



REGULATORY SERVICES COMMITTEE

REPORT

17 May 2012

Subject Heading:

Planning Contravention - alleged breach of planning control on land known as Aveley Marshes, Rainham

Report Author and contact details:

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Policy context:

Local Development Framework

Financial summary:

Enforcement action and a defence of the Council's case in any appeal with 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 open land known as Aveley Marshes, Rainham.

This concerns the unauthorised operational development by the construction on the land of a hardsurface, including compact earth and gravel, and an unauthorised material change of use of that land for the purpose of storage and parking of vehicles and plant.

Staff consider that the unauthorised operational development and unauthorised material change of use are materially harmful as the vehicle parking and commercial activity are detrimental to the visual amenities and character of the surrounding area in general and open nature of this part of the Metropolitan Green Belt. Furthermore the unauthorised operational development has a detrimental affect on the wildlife corridor that surrounds the Inner Thames Marshes SSSI. The unauthorised operational development has reduced the flood storage volume available within the functional flood plain leading to an increased risk of flooding.

The unauthorised operational development has occurred within the last 4 years and 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 that an Enforcement Notices be issued and served.

1. UNAUTHORISED CHANGE OF USE:

Requiring within 3 months:

- Cease using the land, as shown cross hatched on the attached plan for the unauthorised purpose of storage and parking, including storage of vehicles, containers, portable buildings and plant
- Remove all materials, associated spoils and rubble brought onto the land in connection with the unauthorised use mentioned above
- Stop using the land for any purpose other than as open land.

2. UNAUTHORISED OPERATIONAL DEVELOPMENT

Requiring within 6 months:

- Remove all hardstanding including the compacted earth and gravel and membrane materials from the land as shown cross hatched on the attached plan.

- Remove all building materials, associated spoils and rubble brought onto the land in connection with unauthorised operational development.
- Return the land to open land as it was before the unauthorised development took place.

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.

REPORT DETAIL

1. **Site Description**

- 1.1 The site identified in the plan is an irregular shaped piece of land located in an area known as Aveley Marshes in the south of the borough. The area is located within the Metropolitan Green Belt as designated in Local Development Framework (LDF) policy CP14 of the Core Strategy and Development Control Policies Development Plan Document. The land is also designated a site of Site of Nature Conservation Importance (SINC) and is of Metropolitan Importance
- 1.2 The south eastern and south western boundaries of the identified area 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 uses, the land immediately to the west and north of the site is open land known as Aveley Marshes and it is also located within the Metropolitan Green Belt. It is noted that Aveley, Wennington and Rainham Marshes form the largest expanse of wetland boarding the upper reaches of the Thames Estuary and the area is some 130m to the east of the Inner Thames Marshes, Site of Special Scientific Interest (SSSI). The land immediately to the south and east of the site is located within a different Local Planning Authority (Thurrock Council). It is used for commercial and industrial uses including storage and distribution. It is not designated as being located within Metropolitan Green Belt in the Thurrock Borough Local Plan (adopted 1997).
- 1.4 The nearest highway to the site is Juliette Way within the Purfleet Industrial Park (which is in the Borough of Thurrock) some 100m to the east of the site. The site is around 100m south east of the A13 trunk road and some 40m north of the Channel Tunnel Rail Link.

2. **The Alleged Planning Contravention**

- 2.1 Following complaints, officers from the Planning Enforcement Service have investigated and visited the site.

- 2.2 They have seen that additional hardsurfacing (operational development) has been laid encroaching into the Metropolitan Green Belt. It also appears that the land levels have been raised and the watercourse has been filled in.
- 2.3 Vehicles including cars, lorries and lorry trailers, containers, portable buildings plant and machinery are stored in the open on additional hardsurfacing (a material change of use of the land.)
- 2.4 These alleged breaches amount to unauthorised operational development on the land which it is alleged have occurred within the last 4 years and the unauthorised material change of use of the land which it is alleged has occurred within the last 10 years. In relation to the unauthorised operational development, it is possible that some small areas of hard surface may have been in place more than 4 years. However in the event of any appeal against the issuing of enforcement notices, the Council would rely on planning case law; including *Murfitt v Secretary of state for the Environment and East Cambridgeshire DC* (1980) 40 P&CR 254 to argue that the construction of hard surfaces were an integral part of the making of the unauthorised change of use, and can thus be enforced against.
- 2.5 The Council's Planning Enforcement Service, together with the Environment Agency, have been unsuccessful in trying to resolve the various beaches on site. Due to the seriousness and harm caused by the unauthorised operational development and the unauthorised material change of use, this Service is unwilling to allow the situation to become further protracted.

3. **Relevant Planning History**

- 3.1 None.

4. **Enforcement Background**

- 4.1 The Service, in this investigation, has made contact with the land owners who appear reluctant to remedy the breaches.
- 4.2 On 14 January 2011 Enforcement Notices were served on similar matters and were later withdrawn. This was following Legal Advice at the Public Enquiry, on 9 November 2011, whereby issues were raised by the Appellant that all parties having an interest in the land were not served with a copy of the Enforcement Notices. The Council at that time were not in a position to fully defend this.
- 4.3 The Environment Agency are also investigating alleged breaches in relation to the diversion of a watercourse and the impact on the Channel Tunnel Rail Link.

5. **Material Considerations of the Use and Development**

- 5.1 The issue is whether it is expedient for this Council to serve Planning Enforcement Notices having regard to the nature and impact of the unauthorised operational development and unauthorised material change of use.
- 5.2 The site is within the area identified in the LDF Core Strategy and Development Control Development Plan Document and LDF Proposal Map as Metropolitan Green Belt. The relevant planning policies are CP14, CP15, CP16, DC45, DC48, DC58 & DC61 as well as the Supplementary Planning Document; Protecting and Enhancing the Borough's Biodiversity. Other material considerations are Chapter 9 of the National Planning Policy Framework and Policy 7.16 of the London Plan.
- 5.3 The site is an area of Metropolitan Importance for Nature Conservation (SINC) and Aveley, Wennington and Rainham Marshes are the largest expanse of wetland boarding the upper reaches of the Thames Estuary. It is considered that there are no economic or social benefits outweighing the nature conservation importance of the site
- 5.4 Chapter 9 of the National Planning Policy Framework, Policy DC45 and Policy 7.16 of the London Plan make it clear that there is a general presumption against inappropriate development and material change of use which is harmful to the Green Belt except in very special circumstances. No special circumstances have been demonstrated to the Council that there should be a departure from long established Green Belt Policy.
- 5.5 Policy DC48 (flood risk) states that operational development will not be permitted where it would undermine or breach flood defences. The work carried out has reduced flood storage volume available and increased the risk of flooding in the area.

6. **Justification for Intended Action**

- 6.1 The unauthorised operational development and unauthorised material change of use are detrimental to the visual amenities and character of the surrounding area in general and harmful to the essential open nature of this part of the Metropolitan Green Belt. The NPPF Policy DC45 and Policy 7.16 of the London Plan make it clear that there is a general presumption against inappropriate development and material change of use which is harmful to the Green Belt except in very special circumstances. There are no very special circumstances for expanding the site further into the Green Belt and the unauthorised operational development and unauthorised material change of use are contrary to established Green Belt policies.
- 6.2 As set out elsewhere in this report, the site falls within an area of metropolitan importance for Nature Conservation. Aveley Marshes forms part of the largest expanse of wetland boarding the upper reaches of the Thames Estuary. Policy DC58 states that planning permission for operational development and material change of use that adversely affect

any Sites of Special Scientific, and all sites of Metropolitan Local Importance for Nature Conservation, as identified in Protecting the Borough's Biodiversity SPD, will not be granted unless the economic or social benefits of the proposal clearly outweighs the nature conservation importance of the site; and then only, if adequate mitigation can be provided and no alternative site is available.

- 6.3 It is considered that the expansion of the site into an area identified as being of Metropolitan Importance for Nature Conservation, has harmful impact to birds, wildlife and plants. Unmitigated operational development affecting the ditch network in this particular area could have implications for water voles and their habitat which are both fully protected under the Wildlife and Countryside Act 1981 (as amended). There are no economic or social benefits outweighing the nature conservation importance of the site.
- 6.4 The unauthorised operational development also includes changes to the watercourse that are located in an area identified as an area liable to flooding. The Environment Agency expressed particular concern as their survey shows that the ground level has been raised by 1.5 to 2.5 metres. The Environment Agency consider that the ground raising carried out has reduced the flood storage volume available within this area of functional flood plain (Flood Zone 3b) and it may be obstructing flood flow pathways and increasing flood risk in the area. The development is therefore contrary to policy DC48 of the LDF Development Control Policies Development Plan Document.
- 6.5 It is contrary to Policies CP15, CP16, DC45, DC48 and DC58 of the Local Development Framework Core Strategy and Development Control Policies Development Plan Document as well as the provisions of Chapter 9 of the National Planning Policy Framework and Policy 7.16 of the London Plan.
- 6.6 If a planning application were to be submitted for both the operational development and material change of use, Staff consider that they would be recommended for refusal. In view of Staff, planning conditions could not mitigate or overcome the material harm caused by the alleged breaches of planning control.
- 6.7 The Enforcement Notices served on 14 January 2011 were appealed and were subject of a Public Inquiry which was held on 9 November 2011.
- 6.8 Following representations by the appellant at the commencement of that Inquiry the Council agreed to withdraw the notices.
- 6.9 On 28 November 2011 formal withdrawal notices were served on the appellant.
- 6.10 It should be noted that the Council's withdrawal of notices does not affect the power of the Local Authority to issue a further Enforcement Notice or notices (Section 173 A(4) of the Town and Country Planning Act 1990).

6.11 Authority is therefore sought for the re-issue of the notices.

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:

No implications identified.

BACKGROUND PAPERS

Plan showing an area of land at Aveley Marshes cross hatched on which the alleged breach of planning control is taking place.