



REGULATORY SERVICES COMMITTEE

REPORT

07 June 2012

Subject Heading:

Planning Contravention

Tomkyns Manor

Tomkyns Lane, Upminster

Report Author and contact details:

Simon Thelwell

Planning Control Manager (Projects and Compliance)

01708 432685

simon.thelwell@havering.gov.uk

Policy context:

NPPF

Local Development Framework

Financial summary:

Enforcement action and a defence of the Council's case in any appeal will 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 a barn style building that has been erected at Tomkyns Manor in Tomkyns Lane, Upminster. Planning permission has been granted for a building on this site on the basis that it be used for the purposes of stabling horses and agricultural storage. However, it has not been erected in accordance with the plans and is now being used predominantly for residential purposes. A new access road to the barn has been formed off Tomkyns Lane, this too is unauthorised. The

building sits within the Green Belt. It is considered expedient to take enforcement action against the unauthorised building/its use and the access road.

RECOMMENDATIONS

(A) That the committee consider it expedient that, subject to consultation and approval from the Assistant Chief Executive, Legal and Democratic Services, an Enforcement Notice be issued and served to require within 9 months:

1. The unauthorised building be demolished.
2. Remove all materials, hardstanding and rubble associated with the unauthorised building and resulting from the demolition of the building.

(B) That the committee consider it expedient that an Enforcement Notice be issued and served to require, within 6 Months:

1. The residential use ceases.
2. Return the barn to its authorised use as stables and agricultural storage in accordance with P0080.07.

And within 9 months:

3. Remove all residential installations including bathroom and kitchen fittings and internal walls created in connection with this unauthorised use.
4. Restore the barn so that it accords with the approved plans in planning application P0080.07.
5. Remove the unauthorised access road off Tomkyns Lane and restore the land to the condition prior to the formation of this road.
6. Remove all rubble and building materials resulting from compliance with 2-5 above.

(C) 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 Tomkyns Manor site contains a large detached dwelling with associated buildings and a tennis court toward the north of the site close to the Tomkyns Lane/Warley Road junction. The remainder of the site is mainly open space. The area of the building and access road subject to this report is on the southern part of the site, approximately 170 metres from the main dwelling, about 35 metres west of Tomkyns Lane.

1.2 The site is within the Green Belt.

2. **Relevant Planning and Enforcement History**

2.1 P2206.06 – Erection of Essex barn for stables and agricultural use –
Withdrawn

P0080.07 – Erection of Essex barn for stables and agricultural use -
Approved

2.2 There is no relevant enforcement history.

3. **The Alleged Planning Contravention**

3.1 In December 2009, a complaint was received stating that the barn erected on the site was being used for residential purposes. A site visit was carried out but it was not possible to gain access to the property. The property owner was contacted by letter in order to seek information in this matter. An exchange of e-mails followed with little progress. The owner of the property engaged a planning agent to deal with this issue. A site visit was undertaken with the agent in attendance and it was found that the greater part of the building was being used for residential purposes.

3.2 Building Control records indicate that the building was completed in September 2008, but only as a shell, it was not fitted out internally as stables or agricultural storage as indicated on the approved plans. It is also apparent that the building was not been completed externally as shown on the approved plans with a different roof form, no stable doors and changes to the positioning of windows and doors. Subsequent to the building shell being constructed, it has been fitted out internally as residential accommodation with a small stabling area at one end of the building. The residential part of the building contains bedrooms, study and a large kitchen, dining and lounge area. Additional windows and doors have been installed in connection with this use.

3.3 An access road has been formed to the new building running from the southeast corner of the site.

3.4 A planning application was submitted for a change of use of the building to a mixed use comprising 2-bed flat (for holiday letting) and 3 stables together with private access drive and parking area. This application was received on 10th February 2012, but then subsequently withdrawn on 5th April 2012.

- 3.5 There is considered to be a breach of planning control at the site in that the residential use of the building does not benefit from planning permission. Planning permission was granted for a building on this part of the site, but on the basis that this was for stables and agricultural storage related to the open areas of the site. Subject to legal confirmation, it is considered that the building itself, in that it was never put to the use intended and not completed in accordance with the approved plans, is unauthorised and enforcement action against the building should be considered. In any event, staff consider that enforcement action against the unauthorised use is expedient.

4. **Policy and Other Material Considerations**

- 4.1 The main issues in relation to this development is whether it is acceptable in the Green Belt.
- 4.2 The National Planning Policy Framework (NPPF) states that in the Green Belt, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Construction of new buildings is regarded as inappropriate development except (amongst other things) for buildings for agriculture and forestry; appropriate facilities for outdoor sport and recreation. The reuse of buildings is not inappropriate provided that the buildings are permanent and of substantial construction and openness is preserved.
- 4.3 Policy DC45 of the LDF states that planning permission for development in the Green Belt will only be granted if it is for agriculture or forestry, outdoor recreation, nature conservation and cemeteries. The reuse of existing buildings will only be granted if the criteria set out in PPG2 (now superseded by NPPF) are satisfied.
- 4.4 In assessing the planning merits of the case, it is considered relevant to consider the circumstances for planning permission being granted for a building on this part of the site in 2007. That application was explicit that the building was to be used for stables and agricultural storage. In support of the application was a planning statement and accompanying letter from a veterinary surgeon. This supporting information was that the site had about 14 acres of land for both horse grazing and hay production. 6 stables were provided for the grazing horses with a small tack room and food store. The roof of the barn was proposed for hay storage of 800 bales of hay per annum with a machine store to accommodate a tractor, harrow, hay cutters and other agricultural equipment.
- 4.5 On the face of it the details submitted with the application, the proposed building was for the purposes of agriculture (hay production) and outdoor recreation (keeping of horses) which was designed for that purpose and the assessment of the proposal was that it met the requirements of Green Belt

policy. Planning permission was therefore granted with a condition restricting the use to stables and agricultural storage.

- 4.6 Whatever the intention of the applicant and owner of the property, a building was constructed, similar in size although not in accordance with the approved plans, but was never fitted out to provide the stables and agricultural storage which was the lawful use of the building. The subsequent fitting out of the building, and use for residential with some stabling, would appear to be the first use of the building.
- 4.7 Should an application have been made for a new building for use for mainly residential purposes, then the proposal would have been judged to be inappropriate development in the Green Belt and very special circumstances would need to have been demonstrated and accepted as outweighing the harm to the Green Belt in order to recommend the granting of planning permission. A residential building, as well as being inappropriate, would likely lead to domestic use around the building including parking, sitting out areas, gardens and would change the open character of this part of the green belt compared to an agricultural building.
- 4.8 It is considered that the mixed use or residential use does not constitute an appropriate use within the Green Belt and that planning permission would not be granted for its retention.
- 4.9 Although planning policies allow for suitable re-use of buildings in the Green Belt, in this case the building has never been put to its intended use and it has only recently been constructed. To allow a change of use in this case would be a misuse of policies intended to preserve the openness of the Green Belt.
- 4.10 Authorisation is sought primarily for cessation of the unauthorised use and removal of the building. The latter authorisation would be exercised subject to consultation with the Assistant Chief Executive of Legal and democratic Services.
- 4.11 The access road that has been constructed seems to be for a sole purpose of providing an access to the unauthorised residential building. The road detracts from the openness of the Green Belt and is considered to be inappropriate development. It is therefore recommended that enforcement action be taken to require the removal of the access road.

5. **Recommendation for action**

- 5.1 For the reasons outlined in this report, it is considered that the building and access road that have been constructed are unauthorised, are contrary to national and local policy on the Green Belt and that there are no very special circumstances to outweigh such identified harm. In the circumstances, it is considered expedient to serve enforcement notices requiring the removal of the building and access road.

- 5.2 Given that the building is a quite substantial structure, it is considered to be reasonable to allow up to 9 months for full compliance with any notice.

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:

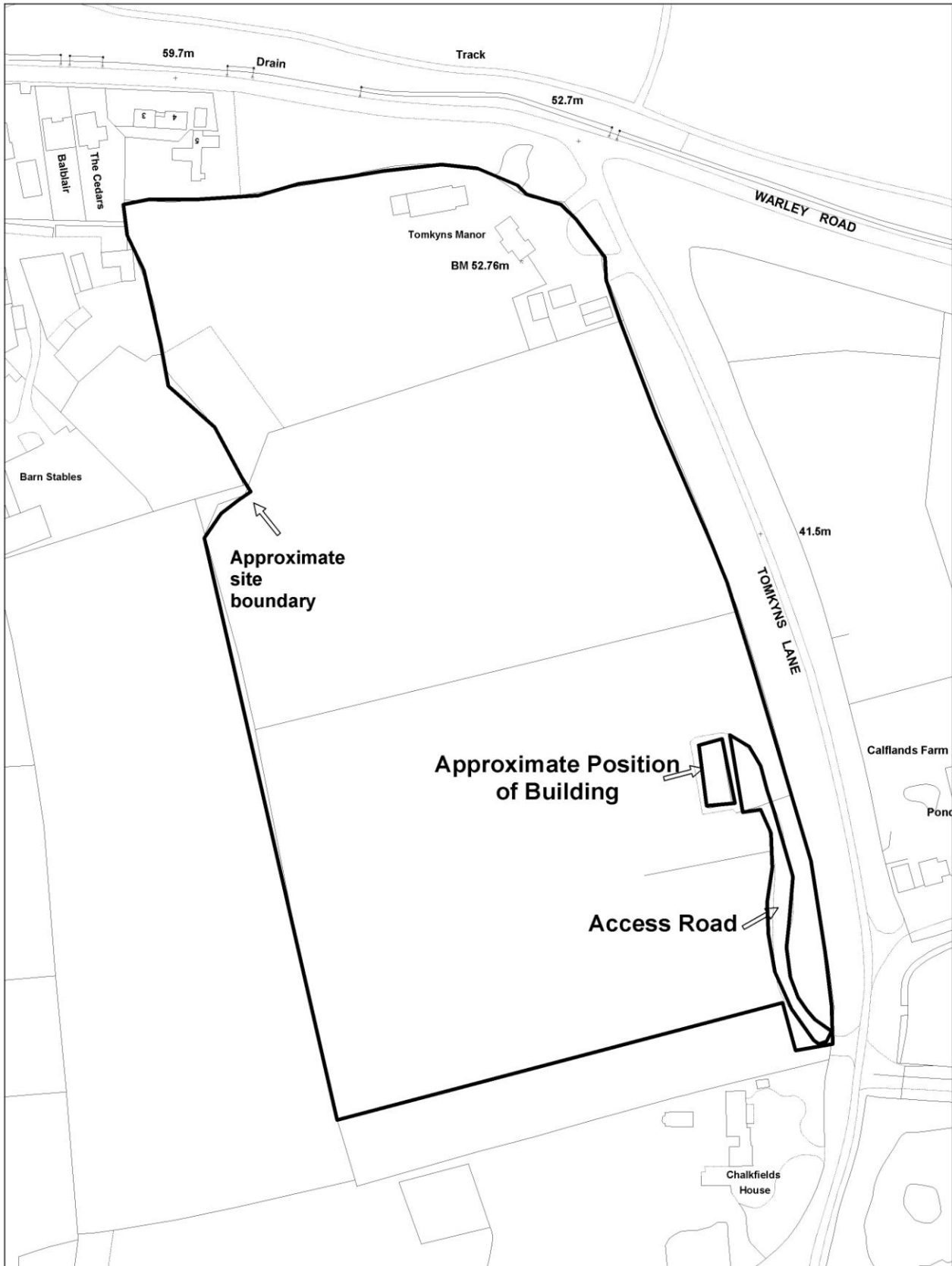
No implications identified.

Equalities implications and risks:

No implications identified.

BACKGROUND PAPERS

- 1 *Site Plan*
- 2 *Planning History*



<p>Tomkyns Manor</p>	<p>Map Reference: TQ5690SE Date: 23/05/2012</p>	<p>Scale @ A3 1:1250</p> <p>Scale 0 10 20 30 40 50 m</p>
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