the situation being resolved.

5. Content of Report

5.1 The Lawful Fall-back Position

Planning permission was granted (ref: 08/00295/FUL) for the construction of a detached dwelling and garage. Planning permission 10/02043/XFUL granted an extension of time to implement planning permission 08/00295/FUL, following the grant of which footings for the permitted garage were dug, and the driveway was constructed, thereby implementing the planning permission. A subsequent application for a Certificate of Proposed Lawful Development (ref: 16/00592/CLOPED) confirmed that development had lawfully commenced to implement planning permission 08/00295/FUL and as such, the planning permission remains extant and no further planning permission would be required to develop the site in accordance with that planning permission .

Permitted development rights provided under Class A of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 permit the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with works to implement a planning permission. The site owner is relying on this permitted development right to continue to provide a site hoarding, several metal storage

containers for storage, a site office and two 'temporary' linked residential structures on the site.

5.2 The Planning Harm

In the absence of any activity to progress the development since the initial commencement and with no identified prospect of the development resuming or being completed within a reasonable time period, the continued presence on the site of the hoarding, the storage containers, the site office and the continued residential occupation and presence of 'temporary' housing, is considered harmful to the openness of the Green Belt, incongruous in the street scene and harmful to the appearance of the locality. If the works to implement planning permission 08/00295/FUL and 10/02043/XFUL are not continuing, the Council should reasonably have the opportunity to consider taking further enforcement actions.

Where the site owner can rely upon permitted development rights under Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, the Council cannot reasonably consider taking enforcement action against the temporary development in order to remedy the harm caused by that temporary development.

The main issues to be considered when weighing up the benefit of the development against the harm caused by the temporary development are:

- a. Impact on the openness of the Green Belt and harm to visual amenity caused by the temporary development; and,
- b. Impact on amenity of neighbours due to the untidy and incongruous appearance of the site;

5.3 Human Rights and Equality

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

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

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

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

- (a) is in accordance with the law;
- (b) serves a legitimate aim; and
- (c) is necessary and proportionate in the particular circumstances of the case.

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.

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*.

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

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 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". The policies that form the development plan, considered in their adoption 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 71 requirements of the EA.

5.4 Reasons to Take Formal Action

Allowing the situation to continue could result in the harm to amenity continuing for a further extended and unknown period.

5.5 Requirements for Remedy

- i) Complete the development allowed under Planning Permission 08/00295/FUL, 10/02043/XFUL, and 16/00592/CLOPED within 12 months from the issue of the notice;
- ii) Remove from the site the temporary structures including the residential units, the site hoarding, the storage containers and the site office within 12 months from the issue of the notice;

- iii) Remove from the site all machinery, equipment and materials required in connection to compliance with requirement i) and ii) above.

5.6 Proportionality and Expediency

The development of the site results in planning harm as set out in Section 3 of this report, and therefore amounts to an unacceptable form of development when considered against the development plan. It is therefore expedient to take enforcement action in order to require either the completion of the development or the reversion of the site to undeveloped Green Belt land to remedy the harm.

6. Corporate Implications

6.1 Financial

Completion Notices are subject to confirmation by the Secretary of State (SoS) for the Department for Communities and Local Government in accordance with Section 95 of the Act. The confirmation of a completion notice by the SoS is also subject to challenge to the High Court under Section 284. The cost of defending enforcement appeals forms a normal part of the Sustainable Development service budget.

6.2 Legal

The Head of Legal and Democratic Services has been consulted on this report.

7 Links to Council Policy Objectives

- 7.1 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

- 8.1 In the event the recommendation set out in this report is agreed, the Head of Legal and Democratic Services will, in consultation with the Director of Services, take appropriate enforcement action which may include the issue of a Completion Notice which will be subject to confirmation by the Secretary of State for the Department of Communities and Local Government.

Background Papers:	Enforcement Case File
---------------------------	-----------------------