

## 6 SEPTEMBER 2022 PLANNING COMMITTEE

6b ENF/2021/00056

WARD: Heathlands

LOCATION: Gorse Hill, Hook Heath Road, Woking, Surrey, GU22 0QF

DESCRIPTION: Unauthorised siting of two storage containers

OFFICER: Mike Ferguson (Senior Planning Enforcement Officer)

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### **PURPOSE**

To seek Committee approval for enforcement action and to authorise all actions necessary to remedy the breach of planning control including proceedings in the courts.

### **SITE STATUS**

- Green Belt
- Grade II Statutory Listed Building (Gorse Hill Mansion House)
- Conservation Area (Fishers Hill)
- Hook Heath Neighbourhood Area

### **RECOMMENDATION**

1. Issue an Enforcement Notice in respect of the above land requiring the following within three (3) months of the notice taking effect:
  - a) Permanently remove from the land the two storage containers whose approximate location is shown hatched black on the attached plan
2. That the Director of Democratic and Legal Services be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended, and officers be authorised in the event of non-compliance to prosecute under Section 179 of the Town & Country Planning Act 1990 or appropriate power and/or take direct action under Section 178.

### **SITE DESCRIPTION**

The Mansion at Gorse Hill is Grade II listed, being a former private house constructed in the classical style and dating from 1910, now extended. The Gorse Hill complex operates as a hotel and conference centre catering for corporate and leisure users. In recent years a new meeting, conference and events space, known as 'The Garden Suite', has been constructed in the grounds (to the south-west of the Mansion) in the same style as the original Mansion. Both the Mansion and conference centre are set within landscaped grounds which includes a private drive, accessed from Hook Heath Road, and surface level car parking to the east and south of the site. There are numerous significant mature trees within the grounds which add to the sylvan character of the area.

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### PLANNING HISTORY

There is an extensive planning history for the Gorse Hill complex, which is available to view on file. The most recent notable planning history is set out in the Delegation Report for PLAN/2022/0057. It is that application that is pertinent to the content of this report:

- PLAN/2022/0057 “Lawful Development Certificate (Existing) for storage containers ancillary to the Gorse Hill Hotel (Class C1) and conference centre use” was received on 21/01/22 but subsequently REFUSED on 15/03/22.

Reason(s) for Refusal:- 01. Due to the degree of permanence taken together with the size of the containers and that each is fixed to the ground through their own weight, as a matter of fact and degree, the storage containers are buildings within the definition provided in section 336 of The Town and Country Planning Act 1990, and their siting amounts to operational development for which planning permission is required.

### REPORT

This matter was first reported to Planning Enforcement by a Councillor in March 2021.

The Planning Enforcement Officer undertook an initial site visit on 19 March 2021 (and photographs were taken). The officer noted that there were two storage containers, each approximately 6m long by 2.4m wide and 2.5m in height and that they had been in situ for circa 20 months. The officer advised the duty manager that the containers needed planning permission because they had been in situ for a period greater than would reasonably be considered temporary and based on comments that they may be there for a further 4 years pending an alternate solution being found for the storage of tables and chairs.

This investigation was taken over by the Senior Planning Enforcement Officer on 8 November 2021 due to the subsequent absence of the Planning Enforcement Officer for a protracted period.

Although a planning application for development described as “Siting of two shipping containers for storage behind the Garden Suite Conference facility (retrospective)” had been received on 24 April 2021, this was still ‘invalid’ several months later. It is noteworthy though that the application form stated that the development commenced on 1 May 2019.

In initial correspondence with the applicant during November-December 2021 progression was sought with respect to the shortcomings in the existing planning application pending enforcement action otherwise being duly considered in January 2022.

Direct contact was received from the complainant for the first time in December 2021. The complainant subsequently asserted that the two storage containers had been present since May 2019 (this timeframe corroborating the applicant’s own submissions in this regard).

Contact was received from a new planning consultant in January 2022 asking for a short extension of time to submit a suitable application before enforcement action was considered.

PLAN/2022/0057 “Lawful Development Certificate (Existing) for storage containers ancillary to the Gorse Hill Hotel (Class C1) and conference centre use” was duly received on 21 January 2022.

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The application asserted that “The placing and retention of the storage containers does not amount to development, as they are ancillary to the site's use as a hotel and do not comprise a ‘building’ operation nor do they constitute a material change in use of the land.”

It was again reiterated in that application form that the development had commenced on 1 May 2019 (such that the storage containers have now been present for in excess of 3 years).

PLAN/2022/0057 was REFUSED on 16 March 2022

The shipping containers are considered to be a building as defined in section 336 of the Town and Country Planning Act as including any structure or erection and any part of a building, but not plant or machinery comprised within a building. Case law has established three primary factors as decisive on what is a building and these include a) Size b) Permanence and c) Physical attachment. No one factor is decisive. The containers are substantial in size are likely to require specialist equipment to move them around the site. The containers have been permanently in their current location for over 3 years now and have not been moved. The containers are on a fixed hard surface and are of a size and weight that results in each being fixed to the ground through their own weight. As a result of the degree of permanence taken together with the size of the containers and attachment to the land, as a matter of fact and degree the containers are considered to amount to operational development which requires planning permission.

Whilst the applicant provided Counsel advice with a contrary view, the Senior Planning Enforcement Officer, the Senior Planning Officer and the Council's Legal Department are satisfied that case law is supportive of the stance taken.

Shortly after the refusal of the Lawful Development Certificate the planning consultant stated that the Council's decision would be appealed within a few weeks. To date, no appeal has been forthcoming albeit there is not a deadline for such.

The Senior Planning Enforcement Officer sent an email to the planning consultant in April 2022 as follows:

*“Before I commence an internal report, that I will openly say is likely to recommend the serving of an enforcement notice, I present two points for you to consider:*

- 1) I offer a final opportunity for yourselves and/or your client to re-consider and to remove the containers within an agreed reasonable time period so as to resolve this matter informally. Please get back to me within 2 weeks if there is a willingness to positively engage in discussion regarding remediation.*
- 2) In the interests of fairness and due diligence I wish to visit and see the containers for myself in the next fortnight so that (although a colleague has previously attended) I will be writing my report with first-hand knowledge. I will contact the hotel directly to arrange my attendance at a mutually convenient date and time unless there is a specific individual you wish to put me in touch with to make such arrangements.”*

The Senior Planning Enforcement Officer undertook a site visit on 16 May 2022 having made arrangements via the duty manager (and further photographs were taken). The storage containers still remain in situ, have not moved location and continue to be used for the storage of tables and chairs and other hotel equipment. Each of the two storage containers measures 6m long x 2.4m wide x 2.5m tall and they are positioned approximately 60cm from the boundary.

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A follow-up email was sent to the planning consultant in May 2022 to advise that, with no positive engagement nor any apparent willingness to re-consider and remove the storage containers, work would commence on a report to Planning Committee seeking authority to take enforcement action. This is that report.

In the evident absence of cooperation, such that informal means to resolve the breach of planning control have been exhausted, it is considered that the Council is left with little option but to take enforcement action.

The Council must have regard to its public sector equality duty (PSED) under S.149 of the Equalities Act 2010. This requires consideration to be given to the need to eliminate unlawful discrimination. It is not known whether the owner falls within one of the protected characteristics. Officers do not consider that the recommendation in this report would have a disproportionate impact on any potential protected characteristic.

It is therefore considered expedient to serve an Enforcement Notice having regard to the provisions of the development plan and to other material considerations and authority is sought to serve an Enforcement Notice.

### **EXPEDIENCY OF TAKING ACTION**

It is considered expedient to take enforcement action for the following reasons:

1. It appears to the Council that the unauthorised development was substantially completed within the last four (4) years and so it is not immune from enforcement action.
2. The unauthorised development does not constitute permitted development under Schedule 2, Part 4, Class A of the General Permitted Development (England) Order 2015 (as amended) because it does not comprise of “temporary buildings and structures”.
3. The unauthorised development constitutes inappropriate development within the Green Belt, is harmful to Green Belt openness and no Very Special Circumstances are considered to exist which would clearly outweigh the Green Belt harms and the harm to the character and appearance of the Fishers Hill Conservation Area. It is therefore contrary to Woking Core Strategy (2012) policy CS6 'Green Belt', Woking DMP DPD (2016) policy DM13 'Buildings Within and Adjoining the Green Belt' and Section 13 'Protecting Green Belt land' of the National Planning Policy Framework (NPPF) (2021).
4. By combined reason of its size and appearance the unauthorised development fails to preserve the character and appearance of the Fishers Hill Conservation Area contrary to Woking Core Strategy (2012) Policy CS20 'Heritage and conservation', Woking DMP DPD (2016) policy DM20 'Heritage assets and their settings', SPG Heritage of Woking (2000) and Section 16 'Conserving and enhancing the historic environment' of the National Planning Policy Framework (NPPF) (2021)
5. Paragraph 59 of the NPPF (2021) states that “Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control”. It is considered that enforcement action is proportionate for the reasons listed above.

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The above reasons therefore make it expedient to undertake enforcement action and issue the necessary Enforcement Notice.

### **FINANCIAL IMPLICATIONS**

The financial implications including staff resources, the costs of any subsequent appeal, court hearing, legal representation and/or any other costs (including, where appropriate, taking direct action) are all matters that have been considered in the making of this report.

An appeal against an Enforcement Notice could be subject to an application for full or partial award of the Appellant's costs in making an appeal if it was considered that the LPA acted unreasonably.

If the Committee decide to take enforcement action and the owner decides to exercise their right of appeal, it is thought unlikely that this case would be determined by Public Inquiry and therefore costs are likely to be comparatively minimal.

### **BACKGROUND PAPERS**

- Site visit photographs dated 19/03/21, 15/03/22 and 16/05/22.
- Delegation Report and Decision Notice for PLAN/2022/0057.

### **RECOMMENDATION**

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