

EAST HERTS COUNCIL

DEVELOPMENT MANAGEMENT COMMITTEE – 07 DECEMBER 2016

REPORT BY HEAD OF PLANNING AND BUILDING CONTROL

ESBIES ESTATE, SAWBRIDGEWORTH – UPDATE ON ENFORCEMENT ISSUES

WARD(S) AFFECTED: SAWBRIDGEWORTH

Purpose/Summary of Report

- To update Members on the current situation relating to enforcement matters at the Esbies Estate, off Station Road, Sawbridgeworth, and to obtain authorisation to pursue further action at the site where previous enforcement notices have not been complied with and/or further unauthorised development has occurred.

RECOMMENDATION FOR DEVELOPMENT MANAGEMENT COMMITTEE:

(A)	Officers be authorised to serve an injunction under Section 187B of the Town and Country Planning Act 1990 to secure compliance with the extant enforcement notices across the site; together with any unauthorised development that has occurred since the service of Notices in 2010, and also to prevent any further unauthorised development at the site.
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1.0 Background

- 1.1 The attached Ordnance Survey extract identifies the location of the site known as Esbies Estate, which has been used for leisure purposes (holiday chalets and caravans) for very many years, with some development having first taken place prior to 1948.
- 1.2 The site is located within an area of low lying land alongside the River Stort which, together with the river itself, forms a narrow belt of land that separates the town of Sawbridgeworth from the smaller settlement of Lower Sheering. To the east of the estate, on the opposite side of the river, is a mixed industrial, commercial and residential development, some of which is accommodated within former malting buildings.

- 1.3 To the west of the estate is a residential area comprising a mix of modern semi-detached and terraced dwellings on rising land. Much of this residential area is owned by a single company known as Forebury Estates. To the south there is a further belt of open land.
- 1.4 The estate comprises a central track with plots on either side. The plots vary considerably in size, character and appearance, with some occupied by caravans/mobile homes, some with timber chalet buildings, and some remaining relatively undeveloped. Historically the site was green in character and benefited from a considerable amount of soft landscaping. It was generally used as leisure plots with small chalet buildings occupied during March to September each year. However, in recent years, a significant amount of unauthorised development has occurred, which has eroded the open, landscaped character of the estate. Much hardstanding has been laid and many of the plots are now occupied all year round with varying numbers of mobile homes, caravans and sheds.
- 1.5 Esbies Estate has a long and complicated planning history. Although the site was originally divided up into around 46 Plots, these have amalgamated over time to form approximately 19 sites currently, although the precise number and size of plots is subject to change on a frequent basis.
- 1.6 The whole of this site is located within the Metropolitan Green Belt, in a particularly vulnerable wedge adjacent to the River Stort. Policy GBC1 of the East Herts Local Plan Second Review April 2007 is therefore relevant in this case. The site is proposed to remain in the Metropolitan Green Belt within the emerging District Plan and policy GBR1 of that Plan is therefore also relevant.
- 1.7 Members may recall that, in July 2005, the Council approved a development brief for Esbies Estate to encourage the comprehensive redevelopment of the site in order to improve its appearance, and to remedy the various breaches of planning control that had by then occurred on the site. Unfortunately, to date, no formal proposals for its redevelopment have been submitted and it must be acknowledged that there are a number of significant constraints to development such as the location of the site in the Green Belt; on land likely to flood; and with some access difficulties.

- 1.8 Members will also be aware that Enforcement Notices were issued and served on various plots within the site in 2010 and some of these were the subject of appeals to the Planning Inspectorate. However, following a lengthy public inquiry, the majority of those appeals were dismissed by the Secretary of State in September 2013.
- 1.9 The unauthorised works involve the siting of numerous mobile homes; the erection of outbuildings; the creation of large areas of hardsurfacing; and various changes of use of the land, including permanent residential occupation (contrary to previous conditions relating to seasonal use only) and the parking/storage of commercial vehicles and mobile homes. Some plots are simply overgrown and untidy in appearance.
- 1.10 The time period for compliance with the Notices has now passed and, whilst some have been complied with, the majority have not. There remains a significant amount of hardsurfacing on the site and caravans/mobile homes continue to be sited on the land and used for permanent residential accommodation in breach of the Notices served.
- 1.11 Officers have revisited the estate on several occasions since the appeal decision and despite several reminders to the owners of the land it has not been possible to secure compliance with the Notices in order to remedy the condition of the site. Indeed, there has been additional unauthorised development on some plots and more caravans have been brought onto the site. Officers have found an ever changing situation at the site with the amalgamation of plots, making the situation ever more complex in planning terms.

2.0 Report

- 2.1 The attached **Essential Reference Paper 'B'** shows the current planning position for each plot on the estate (as far as is possible given that the site changes so frequently), together with details of the Enforcement Notices that have been served and an update on compliance with those notices.
- 2.2 Given that there has been a very low level of compliance with the notices and that other unauthorised development has occurred across the estate Officers have, together with the Council's Legal advisors, considered the most appropriate course of action to remedy the various breaches of planning control at the site and

secure a significant improvement in the condition, character and appearance of the site.

2.3 The options that are available to the Council can be summarised as follows:

- 'Do nothing'
- Compulsory Purchase
- Prosecution for non-compliance with extant notices
- Direct Action
- Injunctive action

Do nothing

2.4 Whilst it would be possible for the Authority not to pursue any enforcement action in relation to this site, officers would not recommend this course of action for the following reasons:

- The site lies within a particularly sensitive part of the Metropolitan Green Belt which separates the settlements of Sawbridgeworth and Lower Sheering
- The development is contrary to established Green Belt policies
- Further unauthorised development of the site would be difficult to control and enforce against
- The character and appearance of the site will not be improved and may well deteriorate further
- The Council has expended considerable resources for a period in excess of 20 years in resisting the unauthorised development of this site and this approach would waste those resources and would send out the wrong message in respect of the breach of planning control

Compulsory Purchase

2.5 This would involve the purchase of some or all of the plots on the estate with a view to carrying out remedial works to the land and potentially permitting some form of redevelopment of the site in accordance with an updated Development Brief for the estate. The process is a complex one and the Council's solicitor has commented on this further at paragraph 3.1 of this report.

Prosecution

2.6 In respect of Prosecution for non-compliance with extant notices, Officers advice is that such action:

- Is only in a punitive measure and would not result in a physical improvement of the site
- It would involve issuing summonses on a number of unknown individuals
- It would be time consuming and costly as a result
- It would not be able to address the further unauthorised development that has been carried out to the site since the appeal decision. This means that further enforcement notices would be required which carry with them a right of appeal and the potential for further protracted and costly appeal proceedings

Direct Action

2.7 Direct Action would secure compliance with extant notices on the site and achieve the physical alteration of the land. However, it would have the following disadvantages:-

- It would result in substantial costs to the Authority with limited prospect of recovery in the short to medium term
- It would again not be able to address the further unauthorised development that has been carried out to the site since the appeal decision. Further enforcement notices would be required and, as stated above, these would carry with them a right of appeal and the potential for further protracted and costly appeal proceedings
- There is the potential for adverse publicity given that the removal of caravans/mobile homes used for permanent residential accommodation is involved.

Injunctive action

2.8 This would involve the service of an injunction on all land owners and persons with an interest in the land and would:-

- enable the physical condition of the site to be improved (given that failure to comply with a county court or High Court injunction is a serious matter with corresponding serious penalties, including imprisonment)

- It can secure both compliance with the extant enforcement notices and, in addition, can include the additional unauthorised development that has occurred on the site since the appeal decision.
- Furthermore, it has the significant advantage in that it can prevent further unauthorised development at the site so that the Council will not have to deal with further protracted enforcement matters in the future.

3.0 Implications/Consultations

3.1 The Council's solicitor has set out the following legal analysis of the options discussed above:

Do Nothing

There are no advantages to this course of action.

If this approach is chosen the Council needs to carefully document reasons for any decision not to take planning enforcement action against breach of planning control. Whilst planning enforcement action is discretionary members of the public could still challenge a decision not to take any action by either instigating a judicial review challenge or complaining to the local government ombudsman. In addition, the "do nothing" approach may give a wider perception of toleration to the public.

Compulsory purchase (CPO)

This is a time consuming and costly procedure but is mentioned for completeness. Cases for CPO require a compelling case in the public interest in order to be confirmed by the Secretary of State, and this is a very high hurdle to overcome. Furthermore, even if a CPO is made and confirmed, it would not necessarily result in occupiers leaving voluntarily; an eviction process may be required in any event (and the costs associated with that) and further the costs of acquisition on top. This option is not viable.

Prosecution

There are no real advantages to this course of action.

The disadvantage of prosecution is that securing a conviction does not secure compliance with an enforcement notice, only the payment of a fine. Even securing payment of the fine may be

difficult. Therefore, it is important to note that criminal proceedings will not necessarily result in compliance with the enforcement notices.

The Council should be concerned with remedying the breach which prosecution will not deal with.

Direct Action

The Council can take direct action to secure compliance pursuant to Section 178 of the TCPA. This may be perceived to be a heavy handed approach and may attract negative media attention. Whilst compliance may be achieved by removal, the decision to take direct action may be subject to judicial review.

Injunction

An application for a mandatory injunction to require all those residing on the site to comply with the terms of the enforcement notices. The court has a wide power to grant an injunction and may grant such an injunction as it thinks appropriate for the purposes of restraining the breach.

The advantages are summarised above in paragraph 2.8.

The court will need to determine for itself whether the enforcement is proportionate in human rights terms and it has to weigh up the public interest against the impact upon the human rights of those that would be affected by the injunction

In terms of disadvantages, if obtained there is still no guarantee that it will be complied with and the Council would then have to return to court in proceedings for contempt.

If this option is chosen then proceedings would need to be lodged imminently as the basis for seeking the injunction must be because the Council considers it to be necessary or expedient to do so. The longer the Council allows the breach to continue the weaker the case will be for injunctive relief.

- 3.2 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Appeal decision dated 4 September 2013 (Ref: APP/J1915/C/10/2133783)

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