



REGULATORY SERVICES COMMITTEE

REPORT

30 January 2014

Subject Heading:

Alleged breach of planning control at Aveley Marshes, Rainham, Essex

Report Author and contact details:

Simon Thelwell
Projects and Regulation Manager
01708 432685
simon.thelwell@havering.gov.uk

Policy context:

Local Development Framework (October 2008) & London Plan July 2011

Financial summary:

Defence of any appeal against Enforcement Action and remedy of the unauthorised use / development may have financial implications.

The subject matter of this report deals with the following Council Objectives

Ensuring a clean, safe and green borough	<input checked="" type="checkbox"/>
Championing education and learning for all	<input type="checkbox"/>
Providing economic, social and cultural activity in thriving towns and villages	<input type="checkbox"/>
Value and enhance the life of our residents	<input checked="" type="checkbox"/>
Delivering high customer satisfaction and a stable council tax	<input type="checkbox"/>

SUMMARY

This report concerns alleged breaches of planning control on land known as Aveley Marshes, Rainham located within the Metropolitan Green Belt

This report concerns a material change of use of land in planning terms to the use of the land as a scaffolding yard and for the storage of scaffolding

equipment, storage of crane parts, storage of scrapped HGV's and HGV bodies, storage of containers, storage of plant and equipment, parking and storage of vehicles and storage of agricultural equipment

The Unauthorised changes of use are materially harmful as the commercial activity is detrimental to the visual amenities and character of the surrounding area in general and open nature of this part of the Metropolitan Green Belt. The unauthorised change of use has occurred within the last 10 years and it is requested that authority be given to issue and serve Enforcement Notices to seek to remedy the breaches.

RECOMMENDATIONS

That the committee consider it expedient to issue Enforcement Notices on the owners / occupiers of the property requiring, within 3 months, that:

- (i) Cease the use of the land as a scaffolding yard and for the storage of scaffolding equipment, the storage of crane parts, the storage of scrapped HGV's and HGV bodies, the storage of containers, the storage of plant and equipment, parking and storage of vehicles
- (ii) Cease the use of the land for the storage of agricultural equipment not associated with the agricultural holding
- (iii). Remove all plant & machinery, building materials, associated spoils and rubble brought onto the land in connection with the unauthorised use mentioned above

That power to issue enforcement notice(s) against the owners / occupiers of the property including the precise wording of the breach, reasons for service and requirements is delegated to the Head of Regulatory Services, in consultation with the Assistant Chief Executive.

In the event of non-compliance, and if deemed expedient, that proceedings be instituted under the provisions of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.

REPORT DETAIL

1. **Site Description**

- 1.1 The area of land where the alleged breaches of control have occurred is irregular shaped piece of land located within the south eastern section of Aveley Marshes, This site in the south east of the borough is located within

the Metropolitan Green Belt, as designated in Local Development Framework (LDF).

- 1.2 The land identified in attached plan measures some 1.05 hectares in area and is approximately 290m in length (on a north east to south west axis) and some 50m wide (west to east) at its widest point. The area is covered largely by a compacted hard surface and the various alleged unauthorised uses take place on this area. The south eastern and south western boundaries of the land form the borough boundary with Thurrock Council and also the boundary between the Greater London Authority and Essex County Council.
- 1.3 In terms of the surrounding land, immediately to the west of the site is a watercourse and beyond this; the land to the west and north of the site is open land known as Aveley Marshes. It is located within the Metropolitan Green Belt and is designated as a site of Site of Nature Conservation Importance (Metropolitan) within the LDF.
- 1.4 The land immediately to the south and east of the site is used mainly for commercial and storage uses. It is located within a different Local Planning Authority (Thurrock Council) and it is designated as a Primary Industrial and Commercial Area in the Thurrock Borough Core Strategy and Policies for Management of Development local plan and proposal map adopted in December 2011.
- 1.5 Vehicular access into the site is via a site located in Thurrock which has a gated entrance and a road frontage onto Juliette Way in Purfleet. It is the nearest road to the site and is some 100m to the east of the site. There is another gated entrance to the north of the site through an Industrial estate known as Thurrock Commercial Park although this is normally closed. Access to Juliette Way is from the A1306 London Road. About 30m to the south of the area is the Channel Tunnel Rail Link and the C2C London, Tilbury and Southend Line.

2. The Alleged Planning Contravention

The alleged planning breaches at the site relate to the use of the land mainly in connection with the storage and stationing of numerous items on the land. These include the use of the land as a scaffolding yard and for the storage of scaffolding equipment, the storage of crane parts, the storage of scrapped HGV's and HGV bodies, the storage of containers, the storage of plant and equipment, parking and storage of vehicles and the storage of agricultural equipment not associated with the surrounding agricultural holding.

3. Relevant Planning and Enforcement History

- 3.1 There is no planning history for this site.

- 3.2 In August 2009, the Council received complaints that alleging that hard-standing was being laid on site. Staff visited the site and noted a number of possible breaches of planning control.
- 3.3 In September 2009, the Council wrote to the owners of that land alleging that hard standing had been laid without the benefit of planning permission and that there had been a change of use of the land as it was being used for a number of uses including for the purposes of the parking and storage of vehicles. The Council noted that retrospective planning applications would be required to retain the unauthorised use and development and at the time of the writing, no applications had been submitted. The letter stated that in the Council's view, were any such applications received in the future, it was unlikely that they would have been successful. In November 2009, a solicitor representing the owners did contact the Council concerning the alleged breaches of planning control. However no progress was made in resolving the alleged breaches of control
- 3.4 During 2010 the Council received updates from both Thurrock District Council and the Environment Agency concerning their respective investigations. However there was no record of any direct contact with the owners or their representatives concerning the alleged breaches of control. The Council Planning Enforcement team wrote to the owners in August 2010 confirming that it was preparing a report seeking authorisation to serve Enforcement Notices and authority to serve Enforcement Notices was approved by the Regulatory Services Committee 26 August 2010.
- 3.5 Two Enforcement Notices were served in January 2011. The Enforcement Notices allege: without the benefit of planning permission, a material change of use in the storage and parking of vehicles, containers, portakabins and plant (Notice A) and without the benefit of planning permission, the construction on the land of a hard surface, including compact earth and gravel (Notice B). The Notices were both dated 14 January 2011 and were served on the same day. The effective date of both Notices was 14 February 2011. Appeals were submitted against both Notices and a Public Inquiry was heard on 9 November 2011. During the course of the Inquiry the Council decided to withdraw both Notices in the light of evidence submitted by the appellants in regard to the service of the Notices. Both notices were withdrawn in November 2012
- 3.6 In September 2013, the Council served "planning contravention notices" (PCN's) on the owners and occupiers of the land requiring information about activities on land. The responses in the returned PCN's confirmed that the land is continuing to be used as a scaffolding yard and for the storage of scaffolding equipment, the storage of crane parts, the storage of scrapped HGV's and HGV bodies, the storage of containers, the storage of plant and equipment, parking and storage of vehicles and the storage of agricultural equipment.

4. **Policy and Other Material Considerations**

- 4.1 Section 9. Protecting Green Belt land of the National Planning Policy Framework (NPPF) sets out policies in regard to the green belts noting that the fundamental aim of Green Belts is to prevent urban sprawl by keeping land permanently open. The most important aspect of Green Belts is their openness, and there is a general presumption against inappropriate development within them.
- 4.2 Paragraph 87.states that: As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 says that; when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Finally paragraph 90 states that; certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt.
- 4.3 Policy 7.16 of the London Plan (REMA 2013) says that the strongest protection should be given to London's Green Belt, in accordance with national guidance. Inappropriate development should be refused, except in very special circumstances. Development will be supported if it is appropriate and helps secure the objectives of improving the Green Belt as set out in national guidance.
- 4.4 Policy DC61 (Urban Design) states that planning permission will only be granted for development which maintains, enhances or improves the character and appearance of the area.DC45 (appropriate development in the Green Belt) states that Council will promote uses in the Green Belt that have a positive role in fulfilling Green Belt objectives. Planning permission for development in the Green Belt will only be granted if it is for the following purposes including agriculture and forestry, outdoor recreation, nature conservation, cemeteries; mineral extraction and park and ride facilities
- 4.5 It is considered that the use of the land for the purposes of the storage of scaffolding equipment, the storage of crane parts, the storage of scrapped HGV's and HGV bodies, the storage of containers, the storage of plant and equipment, parking and storage of vehicles and the storage of agricultural equipment is inappropriate in Green Belt in this instance because it involves extensive external storage and parking. The alleged breaches of planning control fail to preserve the openness of the Green Belt and conflict with the purposes of including land in Green Belt.
- 4.6 Given the in principle and physical harm to the Green Belt, the proposal is considered contrary to Policies DC45 & DC61 contained within the Havering Local Development Framework (LDF), Policy 7.16 of the London Plan (REMA 2013) and National Planning Policy Framework (NPPF)

5. **Recommendation for action**

- 5.1 For the reasons outlined above, the use of the land for the purposes identified within this report are considered to be unacceptable and contrary to long established national guidance for Green Belts. The owners of the site have not sought to regularise the breach of planning control through the submission of a planning application. In summary, the alleged breaches of planning control have occurred within the last ten years and the Council would be acting within the time limit for taking enforcement action, i.e. the developments are captured within the 10 year rule. Staff consider that the uses are contrary to policy DC45 & DC61 of the LDF Core Strategy and Development Control Policies DPD and policy 7.16 of the London Plan.
- 5.8 Taking into account the harm that has been identified, it is recommended that enforcement notice(s) be served requiring the cessation of the use of the land for the purposes of the storage of scaffolding equipment, the storage of crane parts, the storage of scrapped HGV's and HGV bodies, the storage of containers, the storage of plant and equipment, parking and storage of vehicles and the storage of agricultural equipment

It is considered that three months would be adequate period to secure compliance with the requirements set out in the recommendation section of this report.

IMPLICATIONS AND RISKS

Financial implications and risks:

Enforcement action may have financial implications for the Council.

Legal implications and risks:

Enforcement action, defence of any appeal and, if required, prosecution procedures will have resource implications for the Legal Services.

Human Resources implications and risks:

No implications identified.

Equalities implications and risks:

Section 149 of the Equalities Act 2010 (EA) came in to force on 1st April 2011 and broadly consolidates and incorporates the 'positive equalities duties' found in Section 71 of the Race relations Act 1976 (RRA), Section 49 of the Disability Discrimination Act 1995 (DDA) and section 76(A) (1) of the Sexual Discrimination

Act 1975 (SDA) so that due regard must be had by the decision maker to specified equality issues. The old duties under the RRA, DDA and SDA remain in force.

The duties under Section 149 of the EA do not require a particular outcome and what the decision making body decides to do once it has had the required regard to the duty is for the decision making body subject to the ordinary constraints of public and discrimination law including the Human Rights Act 1998.

Having considered the above duty and the Human Rights Act 1998 there are no equality or discrimination implications raised.

BACKGROUND PAPERS

- 1. Aerial Photographs*
- 2. Relevant Planning History*