

## 20 JULY 2021 PLANNING COMMITTEE

6g ENF/2021/00011

WARD: Horsell

**LOCATION:** Land at 21 Whopshott Avenue, Horsell, Woking, Surrey, GU21 4UE

**DESCRIPTION:** Unauthorised change of use of amenity land to residential garden and erection of fence.

**OFFICER:** James Kidger

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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.

### **PLANNING STATUS**

- Surface Water Flooding
- Thames Basin Heaths Special Protection Area (TBH SPA) Zone B (400m-5km)

### **RECOMMENDATION**

1. Issue an Enforcement Notice in respect of the above land requiring the following within three months of the notice taking effect:
  - a) Permanently remove from the land the 1.95m high close boarded timber fence, concrete posts and gravel boards erected along the boundary of the amenity land;
  - b) Cease the use of the amenity land as residential garden;
  - c) Re-instate the approved boundary of the residential curtilage with a wall or fence no greater than 2m in height; and
  - d) Remove from the land all material, rubble, debris and paraphernalia arising from compliance with the 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 comprises a single storey detached dwelling on a corner plot fronting Whopshott Avenue to the east. Whopshott Close lies to the south, separated from the residential curtilage by a strip of amenity land. The site and surrounding area is part of an infill development on land formerly part of Whopshott Farm. The development is in an open plan style and was approved under application reference 21129 in 1967.

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The unauthorised development consists of the enclosure of the amenity land via the erection of a 1.95m high fence, so that it is incorporated within the residential garden.

### **PLANNING HISTORY**

- 21129 – 46 dwellings – approved 1967.
- 75/1133 – single storey extension – approved 27<sup>th</sup> October 1975.
- 76/0418 – single storey extension – approved 25<sup>th</sup> June 1976.
- 77/0323 – part removal of wall – judged not development 13<sup>th</sup> April 1977.

### **RELEVANT PLANNING POLICY**

#### National Planning Policy Framework (NPPF) (2019):

Section 2 – Achieving sustainable development

Section 4 – Decision-making

Section 12 – Achieving well-designed places

Section 14 – Meeting the challenge of climate change, flooding and coastal change

#### Woking Core Strategy (2012):

CS9 – Flooding and water management

CS21 – Design

CS24 – Woking's landscape and townscape

CS25 – Presumption in favour of sustainable development

#### Supplementary Planning Documents (SPDs):

Woking Design (2015)

Outlook, Amenity, Privacy and Daylight (2008)

### **BACKGROUND**

The Planning Enforcement team undertook a site visit on 12<sup>th</sup> February 2021 after being notified of the unauthorised development. The development was observed and the owners were advised that they had the option of applying for permission retrospectively.

A retrospective planning application for the change of use and fence, along with prospective hardstanding to the front and an extension to the rear, was received in April. The application was withdrawn at the applicant's request in June, before a decision could be issued. Officers had informed the applicant prior to the withdrawal that the application would likely be refused, due to the harmful impact of the loss of the amenity land to the character of the area. The applicant was also advised that a separate application for the hardstanding and extension would likely be successful.

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.

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### **EXPEDIENCY OF TAKING ACTION**

It is considered expedient to take Enforcement Action for the following reasons:

1. The loss of the amenity land and the siting of the fence directly adjacent the footpath is considered harmful to the character and visual amenity of the street scene. Grass verges and open plan forecourts are an integral feature of the Whopshott Farm development, which overall is little changed in this respect since completion. The grass verge amenity land adjacent no. 21 is matched by that adjacent no. 1 Whopshott Close, and nos. 1 and 2 Whopshott Drive. Collectively, these verges make an important contribution to the appearance of the development, in softening the views of the streetscape to the benefit of residents and passers-by. In this context the fence appears harsh and incongruous, and forms a hard, opaque boundary in an otherwise open plan area. It would be prominent and overbearing to pedestrians. The unauthorised development would therefore affect the spacious layout and character of the area. For these reasons the unauthorised development would fail to accord with Core Strategy policies CS21 (Design) and CS24 (Woking's landscape and townscape), which amongst other things call for development to be of positive benefit in terms of townscape character, and to provide suitable boundary treatments.
2. The unauthorised development does not constitute permitted development under Schedule 2, Part 2, Class A of the General Permitted Development (England) Order 2015 (as amended) because a) it exceeds the size tolerances, and b) it involves a material change of use.
3. The unauthorised development would set a precedent making it difficult for the Local Planning Authority to refuse similar development in the vicinity and would further erode the spacious layout of the area.
4. It appears to the Council that the unauthorised development was substantially completed within the last 10 years. Google Earth imagery shows that the development had not commenced on 15<sup>th</sup> April 2020.
5. Paragraph 58 of the NPPF 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 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, this case is unlikely to be determined by Public Inquiry and therefore costs are likely to be minimal.

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### **BACKGROUND PAPERS**

Site Photographs dated 12<sup>th</sup> February 2021 and 21<sup>st</sup> May 2021.  
Google Earth imagery dated 15<sup>th</sup> April 2020.

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