

SUBJECT:	<i>Planning Enforcement Report to Planning Committee</i>
RESPONSIBLE OFFICER:	<i>Steve Bambrick – Director of Services</i>
REPORT AUTHOR:	<i>Kirstie Elliot, KElliot@chiltern.gov.uk</i>
WARD:	<i>Wexham And Iver West</i>
SITE ADDRESS:	<i>Site Of Southend Cottage Middle Green Wexham</i>
BREACH:	<i>Prolonged period of inactivity since the commencement of works to implement planning permission 12/01335/FUL (and subsequent variations) and the continued presence and residential occupation of several outbuildings/structures temporarily by temporary planning permissions any also partly permitted under Schedule 2 Part 4 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 on site comprising: 1) a mobile home; 2) portacabin/utility room; 3) summerhouse; 4) carport/store; 5) Materials Storage; 6) Tools Storage; 7) Presence of Containers; [“the Temporary Development”] despite no works for the replacement dwelling continuing on site.</i>

LOCATION PLAN – This plan is supplied only to identify the location of the site and for no other purpose whatsoever.



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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 (comprising the demolition of the existing dwelling and outbuilding known as 'The Coach House') and subsequent cessation of works (in approximately May 2016) in connection with PP ref: 12/01335/FUL for "'Replacement dwellinghouse' and 13/00460/VC 'Variation of conditions 6 and 7 of planning permission 12/01335/FUL to allow for the temporary retention of the 'Coach House' to be used as storage during the construction of the replacement dwelling and the permanent retention of 'The Workshop' excluding the 'tool store' which is to be demolished. Notwithstanding the cessation of the works there continues to be present on the site a mobile home, a portacabin/utility room, a carport/store, a summerhouse, storage containers and various tools and materials. The summerhouse is residentially occupied with the other outbuildings/structures being used for other residential purposes (e.g. storage and domestic work)
- 3.2 The owners/occupiers of the site have not, when given the opportunity to, continued with the development allowed under the Planning Permission. A variation of condition application (reference 17/01846/VRC) has been submitted by the owners/occupiers to vary conditions 6 and 7 of planning permission 12/01335/FUL and conditions 6, 7, 8 and 9 of permission 13/00406/VC to enable the temporary retention of the outbuildings/structures on the site during the construction of the replacement dwellinghouse. This application is being reported to the Planning Committee with recommendation that permission be granted subject to conditions that the outbuildings/structures be removed within 18 months of the date of the permission or upon the substantial completion of the development or its first occupation, whichever is the sooner. Notwithstanding the submission of this application, the construction of the replacement dwellinghouse has not commenced 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 12/01335/FUL and 13/00406/VC, and which officers consider has been commenced due to the demolition of the existing dwelling. As no building operations are occurring the Temporary Development on site is not, therefore, considered to be reasonably required. As such, the Council would seek to consider the planning harm resulting from the continued presence of this on the site.
- 3.4 The Temporary 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, harm to the visual amenity of the area as an incongruous addition to the street scene and harmful to the setting of the nearby listed buildings at The Manor House

4. Reasons for Recommendations

- 4.1 An ongoing harm to the openness of the green belt and 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 Development. 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: 12/01335/FUL) for the construction of a replacement dwellinghouse. Variation of condition application ref: 13/00406/RV was granted for 'Variation of conditions 6 and 7 of planning permission 12/01335/FUL to allow for the temporary retention of the 'Coach House' to be used as storage during the construction of the replacement dwelling and the permanent retention of 'The Workshop' excluding the 'tool store' which is to be demolished'. This permission runs alongside this permission and following its grant the existing dwelling on site was demolished thereby commencing the development. As such, officers consider that the planning permission remains extant.

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 the Temporary Development.

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 Temporary Development is considered harmful to the openness of the Green Belt, incongruous in the street scene and harmful to the appearance of the locality and the setting of the nearby listed building. If the works to implement planning permission 12/01335/FUL and 13/00460/VC 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 12/01335/FUL within 12 months from the issue of the notice;
- ii) Remove from the site the Temporary Development 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 Attention is drawn to the owner/occupiers application (ref: 17/01846/RVC) for a variation of condition to enable the outbuildings/structures to remain on site during the construction works, whereby it is the case officer's recommendation that this application be approved subject to conditions that the outbuildings/structures be removed within 18 months from the

date of the permission, or upon the substantial completion or first occupation of the development, whichever is the sooner. The wording of the conditions is such in recognition of the remedial action recommended in this report to remedy the planning harm that has been identified through the continued presence of the Temporary Development on the land.

5.7 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.

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
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