

**E/13/0349/B – Unauthorised engineering and other operations to create a hard surfaced roadway into the site at Land to the North of Holborn Farm, West End Road, Wormley West End, Herts, EN10 7QN**

**Parish: BRICKENDON LIBERTY CP**

**Ward: HERTFORD HEATH**

**RECOMMENDATION:**

That the Director of Neighbourhood Services, in consultation with the Director of Finance and Support Services, be authorised to take enforcement action under section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the removal of the material used to create the roadway and the reinstatement of the land to its former condition.

Period for compliance: 6 Months.

Reasons why it is expedient to issue an enforcement notice:

1. The unauthorised development constitutes inappropriate development within the Metropolitan Green Belt which results in harm by definition and also through a loss of openness and an adverse impact on the rural character and appearance of the surrounding area. The works are thereby contrary to policies GBC1 and ENV1 of the East Herts Local Plan Second Review April 2007 and national guidance contained in the National Planning Policy Framework.

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**1.0 Background:**

- 1.1 The site is shown on the attached Ordnance Survey extract. It lies on the northern side of West End Road, about 450 metres west of Holy Cross Hill. It is a relatively remote part of the District, close to the boundary with the Borough of Broxbourne and the site lies within the Metropolitan Green Belt.
- 1.2 On 31 December 2013, a concern was brought to the attention of the Planning Enforcement team stating that a new access track was being laid from West End Road into the site and a large volume of hardcore was being brought onto the site.
- 1.3 On the 8 January 2014 a site visit was made to the site, together with an Enforcement Officer from Herts County Council as there was a concern that the unauthorised works included the importation of waste material onto the site.

## **E/13/0392/B**

- 1.4 During the site visit, it was discovered that a new track had been laid with hard core, approximately 4 to 5 metres wide from the entrance to the site on West End Road, to the rear of the site which is approximately 400 metres long. In some places along the track, the height of the material laid was in the region of 500mm to 1 metre high.
- 1.5 The owner was advised by letter on the 10 January 2014 that, although there was a small track through the site originally, the widening and raising the height of the track was considered to be 'development' within the meaning of the Act for which either an application for Prior Approval (if the track were required for agricultural purposes) or for planning permission should have been submitted. As work had already been carried out, the owner was advised that the matter could not now be dealt with via a Prior Approval application in any event and would require planning permission.
- 1.6 The owner was further advised that it was the opinion of Officers that, in view of the location of the site in the Green Belt, and the visual impact of the unauthorised track on the area, any such application was unlikely to be viewed favourably by the Council. Therefore, the owner was advised to remove the unauthorised material and to reinstate the land to its former condition.
- 1.7 A letter was subsequently received from the owner's agent stating that they considered that the works to the track were 'permitted development' under Schedule 2, Part 6 of the General Permitted Development Order 1995 (as amended) which allows persons carrying out an agricultural activity on their land certain rights.
- 1.8 It was considered by Officers that to determine the ownership and use of the site as well as to determine the extent of the works a Planning Contravention Notice was served on the owner.
- 1.9 A reply to the Planning Convention Notice was received from a new agent acting for the owner on the 10 March 2014. As part of the owner's response they continued to state that the works were carried out for agricultural purposes and were permitted under 'permitted development' rights and therefore that no breach of planning control had occurred.
- 1.10 Officers do not agree with that assertion, however, as such 'permitted development' rights can only be exercised where the Prior Approval of the Council has been formally sought through an application. No such application had been submitted and therefore the development cannot constitute 'permitted development'. The owner was advised of that in

May 2014 and were advised that, unless an application was submitted within a 28 day period or the track removed, the matter would be reported to the Development Management Committee to seek authorisation to issue and serve an enforcement notice.

- 1.11 Following further correspondence with the owner's agent, they maintain their view as regards 'permitted development' and therefore no application for these works have been submitted to this Authority.

## **2.0 Planning History:**

- 2.1 There is no relevant planning history for this site.

## **3.0 Policy:**

- 3.1 The relevant 'saved' policies of the East Herts Local Plan Second Review April 2007 are:

- GBC1 – Inappropriate Development in the Green Belt.

- 3.2 The National Planning Policy Framework (NPPF) and the national Planning Practice guidance (NPPG) are also material considerations in the determination of this matter.

## **4.0 Considerations:**

- 4.1 The main considerations in this matter are whether the works that have been undertaken constitute 'permitted development' under Schedule 2, Part 6 of the General Permitted Development Order 1995 (as Amended); if not, whether the development constitutes inappropriate development in the Metropolitan Green Belt; and its impact on the openness, character and appearance of the surrounding countryside.

### Permitted Development

- 4.2 Part 6 of the Town and Country Planning (General Permitted Development) Order 1995 which grants deemed consent for certain agricultural development is subdivided into 2 sections, Class A and Class B. Class A refers to development on agricultural units of 5 hectares or more and states that development on *agricultural land* consisting of the formation or alteration of a private way is permitted subject to the condition, inter alia, that the owner/developer shall "before beginning the development" apply to the local planning authority for a determination as to whether the prior approval of the authority is required with regards to the siting and means of construction of the private way.

## E/13/0392/B

- 4.3 Class B refers to development on agricultural units of less than 5 hectares and states that development consisting of the provision, rearrangement or replacement of a private way is permitted development.
- 4.4 Firstly, it is necessary to consider whether this site comprises 'agricultural land'. That is defined in the above Order as land "*in use for agriculture and which is so used for the purposes of a trade or business*". The owner's agent has indicated that the land is used for grazing and haymaking but has not provided any evidence that this use is for a 'trade or business'. Furthermore, the grazing use appears to Officers to be simply the 'keeping of horses' which is not considered to be agricultural in nature.
- 4.5 There is therefore considerable doubt as to whether the current use of the land would entitle the owner to benefit from either Class A or Class B agricultural permitted development rights at all.
- 4.6 Notwithstanding that, Officers have considered whether the works would be permitted development if the land were shown to be 'agricultural land' within the definition in the Order. However, after due consideration, Officers do not consider that the works undertaken at the site would constitute agricultural permitted development for the following reasons. When considering the size of the 'agricultural unit' for the purposes of Part 6 rights, the size of the whole unit within the control of the owner has to be taken into account and not just the size of the land on which the development is or has taken place. Therefore, in this instance, the size of the unit within the owner's ownership is in excess of 5 hectares meaning that any operations or development carried out under Part 6 would have to be within the constraints of Class A. As such, as set out above, the prior approval of the Council should have been sought for this work. As it was not, and cannot now be sought 'before beginning the development', then no deemed planning permission exists for it. The unauthorised works therefore require express planning permission and, in the absence of that, the works represent a breach of planning control.
- 4.7 In summary, therefore, Officers are therefore satisfied that the works carried out do not constitute 'permitted development'.

### Whether inappropriate development

- 4.8 The site lies within the Metropolitan Green Belt wherein there is a presumption against inappropriate development except in 'very special circumstances'. Both policy GBC1 of the Local Plan and the National

## **E/13/0392/B**

Planning Policy Framework (NPPF) make clear that such 'very special circumstances' will not exist unless there are material considerations to which such weight can be given that they 'clearly outweigh' the harm caused to the Green Belt by inappropriateness or any other harm.

- 4.9 In this case, the unauthorised works constitute engineering operations which, in the view of Officers, do not maintain openness and which conflict with the purposes of including land in the Green Belt (one of which is to safeguard the countryside from encroachment). As such, the proposal is considered to be inappropriate in the Green Belt in accordance with both policy GBC1 of the Local Plan and paragraph 90 of the NPPF.
- 4.10 The NPPF states that 'substantial weight' should be given to any harm to the Green Belt.
- 4.11 Aerial photographs show that a track has been in this location for some period of time to allow access to the woodland and fields to the rear of the site. However, the original track only had a width wide enough to allow a vehicle access to the site and had limited impact on the Green Belt.
- 4.12 The current unauthorised works, by contrast, have a significant and detrimental impact on the surrounding area, consisting of raising the levels of the track, widening it and importing large amounts of hard surfacing. Officers consider there to be substantial harm to the Green Belt in this case therefore, both by inappropriateness; loss of openness and a detrimental visual impact on the rural character and appearance of the surrounding area. As such, planning permission should not be granted for this development unless there are material considerations that 'clearly outweigh' this harm.
- 4.13 Officers are not satisfied that such material considerations exist. No justification has been submitted to clearly show why the track was required to be re-laid, increased in height and widened to such an extent for agricultural purposes.
- 4.14 With regards to the hard core that has been used to create and widen the track, the owners state that the material came from within the farm site itself which lies to the south of the track and on the opposite side of West End Road. However, no evidence has been provided to substantiate this claim and concern remains that the material was imported onto the site to allow these works to take place. The County Council is, Officers understand, investigating this element of the works.

## **E/13/0392/B**

- 4.15 Officers do not consider that the works undertaken are reasonably necessary to support an agricultural use of the site and go beyond what could be considered as alteration or resurfacing of the access track.
- 4.16 Photographs of the site will be available at the Committee meeting.

### **5.0 Recommendations:**

- 5.1 In summary, Officers are satisfied that the unauthorised development does not benefit from deemed permission. It constitutes inappropriate development in the Green Belt by definition and also has a substantial and harmful impact on the openness, character and appearance of the surrounding area. Furthermore, there do not appear to be any material considerations in this case which 'clearly outweigh' this harm such as to justify the inappropriate development.
- 5.2 The proposal is thereby contrary to both national and local planning policy as regards development in the Green Belt and it is therefore recommended that authorisation be given to issue and serve a Planning Enforcement Notice requiring the removal of the hard core from the track, and the reinstatement of the land to its former condition.