

7 FEBRUARY 2023 PLANNING COMMITTEE

6b ENF/2022/00048

WARD: BWB

LOCATION: The Oaks, Murrays Lane, Byfleet, West Byfleet, Surrey, KT14 7NE

DESCRIPTION: Unauthorised boundary treatment comprising brick walls and pillars situated at the front entrance to the site.

OFFICER: Benjamin Bailey / Mike Ferguson

PURPOSE

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

PLANNING STATUS

- Green Belt
- Adjacent to Bridleway 132 (PROW)

RECOMMENDATION

1. Issue an Enforcement Notice in respect of the above Land requiring the following within six (6) months of the Notice taking effect:
 - (i) To remove from the Land the brick walls and pillars which are situated at the front of the site and whose approximate location is shown dotted on the attached plan; and
 - (ii) To remove from the Land all materials, rubble, debris and paraphernalia associated with and arising from compliance with requirement (i) above.
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 site forms a triangular shaped parcel of land situated to the west of the settlement of Byfleet and within the Green Belt. The site provides x4 Gypsy/Traveller pitches, it was formerly agricultural land. To the west of the site lies the M25 Motorway. To the north is the public right of way (PROW) of Murray's Lane which provides access to the River Wey Navigation via a bridge over the M25 Motorway. To the north of Murray's Lane is a Gypsy/Traveller site providing x2 pitches (Boyd's Farm), a scout hut and the residential properties of Glebe Gardens are to the north-east. To the east is a private vehicular track which leads to the single dwellinghouse known as Piper's Hill which is located to the south-east.

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RELEVANT PLANNING HISTORY

PLAN/2022/0978 - Retrospective application for machinery store.
Reported elsewhere on this agenda

COND/2020/0046 - Approval of details pursuant to condition 22 of planning permission ref: PLAN/2018/1072.
Details approved (21.05.2020)

COND/2019/0197 - Approval of details pursuant to conditions 09 and 21 of planning permission ref: PLAN/2018/1072.
Details approved (24.01.2020)

PLAN/2018/1072 - Section 73 application for the removal of condition 01 and variation of condition 02 to make permanent planning permission PLAN/2016/0164 dated 12.05.2016 (3-year temporary change of use of land to four pitches for an extended Romany Gypsy family with associated works including 4 day rooms, 4 mobile homes, 4 touring caravans, hardstanding, and cesspit).
Granted subject to S106 Legal Agreement and conditions (10.05.2019)

COND/2016/0078 - Approval of details pursuant to condition 12 of planning permission ref: PLAN/2016/0164.
Details approved (28.09.2016)

COND/2016/0070 - Approval of details pursuant to conditions 04, 05, 06, 07, 08, 09, 10, 11, 13, 14, 18 and 19 of planning permission ref: PLAN/2016/0164.
Details approved (28.09.2016)

PLAN/2016/0164 - 3-year temporary change of use of land to four pitches for an extended Romany Gypsy family with associated works including 4 day rooms, 4 mobile homes, 4 touring caravans, hardstanding, and cesspit.
Granted subject to conditions (12.05.2016)

REPORT

Planning permission was granted under ref: PLAN/2018/1072 for the permanent change of use of the land to x4 pitches for an extended Romany Gypsy family with associated works including x4 day rooms, x4 mobile homes, 4 touring caravans, hardstanding, and cesspit (3-year temporary planning permission had been previously granted under ref: PLAN/2016/0164).

The following relevant conditions were attached to planning permission ref: PLAN/2018/1072:

“16. *Means of enclosure shall be retained in accordance with the details shown on the approved plan numbered/titled TDA.2188.02 Rev C (Detailed Landscape Proposals) dated 08.09.16.*

Reason: To preserve the character and appearance of the area in accordance with Policies CS6, CS14, CS21 and CS24 of the Woking Core Strategy (2012).

17. *Notwithstanding the provisions of Article 3, Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), (or any order(s) amending or re-enacting that Order with or without modification(s)) no further means of enclosure (including walls or fencing) shall be*

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erected on the land other than those means of enclosure shown on the approved plan numbered/titled TDA.2188.02 Rev C (Detailed Landscape Proposals) dated 08.09.16 without planning permission being first obtained from the Local Planning Authority.

Reason: To protect the amenities of the area and to ensure a satisfactory form of development in accordance with Policies CS6, CS14, CS21 and CS24 of the Woking Core Strategy (2012)."

In respect of means of enclosure along the Murray's Lane frontage of the site the Detailed Landscape Proposals (ref: TDA.2188.02 Rev C) stated within condition 16 shows (by way of a broken red line) a "Proposed 1.2m high post & rail fences (Fences to match those on periphery of site within immediate locality and to incorporate a matching agricultural five bar gate and maintenance stiles)" with "Proposed native buffer plantations (Buffer plantations to consist of native understorey species to match those existing on site. Refer to plant schedule for species/densities)" behind. These were considered to be appropriate means of enclosure which maintained the semi-rural character and appearance of the area.

Whilst dealing with planning application ref: PLAN/2022/0978 (reported elsewhere on this agenda) the existence of brick walls and pillars close to the Murray's Lane frontage of the site came to the attention of Officers. No planning permission exists for the brick walls and pillars. The Council has photographic evidence that the brick walls and pillars were not in-situ on 1 July 2019. As such, it appears to the Council that the brick walls and pillars were substantially completed within the last four (4) years and so are not immune from enforcement action.

Whilst it is acknowledged that Article 3, Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO 2015) grants planning permission (i.e., as 'permitted development'), subject to specific limitations, for "The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure" in this instance condition 17 of planning permission ref: PLAN/2018/1072 removes such 'permitted development' rights, such that they are not applicable. As such, the brick walls and pillars do not constitute 'permitted development' and are thus in breach of planning control.

In the event that a retrospective application for planning permission was to be submitted for the brick walls and pillars it is not considered by Officers that planning permission would be likely to be granted for the reasons set out in the 'expediency of taking action' section below.

The Council must have regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010. Given that the site occupiers are Romany Gypsies they have a protected characteristic for the purposes of the PSED. In reaching the recommendation to take enforcement action Officers have considered the PSED. However, these are qualified rights and interference may be justified where in the public interest, such as the protection of the Green Belt, the character and appearance of the area and highway safety. The concept of proportionality is key. Officers do not consider that the recommendation in this report would have a disproportionate impact on the protected characteristic of the site occupiers.

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.

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EXPEDIENCY OF TAKING ACTION

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

1. It appears to the Council that the brick walls and pillars were substantially completed within the last four (4) years and so are not immune from enforcement action.
2. The brick walls and pillars do not constitute permitted development by virtue of Article 3, Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) because condition 17 of planning permission ref: PLAN/2018/1072 removes such 'permitted development' rights irrespective of whether the brick walls and pillars otherwise comply with the limitations of Schedule 2, Part 2, Class A.
3. The brick walls and pillars constitute inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt. Furthermore the brick walls and pillars harm the openness of the Green Belt. It is considered that no 'very special circumstances' would exist in this instance which would clearly outweigh the harm to the Green Belt by reason of inappropriateness, loss of openness, and the other harm resulting from the brick walls and pillars. The brick walls and pillars are therefore contrary to Policy CS6 'Green Belt' of the Woking Core Strategy (2012), Policy DM13 'Buildings in and adjacent to the Green Belt' of the Development Management Policies Development Plan Document (DMP DPD) (2016) and Section 13 'Protecting Green Belt land' of the National Planning Policy Framework 2021 (NPPF) (most notably paragraph 149).
4. By combined reason of their siting, height and appearance (including the application of materials) the brick walls and pillars appear urbanising, visually incongruous and visually harmful to the appearance of this semi-rural area, including their prominence in views from the well-used adjoining public right of way of Murray's Lane, and therefore fail to respect and make a positive contribution to the character of the area within which they are situated contrary to Policy CS21 'Design' of the Woking Core Strategy (2012) and Section 12 'Achieving well-designed places' of the National Planning Policy Framework 2021 (NPPF) (most notably paragraph 130).
5. It appears to the Council that the brick walls and pillars are likely to obstruct the view of drivers of vehicles exiting the site onto the well-used adjoining public right of way of Murray's Lane (which is used by pedestrians, horse riders, cyclists and vehicles). It also appears that the brick walls and pillars are likely to obstruct the views of those pedestrians, horse riders, cyclists and vehicle drivers using Murrays' Lane of vehicles exiting from the site. As such, it appears that the brick walls and pillars may have an unacceptably adverse effect on pedestrian and highway safety and fail to minimise the scope for conflicts between vehicles and pedestrians, cyclists and horse riders, contrary to Policies CS18 'Transport and accessibility' and CS21 'Design' of the Woking Core Strategy (2012) and Section 9 'Promoting sustainable transport' of the National Planning Policy Framework (NPPF) (2021) (most notably paragraph 112c).
6. Paragraph 59 of the National Planning Policy Framework (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*

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planning control". It is considered that enforcement action is proportionate for the reasons listed above.

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 preparation 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 Council acted unreasonably.

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

BACKGROUND PAPERS

Site visit photographs

RECOMMENDATION

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