

5m E/09/0010/B – a) Unauthorised change of use from vacant land to use for the storage of timber products; the erection of fencing; b) and unauthorised engineering works and adjustment of land levels at A414 Timber, Briggens Home Farm, Briggens Park Road, Stanstead Abbots, SG12 8LB

Parish: HUNSDON CP

Ward: HUNSDON

RECOMMENDATION

That the Director of Neighbourhood Services, in consultation with the Director of Internal 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 unauthorised development and the cessation of the unauthorised use of the land and the restoration of the land to its previous levels and condition.

Period for compliance: 3 months.

Reasons why it is expedient to issue an enforcement notice:

1. The site lies within the Metropolitan Green Belt as defined in the East Hertfordshire Local Plan wherein permission will not 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 a rural area. No such very special circumstances are apparent in this case, and the development is therefore contrary to saved policy GBC1 of the East Herts Local Plan Second Review April 2007 and the requirements of national planning policy in PPS7 'Sustainable Development in Rural Areas'.
2. The fencing, by reason of its siting and design would appear unduly prominent in the area to the detriment of the character and appearance of the locality and the openness of the Green Belt, contrary to saved policies ENV1 and GBC1 of the East Herts Local Plan, Second Review, April 2007.

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1.0 Background

- 1.1 The site is situated to the south of the A414, approximately 300 metres north west of Briggens House, a Grade II Listed Building. It is used by a timber company for the manufacturing, storage and distribution of goods, this use was granted permission in 2006 under reference 3/06/1561/FP.

E/09/0010/B

- 1.2 The site is occupied by various buildings used by the business including a Grade II Listed 'cattle shed'. The land levels where the buildings are situated and the business operates are substantially lower than the surrounding land.
- 1.3 In January 2009 the council was made aware that earthworks were being carried out at the site without planning permission. Further investigations revealed that these works were to create more extensive hardstanding located to the east of the approved site in order to store more materials outdoors.
- 1.4 Following contact by the enforcement team, two applications for retrospective planning permission were submitted in September 2009. Application reference 3/09/1411/FP sought retrospective planning permission for a change of use from vacant land to a use for the storage of timber products; and the erection of timber close-boarded fencing. Application reference 3/09/1412/FP sought retrospective planning permission for engineering works to stabilize banking and the adjustment of land levels at the site.
- 1.5 The unauthorised works involved lowering the land levels either side of the access drive into the site and levelling part of the land to enable its use for additional storage/sales area in association with the timber business. New fencing had also been erected across at the top of the banking to the east of the extended site area.
- 1.6 The new levelled area to the north of the access ramp is now occupied by buildings displayed for sale purposes to include approximately 10 timber shed like structures, a green house and bundles of railway sleepers. The area to the south of the access is occupied by what appears to be pallets of concrete and timber fencing posts and piles of fencing panels, all of which appear to be goods for sale.
- 1.7 The Design and Access statement that was submitted with application reference 3/09/1411/FP suggests that, due to diversification of the business during a financially difficult time, the additional storage area is required. The company has extended the range of timber products manufactured at the site to include hardwood sash windows frames and staircases, particularly for listed buildings.
- 1.8 Application reference 3/09/1412/FP sought retrospective permission for the reduced land levels either side of the access (now a ramp) into the site. The resulting land levels are similar, although slightly raised, to the adjacent land where the business operates. These areas of land have been surfaced with gravel.

E/09/0010/B

- 1.9 The Design and Access statement that was submitted with application reference 3/09/1412/FP explains that recent problems with flood water reaching the buildings, including the listed building at the site, resulted in the land being levelled and the removal of other material from the site that had slipped from the banking.
- 1.10 Following consideration of the applications, the case officer had recommended that planning permission be refused for both retrospective applications. However, the agent withdrew both applications by letter dated the 20th November 2009 prior to a formal decision being issued. A further letter dated 25th March 2010 from the agent suggested that a response to correspondence would be received within 28 days of her return from holiday on the 6th March 2010. A response from the owner's agent to a letter from the enforcement section sent on the 11th October 2010 advised the council that they considered the fence to be 'permitted development' and the levelling of the slipped land to be de minimus. To emphasise this point an application for a Certificate of Lawfulness has been submitted for consideration.
- 1.11 Photographs of the site will be made available at the meeting.

2.0 Planning History

- 2.1 The most recent planning history for the site has been set out above. Prior to that, the most relevant history can be summarised as follows:-

3/04/2464/FP- Use of buildings and land for manufacture, storage and distribution of timber products and ancillary goods (refused and dismissed at appeal).

3/05/2275/FP-Use of buildings and land for manufacture, storage and distribution of timber products and ancillary goods (refused).

3/06/1561/FP- Use of buildings and land for manufacture, storage and distribution of timber products and ancillary goods (approved).

3.0 Policy

- 3.1 The relevant policies in this matter are:-

GBC1	Appropriate Development in the Green Belt
ENV1	Design and Environmental Quality

4.0 Considerations

- 4.1 Both PPG2 (national policy: green belts) and Local Plan Policy GBC1 outline specific types of uses and development that are appropriate within the Green Belt. These include agricultural related developments and essential facilities for outdoor sports and recreation. The use in question, for storage for a commercial enterprise, is not an appropriate use within the Green Belt, failing to comply with PPG2 and Policy GBC1. Very special circumstances would therefore need to be demonstrated in order to justify approval of the development.
- 4.2 The design and access statement submitted with application 3/09/1411/FP argues that the use of the modest area immediately adjacent to an existing business, which is well screened and utilises raw materials grown in the countryside, exhibits very special circumstances which makes the proposed use acceptable. However, Officers consider that the unauthorised development results in a substantial increase in the size and scale of the business at the site; representing a further incursion of the commercial use into the Green Belt. The screening of the site and the source of raw materials used does not justify the inappropriate use of the site contrary to Green Belt policy. The special circumstances that have been submitted do not outweigh the harm that the use causes and does not justify a departure from Green Belt policy.
- 4.3 The previously refused planning applications, reference 3/04/2464/FP, with its subsequent dismissed appeal, and 3/05/2275/FP for the use of the adjacent land for manufacture, storage and distribution of timber products and ancillary goods are important considerations in this case.
- 4.4 The committee report for the application approved in 2006, under reference 3/06/1561/FP, detailed a more modest scheme and explains that plans had been received which restricted the use of storage to the (then reduced) site edges with restrictions in the storage heights. Together with acceptable alterations to the listed building on site, it was felt that this overcame the previous reasons for refusal. Further, the removal of a portacabin at the site, improved openness. This permission was granted subject to a condition requiring tree planting and the implementation of a landscape scheme. The approved plan shows areas of planting where the current storage area is to the north of the access.
- 4.5 The current development, however, extends the storage areas into previously undeveloped Green Belt land and outside the earlier planning permission. This development is in direct conflict with the intentions of the previous permission granted for the commercial use of the site which was to restrict the size of the site; restrict the areas used for storage and establish landscaping in the undeveloped areas around the site.

E/09/0010/B

- 4.6 The withdrawn application, reference 3/09/1411/FP, also proposed the retention of 1.8 metre closed boarded fencing within the site. This required planning permission due to its siting within the curtilage of a listed building on the site used for the manufacture of timber products. Case law suggests that the definition of curtilage is '*ground which is use for the comfortable enjoyment of a building. It is enough that it serves the purposes of the building in some necessary or useful way.*' Therefore it is considered that there is a functional link to the listed building upon which the commercial use of the site relies. Positioned on the highest part of the site to the east before the land drops into the storage areas, the fencing appears unduly prominent and intrusive in its surroundings. The principle of fencing is not unacceptable; however its prominent siting together with its design makes it to appear overly dominant within the landscape impacting upon the openness of the Green Belt. The use of a more sympathetic style of fence such as a post and rail fence would overcome this concern, as the structure would be more light weight and open, allowing views across the site to be restricted to a limited extent. The current fencing however, is detrimental to the character of the surrounding area and the openness of the Green Belt, contrary to Policies ENV1 and GBC1 of the Local Plan.
- 4.7 Comments were received from the Garden Trust during the consideration of the withdrawn applications which highlighted the importance of the landscape character and appearance of the land that affects the setting of Briggens House. However, in terms of the impact that the unauthorised development has upon the character of the historic park and garden, Officers did not consider that a refusal on those grounds would be justified. Similarly, the proposed use of the land and fencing was not considered to be of any significant harm to the setting of Briggens House, a listed building, in accordance with PPS5.
- 4.8 It is considered that the use of the land is inappropriate development within the Green Belt and there are no very special circumstances that are sufficient to justify a departure from Green Belt Policy. The fencing by reason of its prominent siting and design is considered to be harmful to the character of the area and the openness of the Green Belt. These developments are thereby contrary to the aims of PPG2, and policies GBC1 and ENV1 of the Local Plan.
- 4.9 Now turning to the engineering works to stabilise the bank and the adjustment of land levels, it is considered that the extent of the works cannot be considered as de minimus and therefore planning permission is required. To be de minimus that amount of earth excavated would have to be very small; however it appears that a large volume of earth was moved, most likely with a mechanical digger. The circumstances that were outlined within the Design and Access statement with regards to flooding that

E/09/0010/B

resulted in the development taking place, is not considered to be sufficient to justify a departure from Green Belt policy in this case. The statement submitted was the only evidence of the flooding problem that occurred at the site and alternative solutions to drain the flood water away had not been explored. Furthermore, there has been no justification provided for the use of gravel on the land and it is this inappropriate hard standing, with its unauthorised storage use which has an impact on the character and appearance of the area. If the reduced land levels could have been justified then the use of grass and other soft landscaping would have been far less harsh as surface treatment and would have had a more acceptable impact on the appearance of the area.

- 4.10 The impact that the gravel has exacerbates any harm by transforming previously soft landscaped, undeveloped areas of land into hard landscaped areas and has changed the visual appearance of the area, which detract from the character of the rural location and has enabled further development to occur.
- 4.11 During the consideration and determination of the withdrawn applications, the comments received from the Garden Trust were considered and the importance of the landscape character and appearance of the land that affects the setting of Briggens House was understood. Officers considered that the proposed development, to the site's distance and relationship with Briggens House does not cause unacceptable harm to the setting of Briggens House historic park and garden. The development therefore is therefore not considered contrary to PPS5.
- 4.12 However, the development is inappropriate development within the Green Belt and there are no special circumstances that are sufficient to justify a departure from Green Belt Policy. It is inappropriate and harmful to the character of the rural location, contrary to the aims of PPG2 and GBC1. As such, officers had recommended refusal of planning permission prior to the applications being withdrawn. As no action has since been taken to remedy the breaches of planning control, it is felt necessary and appropriate to consider enforcement action in this case.

5.0 Recommendations

- 5.1 It is therefore recommended that authorisation be given to issue and serve Planning Enforcement Notices requiring the removal of the unauthorised developments; the cessation of the use of the unauthorised land and the reinstatement of the land to its former levels and state.