

E/06/0155/A – Various unauthorised structures; changes of use and untidy sites at Esbies Estate, off Station Road, Sawbridgeworth, Herts, CM21 9JE.

Ward: SAWBRIDGEWORTH

Parish: SAWBRIDGEWORTH

1.0 Purpose of report:

- 1.1 This report, subsequent to the report presented to the Committee on the 13th January 2010 annexed hereto, is to further update Members on the current situation relating to enforcement matters at the Esbies Estate, off Station Road, Sawbridgeworth, and to obtain authorisation to continue with further enforcement action at various plots within the estate where unauthorised development has occurred and where it is considered expedient to do so. This report sets out the changes relating to various plots within the estate and identifies what additional action, if any, is recommended in each case.
- 1.2 The circumstances that exist on the estate are subject to change on a frequent basis and for this reason Officers are seeking authority for: -
- a) action against the unauthorised developments currently identified, and
 - b) delegated authority to ensure that if circumstances change on any of the plots prior to the service of any notice, it can be amended by Officers to accurately and precisely reflect the situation on site at that time. This will ensure that, at the time of service, the notices are accurate, clear and precise as required under the provisions of the 1990 Act.
- 1.3 This report also updates Members in respect of the potential for claims of gypsy/traveller status of some or all of the current occupiers of the site. This status is likely to form part of any appeal to the Planning Inspectorate and may be put forward as a 'very special circumstance' to justify the grant of planning permission. Members will need to consider whether, with the knowledge of this they remain of the view that enforcement action is justified and in the public interest.

RECOMMENDATION

- a) That the Director of Neighbourhood Services, in conjunction with the Director of Internal Services, be authorised to issue enforcement notices under section 172 and "untidy land" notices under section 215 of the

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Town and Country Planning Act 1990 and any other steps as may be required to secure the action identified on each plot as set out in section 3.0 of the annexed report and any additional/revised action identified in this updated report.

Period of Compliance:

- i) Removal of mobile homes - 6 months
and/or cessation of
permanent residential use
 - ii) Other operation development - 2 months
e.g. hard surfacing etc
- b) That, in relation to plots where the option of prosecution and/or enforcement action is identified, the Director of Neighbourhood Services, in conjunction with the Director of Internal Services, be authorised to determine which course of action is the most appropriate in relation to all the identified unauthorised developments.
- c) That authority be delegated to the Director of Neighbourhood Services, in consultation with the Director of Internal Services, to take any further or amended enforcement action under Sections 172 and 215 of the Town and Country Planning Act 1990, where additional but similar unauthorised development occurs on the estate, or where circumstances relating to those unauthorised developments identified in this report change, provided that this delegated authority is only taken on development occurring within six months of the date of this resolution; it is considered expedient in the public interest to take action and is subject to agreement by the Chairman of the Development Control committee prior to the action being taken.

Reasons why it is expedient to issue and serve enforcement notices:

1. The site lies within the Metropolitan Green Belt as defined in the East Herts Local Plan wherein permission will not normally be given except in very special circumstances for development for purposes other than those required for mineral extraction, agriculture, small scale facilities for participatory sport and recreation or other uses appropriate to the rural area. No such very special circumstances are apparent in this case. The unauthorised developments and uses are detrimental to the character, appearance and openness of the area and thereby contrary to

Metropolitan Green Belt policy as expressed in PPG2 and also in saved policy GBC1 of the East Herts Local Plan Second Review April 2007.

2. The estate is sited within Flood Zone 3 and as such any development is at a high risk of flooding to the detriment of the safety of future occupiers. In addition, the unauthorised hard surfacing on the site and unauthorised storage use exacerbates the risk of flooding and the developments are thereby contrary to the advice given in PPG25 and to saved policy ENV19 of the East Herts Local Plan Second Review April 2007.

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2.0 BACKGROUND

- 2.1 This report concentrates on the changes found to various plots during a visit to the estate on Tuesday 11th May 2010 and which will have occurred subsequent to the January 2010 report. It also highlights the likelihood of some residents claiming gypsy/traveller status at any subsequent appeal.
- 2.2 Where no information is included in this report in relation to any plot(s) the situation remains as set out in the January 2010 report.
- 2.3 During the May 2010 visit the following changes were evident: -

3.0 UPDATED ENFORCEMENT PROPOSALS

3.1 Plot 1

It appears that a holiday chalet was granted planning permission under ref: 3/730-76/FP. This chalet was subsequently granted a Certificate of Lawfulness for permanent residential use under ref: 3/02/2314/CL recognising the fact that it had been used as a dwelling for a period in excess of 4 years. During an earlier site visit in December 2010 it was noted that the chalet has been removed and the site was being used for the storage of 6 mobile homes.

However during the site visit on the 11th May 2010 it was noted that the mobile homes had been removed.

Proposed action – Plot 1

Enforcement notice requiring the removal of a shed, the hard standing and a lighting column.
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3.2 Plots 2, 3, 4.

No change.

3.3 Plots 5, 6, and 7

No change.

3.4 Plots 8, 9, and 10

A Certificate of Lawfulness was issued in March 2003, under 3/02/2556/CL, for the retention of an existing timber bungalow on the site for use during the months of April to September only.

An enforcement notice requiring the removal of the hard standing was issued on the 17th January 2003; a subsequent appeal was withdrawn. During a site visit in July 2009 to the site there was a single mobile home unit, a touring caravan and a commercial lorry and private car on site. The area was hard surfaced. During a further site visit on the 7th December 2009 there were no caravans; 3 lamp posts; and hard surfacing.

During the latest site visit there were 6 mobile homes on the land and officers were informed by a resident of one mobile home that all six were occupied.

Proposed action – Plots 8,9, & 10
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Prosecution for failure to comply with the previous Enforcement Notice and/or Enforcement notice requiring the cessation of the use of the site for the stationing of mobile homes for residential use and the removal of the hard surfacing and lighting columns

3.5 Plots 11 and 12

No change

3.6 Plots 13, 14, and 15.

No change

3.7 Plots 16, 17, and 18

No change

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3.8 Plots 19, 20 and 21

A certificate of lawfulness was granted, under reference 3/96/1548/CL, in 1996 for the stationing of one mobile home for seasonal use. During the December 2009 visit to the combined sites there was no mobile home on the land and the site was being used for the storage of commercial vans, lorries, trailers and private vehicles, plant and machinery and contractors materials. Officers have some concern that there may be some animal shelter buildings and enclosed pens to the rear of the site.

During the site visit on the 11th May 2010 it was evident that a mobile home was on the combined plots. To the rear of this site were some structures and compound and approximately 6 dogs either behind the compound boundary or chained to kennels outside the compound. Some of the vehicles and trailers and stored materials had been removed. However there were still some vehicles and piles of gravel and stone material stored on the land.

Proposed action – Plots 19, 20 and 21
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Enforcement notices requiring the cessation of the use of the land for unauthorised permanent residential purposes; storage purposes, commercial vehicle parking and the removal of buildings and structures used in connection with the unauthorised storage and animal keeping.

3.9 Plots 22, 23, 24 and 25.

No change

3.10 Pots 26, 27 and 28.

No change

3.11 Plot 29

No change

3.12 Plot 30

No change

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3.13 Plot 31

No change

3.14 Plots 32, 33, 34, and 35

No change

3.15 Plots 36, 37, and 38

No change

3.16 Plots 39, 40, and 41

No change

3.17 Pots 42 and 43

No change

3.18 Plots 44

No change

3.19 Plot 45

Planning permission, under reference E/330/67, was granted on the 30th March 1967 for a shed, WC and kitchen with a seasonal condition attached. In January 2003 an Enforcement Notice was issued and served requiring the removal of the hard standing, the lamp columns and the reinstatement of the land. A subsequent appeal was withdrawn.

During a recent site visit this plot partially laid to hard standing with a grass area to the rear and parked on the hard standing was a commercial vehicle, 2 private vehicles and domestic paraphernalia. There was also a small shed on site.

Proposed action – Plots 45
Prosecution for failure to comply with an Enforcement Notice requiring the removal of the hard surfacing and light columns and/or the issue of an Enforcement Notice requiring the cessation of the use of the land for the storage of motor vehicles.

3.20 Plot 46.

No change

4.0 Additional information

- 4.1 During the latest visit, officers delivered to each residential mobile home/caravan a Planning Contravention Notice requesting, within 21 days, information relating to their occupancy of the site and appertaining to any gypsy/traveller status which, if it is the case, the local planning authority should take into account in any decision making relating to the site. This information, if and when received, will be reported verbally to the Committee. However, having spoken to some of the occupiers of the site it is clear to your officers that at least some of the residents will claim gypsy/traveller status. Regardless of any definite information on this matter at this stage, it is appropriate for Members to consider the issue, as the need for pitches for gypsies and travellers is a factor that could indeed constitute very special circumstances why some residential use should be permitted at the site, notwithstanding the conflict with policy and harm arising from this unauthorised development.
- 4.2 Officers therefore consider that Members should weigh this issue in determining whether they wish to continue with the enforcement action previously authorised at the site together with new actions recommended in this report.
- 4.3 Members will be aware that there is a shortfall in the provision of gypsy/traveller accommodation in the district and this situation has been used elsewhere, particularly on appeal, as grounds upon which to grant permission for gypsy sites within the Green Belt and Rural Area. Consideration should therefore be given as to whether, if gypsy/traveller status is claimed by any of the occupiers of the site, this would constitute very special circumstances which would outweigh the harm caused to the Green Belt by this unauthorised development and any other harm caused, such as to flood risk at the site.
- 4.4 In respect of the shortfall in gypsy/traveller accommodation, Members will be aware that, in accordance with Circular 01/2006, the Council, in partnership with other Local Authorities carried out a Gypsy and Traveller Accommodation Assessment (GTAA) in 2006 which identified a need for 45 pitches in the study area (35 permanent, 10 transit). That document was submitted to the East of England Regional Assembly to inform the preparation of a Single Issue Review (SIR) Policy intended to meet the outstanding and future needs of Gypsy and Travellers in the region.

- 4.5 Policy H3 of the RSS (Regional Spatial Strategy) published in July 2009, clarifies that at least 1237 net additional pitches would need to be provided in the East of England Region by 2011. Policy H3 further requires that East Herts provides at least 25 additional permanent pitches by 2011 with a further 21 pitches in the period beyond that to 2021.
- 4.6 Since the adoption of policy H3, four pitches have been provided in East Herts at The Stables, Bayfordbury, which reduces the number of pitches to be found by 2011 from 25 to 21.
- 4.7 The LDF is at a relatively early stage of preparation and the matter of Gypsy and Traveller accommodation will be identified in the Core Strategy. However, it will be for the Site Allocations Development Plan Document to address site specific allocations in due course. No public sites are currently identified in the District.
- 4.8 Esbies estate is located within the Metropolitan Green Belt wherein policy GBC1 applies. The provision of gypsy sites within the Green Belt is not one of the uses specified as being appropriate development within the Green Belt and therefore very special circumstances would be required in order to justify the provision of such accommodation. Saved policy HSG10 of the Local Plan April 2007 also reiterates this view.
- 4.9 Planning Circular 01/2006 reiterates national guidance contained in PPG2, stating that Gypsy and Traveller sites are normally considered to be inappropriate development in the Green Belt and that national planning policy on Green Belts applies equally to applications for planning permission from Gypsies and Travellers and the settled population. It further states that alternatives should be explored before Green Belt locations are considered.
- 4.10 Other sites may come forward for Gypsy and Traveller use during the course of the LDF process, but to date the only site suggested for such use also lies within the Green Belt. Members will be aware that any further suggested sites are likely to be within either the Rural Area or the Green Belt. However, it should be noted that whilst development for Gypsy and Traveller accommodation in Green Belts is normally to be viewed as contrary to both national and local policy, there is no such in-principle policy objection in East Herts to sites within the Rural Area, where such development is considered acceptable provided that the criteria of Policy HSG10 can be satisfied. Officers therefore consider that while there is an identified need within the RSS to provide a number of pitches by 2011, and this is a factor which must weigh heavily in the balance of considerations, the adopted policy stance of directing such development to sites away from Green Belt locations should also be a major consideration.

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- 4.11 Similarly, considerations of sustainability and access to nearby facilities should also be taken into consideration in accordance with Circular 1/2006 and in these respects, officers acknowledge that the site is well located in relation to public transport and access to local facilities. For example, the estate is located approximately 0.45 miles to an Infant School; 0.47 miles to a Junior School; 0.85 miles to a Senior School; 0.33 miles to a Bakery; 0.55 miles to a Church; 0.64 miles to a Supermarket; 0.68 miles to a Parade of shops; 0.72 miles to a Doctors Surgery; and 0.21 miles to the Train station.
- 4.12 Officers also consider that, whilst there are near neighbours to the west of the site, given the scale of the development; the enclosed nature of the site; and the ability of the Council to impose conditions, there would be no significant adverse impact to neighbours amenity or users of adjoining sites from noise, disturbance or loss of privacy.
- 4.13 In respect of highway considerations the site is well established and in the past has been the access and egress for up to 46 individual plots. This number, by the amalgamation of plots, has reduced the number of plots to only 16. It is not therefore considered that there would be any highways grounds upon which to object to the established use.
- 4.14 Notwithstanding the above considerations, which are expected to be put forward by the site owners at any appeal against enforcement action, consideration should be given as to whether these circumstances are sufficient to clearly outweigh the harm caused to the Green Belt, by reason of inappropriateness and any other harm, such as to flood risk.
- 4.15 Your officers consider that, whilst the identified need for gypsy/traveller accommodation, together with the other considerations mentioned above, could be considered a very special circumstance, they would not outweigh the harm that this unauthorised development has on the openness, character and appearance of the Green Belt. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. This is a very sensitive site, being a narrow gap of Green Belt between the urban sprawl of Sawbridgeworth and the residential and commercial development on the east side of the adjacent river. Its long term protection from inappropriate development is fundamental. Furthermore, it does not outweigh the harm that would be caused to any residents on the site through increased flood risk.
- 4.16 The Environment Agency have confirmed that the whole site is an area of high risk which is not suitable for caravans with permanent residential use due to them being classified as 'highly vulnerable'. Highly vulnerable

development should not be allowed in flood zones 3a and 3b. The agency would also have concerns about the use of the land for the storage of vehicles and building materials. It is also important to note that paragraph 64 of Circular 1/2006 states, inter alia, that sites should not be located in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans.

- 4.17 PPS25 further explains that caravans are categorised as highly vulnerable due to ‘the instability of such structures places their occupants at special risk and they are likely to be occupied during periods when flood risk is likely to be higher. The area of the site which falls within the functional flood plain is not appropriate for any development other than water compatible and essential infrastructure.

5.0 Conclusion

- 5.1 To conclude, it is considered that the requirement for additional pitches to be provided for in the District in the Regional Spatial Strategy and in the 2006 Northern and Eastern Hertfordshire GTAA, may be a very special circumstance in this case. However, in this case the need for pitches is not, in Officers view, sufficient to outweigh the harm caused by the unauthorised development to the openness, character and appearance of the Green Belt; or to the harm caused to any residents of the site from flooding.
- 5.2 Officers therefore recommend that, even with the knowledge that some or all of the occupiers of the site may claim gypsy/traveller status as a very special circumstance to justify the unauthorised development on appeal, there are sound planning reasons why such an argument would be unjustified.
- 5.3 Officers are satisfied that a decision to take enforcement action in these circumstances is expedient in the public interest. As the mobile homes/caravans appear to be used for primary residential purposes, such action will represent an interference with the human rights of the occupier as expressed in Article 8 of the European Convention on Human Rights. However, this interference is considered to be justified under Article 8 (2) as being “in accordance with the law”; pursuing a legitimate aim (i.e. compliance with the Metropolitan Green Belt policy) and as being necessary in a democratic society in pursuit of that aim. The action and suggested time period for compliance is therefore considered proportionate in this case.

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- 5.4 Officers have also considered whether to defer further enforcement action pending the allocation of gypsy/traveller sites through the LDF process. However, Members are advised that further notices on this site are required, under the “second bite” provisions of the 1990 Act, to be served within 4 years of the previous withdrawn notices. This means that they need to be served by August this year. It is not possible therefore to delay service in this case.
- 5.5 A further option would be to serve the notices before August 2010 but with a longer than usual period for compliance in order to wait for the adoption of the site allocations DPD. However, Officers consider that this would be inappropriate in this case as the site allocations DPD is unlikely to be adopted before July 2014 and in any event, the site would remain in flood zone 3 and therefore the objections to the use of this site, on flood risk grounds, would remain valid. It is therefore, most unlikely that a gypsy/traveller use of this site would become appropriate or acceptable as a result of the LDF process.