

## 7 FEBRUARY 2023 PLANNING COMMITTEE

6c ENF/2022/00200

WARD: Knaphill

**LOCATION:** Land known as 21 Oak Tree Road, Knaphill, Woking, Surrey, GU21 2RW and land at the rear of 21 Oak Tree Road, Knaphill, Woking, Surrey, GU21 2RW as shown edged red on the attached plan.

**DESCRIPTION:** Unauthorised engineering works and the creation of a concrete base for an outbuilding

**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**

- Urban Area
- Ancient Woodland Buffer
- Thames Basin Heaths SPA Zone B (400m-5km)

### **RECOMMENDATION**

1. Issue an Enforcement Notice in respect of the above land requiring the following within six (6) months of the notice taking effect:
  - a) Break up the concrete slab and remove entirely all resulting debris from the land edged red on the attached plan.
2. Issue a Stop Notice in respect of the above land requiring the following with immediate effect upon service (a similar Temporary Stop Notice has already been served under delegated powers and that it is due to expire on 6 February 2023):
  - a) Not to construct an outbuilding on the land or undertake any further associated engineering works;
  - b) Not to bring onto the land any building materials for use in the construction of an outbuilding.
3. That the Director of Democratic and Legal Services be instructed to issue an Enforcement Notice under Section 172 (and a Stop Notice under Section 183) 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.

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### **SITE DESCRIPTION**

21 Oak Tree Road was a semi-detached 3-bedroom dwelling for which significant extensions were granted permission as per PLAN/2021/1125. Rather than implementing that permission, the owners demolished the dwelling entirely and commenced work on an outbuilding (both aspects of this development being unlawful). At the time of writing this report the dwelling is completely absent and a concrete slab exists by way of a base for and commencement of an outbuilding.

### **PLANNING HISTORY**

The most relevant recent planning history is as follows:

- PLAN/2017/1412 “Proposed single storey outbuilding” – REFUSED. The reasons for refusal were “The proposed single storey outbuilding, by reason of its size in conjunction with existing/approved extensions to the host dwellinghouse, represents an overdevelopment of the plot and would provide a lack of soft landscaping out of character with the grain of development in the area resulting in an unacceptable loss of private amenity space harmful to the amenities of existing and future occupiers of the property and contrary to policy CS21 of the Woking Core Strategy (2012), Supplementary Planning Documents Outlook, Amenity, Privacy and Daylight (2008) and Woking Design (2015) and the National Planning Policy Framework (2012).” Importantly, the concrete base (with drainage/waste pipes for services for what the owner acknowledges was intended for an outbuilding) that has been prepared without prior permission is of very similar dimensions and location to that already refused.
- PLAN/2021/1125 “Proposed part single/part two storey rear extension with room in the roof space, first floor front extension and hip to gable roof extension with rear dormer window following demolition of existing single storey rear extension and part existing single storey front extension.” – APPROVED (but not implemented).
- PLAN/2022/0547 “Demolition of existing dwelling and erection of replacement dwelling” – APPROVED. Importantly, this permission was only recently granted on 18/01/2023 such that the dwelling was unlawfully demolished beforehand. It is further important to realise that relevant Permitted Development rights have been removed such that the intended outbuilding cannot be built as PD.

### **REPORT**

This matter was first reported to Planning Enforcement by members of the public at the end of November 2022 (the primary initial concern being the unauthorised demolition of the dwelling).

The Senior Planning Enforcement Officer made initial contact with the owner’s planning agent on 01/12/2022 by way of seeking positive engagement regarding the unlawfully demolished dwelling and the unlawfully commenced outbuilding. In subsequent email exchanges it was made clear to the agent that, without written assurance from the owner that no further unauthorised development would occur, a Temporary Stop Notice would likely be issued.

In making such an assessment the Senior Planning Enforcement Officer was mindful of the following factors:

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- Whilst application PLAN/2022/0547 (including demolition of the dwelling) had been submitted it had not yet been determined at that time.
- If subsequently approved, the Decision Notice for PLAN/2022/0547 would very likely include pre-commencement conditions.
- Planning permission had already previously been refused for an outbuilding (as per PLAN/2017/1412) with a remarkably similar footprint to the concrete slab present.
- Whilst there is no current planning application for an outbuilding, there is a Building Control app (22/06609/DOBNT) for "Erecting of a new dwelling and creating a new gym in rear garden".
- Nevertheless, there was a further demonstration of disregard of due process by way of the failure to comply with Section 80 of the Building Act 1984 (as no Demolition Notice was served as required).
- The dwelling had already been demolished before works had commenced on the concrete slab for the outbuilding (the consequence of this being that, regardless of its subsequent dimensions, the proposed outbuilding cannot be PD as there is now no dwellinghouse for it to be within the curtilage of).
- The refusal of permission as per PLAN/2017/1412 and the reasons therein indicate that the proposed outbuilding is very unlikely to be approved in any event.
- As an aside it is noteworthy that, due to concerns regarding the state in which the adjoining semi-detached dwelling had been left, Building Control colleagues attended to verify there was no inherent safety issue.

Following a flurry of email exchanges with the agent, the Senior Planning Enforcement Officer set out the following in an email to the agent on 14/12/2022 as follows:

*"In addition to being late, the response below (and the continued non-engagement of your client) is not satisfactory.*

*You can advise your client that the means to resolve this matter is to cease work on site pending the appropriate permission being in place and pending any possible 'pre-commencement' conditions being addressed.*

*The issuing of a Temporary Stop Notice is at the discretion of the LPA in terms of whether or not such is deemed expedient.*

*I always consider this a means of last resort but where there is little to no meaningful engagement (as here) you, on behalf of your client, are rather backing me into a corner in terms of options.*

*The highlighted points in my email of 05/12/22 remain largely without response and it is clear the intention is to proceed with unlawful work on the dwellinghouse.*

*You do not elaborate on how/why cessation of this completely unauthorised and unlawful development could have a negative impact on neighbouring properties.*

*I do note you say (in relate to the work at the rear) that your "client has agreed that he will stop work within this area" – I seek confirmation of this in writing to me directly from your client forthwith to avoid any future claim of miscommunication in that specific regard and I will consider 'expediency' on receipt of such.*

*I have attended the site myself this afternoon so as to document its current state by way of a 'line in the sand' and I will be checking again given the uncooperative approach to date re this site.*

*I have to say that it rings alarm bells with me that the builders on site were apparently oblivious to any issues and so the assurance within your email seems to have limited weight.*

*To be clear, if any development occurs beyond that seen today on the intended outbuilding to the rear or associated groundworks then I WILL issue a TSN.*

*I am minded to similarly issue a TSN if any further unauthorised development occurs in relation to the dwellinghouse but I first wish to liaise with my Building Control*

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*colleagues to ensure they are happy that no remedial work is required from a structural/safety perspective regarding the unlawful demolition (with a view to ensuring any actions I may take do not hinder such remediation)."*

Despite the apparent assurance received via the agent on 14/12/2022 (regarding their client agreeing to stop work at the rear of the site), information was received from members of the public on 23/12/2022 that further unauthorised development had occurred by way of concrete being poured to further form the base for the outbuilding.

The Senior Planning Enforcement Officer re-attended on 29/12/2022 and verified that further unauthorised development had indeed occurred. With a complete absence of engagement from the owner and with apparent 'assurances' from the agent not being reliable, a Temporary Stop Notice was served on 09/01/2023 under delegated powers. The requirements of the TSN (expiring 06/02/2023) were as follows:

- a) Not to construct an outbuilding on the land or undertake any further associated engineering works;
- b) Not to bring onto the land any building materials for use in the construction of an outbuilding.

For the sake of clarity, an email was sent to the agent (and owner) on 09/01/2023 as follows:

*"Despite my very clear instructions and fair warnings, it was apparent when I re-attended on 29/12/22, that further unauthorised development has nevertheless occurred and that concrete has been poured to form a base for the unauthorised outbuilding.*

*Consequently, I cannot trust that your client (who has entirely failed to engage with me to date) will cease or abide by my instructions and the assurances from your client (received via you) evidently cannot be relied upon.*

*In this context, I make you aware that I have today served a Temporary Stop Notice as per that attached.*

*Please impress upon your client that if this notice is ignored then prosecution is the probable outcome.*

*I am unclear whether your client is a Project Manager acting for the owner but you will see that I have cc'd this email to the owner Mr Khawaja with whom I spoke this afternoon whilst serving the notices.*

*I have also cc'd the relevant Planning Officer and Building Control Inspector for their ongoing information.*

*Given the blatant lack of cooperation or adherence to due process there has been to date re this site, I am informing you now that I will also be considering serving an Enforcement Notice (and Stop Notice) regarding the outbuilding as my provisional informal view is that this is unlikely to be granted planning permission.*

*I will also take a view on whether further formal enforcement action is necessary regarding the unlawfully demolished dwellinghouse if any further unauthorised development occurs in that regard pending determination of the pending planning application and (if applicable) any subsequent non-adherence to conditions."*

A follow-up email was sent to the agent (and owner) on 19/01/2023 advising that planning permission had been granted as per PLAN/2022/0547. It was further explained that, whilst this does now mean that some groundworks can proceed on the replacement dwelling this is currently very limited as the following conditions must be discharged before any above ground

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development continues: 03, 04, 06, 07 and 08. The following was also made clear in that same email:

*“Importantly, with regards to the outbuilding for which groundworks have commenced, relevant Permitted Development rights have been removed by way of Condition 09.*

*Whilst, given what has gone before, there is a very strong argument for proceeding with an Enforcement Notice and accompanying Stop Notice with respect to an outbuilding I am minded to propose the following as a final olive branch offering:*

- *If I receive an email from the owner Mr Khawaja within 24 hours of this email offering a written assurance that absolutely no work will proceed on such an outbuilding AND assuring me that (as a minimum and once water levels have receded) the protruding waste pipes will be sawn off so they are flush with the concrete slab and the holes filled so that all that remains is essentially hardstanding then I may be able to take a view that further enforcement action (which will cause your client future difficulty due to being shown on searches on the land) might not be necessary. This will still leave Mr Khawaja with the option of breaking up the slab and removing it entirely.*
- *If Mr Khawaja also acknowledges his understanding that if work proceeds on an outbuilding then an Enforcement Notice and Stop Notice would inevitably be served forthwith.*

*I look forward to an urgent reply as if there is none I will take this as an indication of ongoing non-cooperation and will likely revert to the aforementioned formal action. I encourage you therefore to positively engage.”*

Whilst the owner replied to the above to ask for a little longer (until close of play on 23/01/2023) to reply, no such reply was received by that time. Having been advised on the morning of 24/01/2023 of the intention to seek authority to take further enforcement action, the owner did then reply to say “*there will be no further work on the outbuilding*” but he did not address the issue of remediation to resolve the breach of planning control.

A member of the public reported on 23/01/2023 that they had seen a sign-written vehicle for an outbuilding/log-cabin company parked outside of 21 Oak Tree Road and two persons from it inspecting the site at close quarters (albeit the Senior Planning Enforcement Officer cannot corroborate this assertion).

In the evident absence of true cooperation from the owner and given what has gone before, such that it is considered that informal means to resolve the breach of planning control have reasonably been exhausted, it is considered that the Council is left with little option but to take enforcement action. The proposed enforcement action seeks to remedy the breach and not just harm.

Update at 26/01/2023: There is an outside chance that the proposed enforcement action may not transpire to be necessary as during correspondence with the agent on 26/01/2023 the following was stated by the Senior Planning Enforcement Officer:

*“If, by no later than 5pm on Thursday 02/02/23 (1 week from now at the VERY latest), I am informed that the following action (that I will transparently say is the proposed wording on the recommended Enforcement Notice) has been done, i.e. ‘Break up the concrete slab and remove entirely all resulting debris from the land edged red on the attached plan’, and I am satisfied of such on re-attendance then there would at that time no longer be a breach of planning control and no basis for me to serve a notice.”*

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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 (and in this instance an accompanying Stop Notice).

An Enforcement Notice doesn't take effect until at least 28 days after service and if an appeal is lodged an Enforcement Notice is suspended until such time as the appeal is decided by the Planning Inspectorate. Consequently, a Stop Notice is an effective tool to prevent the situation worsening and to cease the unauthorised activities until such time as the Enforcement Notice takes effect.

### **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 comprising commencement of an outbuilding does not constitute permitted development under Schedule 2, Part 1, Class E of the General Permitted Development (England) Order 2015 (as amended).
3. The unauthorised development comprising commencement of an outbuilding, by reason of its size in conjunction with approved host dwellinghouse, represents an overdevelopment of the plot and would provide a lack of soft landscaping out of character with the grain of development in the area resulting in an unacceptable loss of private amenity space harmful to the amenities of existing and future occupiers of the property and contrary to policy CS21 of the Woking Core Strategy (2012), Supplementary Planning Documents Outlook, Amenity, Privacy and Daylight (2022) and Woking Design (2015) and the National Planning Policy Framework (2021) as demonstrated by the planning permission refused on 6 February 2018 under reference number PLAN/2017/1412 for a 'Proposed single storey outbuilding'.
4. 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.

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

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direct action) are all matters that have been considered in the making of this report. Whilst an Enforcement Notice can be appealed (via the Planning Inspectorate), a Stop Notice can be subject to challenge by Judicial Review.

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. Compensation can be payable in certain specific circumstances (such as if an Enforcement Notice is quashed or if a Stop Notice is withdrawn).

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 (a subset of those taken 14/12/2022, 22/12/2022, 29/12/2022 and 09/01/2023).
- Delegation Report and Decision Notice for PLAN/2017/1412.
- Delegation Report and Decision Notice for PLAN/2022/0547.

### **RECOMMENDATION**

1. Issue an Enforcement Notice in respect of the above land requiring the following within six (6) months of the notice taking effect:
  - a) Break up the concrete slab and remove entirely all resulting debris from the land edged red on the attached plan.
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