



# REGULATORY SERVICES COMMITTEE

6 December 2012

# REPORT

**Subject Heading:**

Planning Contravention  
Suttons Farm  
Tomkyns Lane  
Upminster  
Essex

**Report Author and contact details:**

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Local Development Framework

**Policy context:**

**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 residential dwelling house at Suttons Farm, Tomkyns Lane, Upminster. In March 2009, the Council's Planning Enforcement service received a complaint alleging various breaches of planning control at the site. The alleged breaches included newly laid hardstanding and other development such as

extensions and outbuildings. After a site visit, the Council established that there were a number of breaches of planning control around the dwelling house including the laying of hard standing as well as new and altered boundary treatments including brick pillars, brick walls, fencing and gates. Other unauthorised development at the property took the form of engineering operations incorporating stepped levels to the front of the house incorporating the formation of a patio area and a sunken garden.

The Council has tried to resolve these breaches of planning control but despite several planning applications being submitted, none of these have been determined due to the failure to the applicant to provide relevant information and details requested by the Council which were required to progress the applications. Given these problems, the Planning Enforcement Service are not prepared to allow the situation to become further protracted due to the time limits in which it can take action. It is considered that planning permission would not be granted to retain the unauthorised development. It is therefore requested that authority be given to issue and serve an Enforcement Notice in order to seek to remedy the breaches.

## RECOMMENDATIONS

That the committee consider it expedient that an Enforcement Notice be issued and served to require that within 3 months of the effective date of the notice:

- 1. Reduce the height of the boundary walls, brick pillars, fencing, and gates on the land at Suttons Farm, Tomkyns Lane, Upminster (which is shown between points A and B on a plan annexed to this report) to maximum of 1m in height where they are adjacent to highway and to a maximum of 2m in height elsewhere.**
- 2. Restore those parts of the Land (which is shown cross-hatched on a plan annexed to this report) upon which the patio and sunken garden were constructed to its previous condition.**
- 3. Remove all materials from the property resulting from compliance with the above requirements**

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

Suttons Farm, Upminster is comprised of a two storey detached dwelling house and ancillary outbuildings, a swimming pool, and a tennis court set in a plot of land as shown outlined in bold black on the attached plan. Vehicular access into the site is via Tomkyns Lane. The Council contend

that the authorised use of the house and ancillary outbuildings is a dwelling house (Class C3 of The Town and Country Planning (Use Classes) Order 1987 (as amended). The site is located within the Metropolitan Green Belt. The surrounding land is also sited within the Metropolitan Green Belt and there are some residential dwellings and some buildings connected with commercial and agricultural uses primarily in the form of ribbon development located close to the Tomkyns Lane frontage. The wider surrounding area has a predominantly undeveloped open appearance although there are some hedgerows, copses dotted in this landscape.

## 2. **The Alleged Planning Contravention**

Without planning permission,

The formation of three stepped levels to the front of the main house including a hard surfaced patio area adjacent to the house and a level incorporating a sunken garden (the patio)

Boundary walls, brick pillars entry gates and fencing standing at approximately 2.2 m in height to the front of the property (the boundary wall).

## 3. **Relevant Planning History**

There is an extensive planning history for this site

ES\HOR\117\58\P bungalow – Approved

LHAV 518\74 Extension to dwelling house – Approved

LHAV 38\78 Extension to farm house – Approved

P0547.88 Conversion of upper part of existing outbuilding to provide one bed flat for elderly parents – Refused

P0277.90 Conversion of existing outbuilding (upper part) into a one bed flat for elderly parents - Withdrawn

P1468.90 Conversion of Upper part of outbuildings into games room – refused

P0759.91 Conversion of existing barn into a games room - Withdrawn

P0768.91 Conversion of outbuilding to games room (revised plans received 05/08/91) - Approved subject to legal agreement

P0881.95 Construct riding arena 60m x 20m for personal and domestic – Approved

P0374.98 Cover to existing swimming pool - Refused & appeal dismissed

P1311.99 Cover over swimming pool - Refused

P1474.00 Proposed glazed swimming pool enclosure together with site enhancements – Refused & appeal dismissed

E0011.02 Application for Certificate of Lawfulness for Use as Class B8 - storage & distribution (Buildings A & B) - Withdrawn

E0012.02 Application for Certificate of Lawfulness to establish Building C as a residential annex to main dwelling, not as a separate residential unit - No decision

P2304.04 Single and two storey rear extension 2 storey and single storey front extension and new roof - Withdrawn

D0106.11 Certificate of Lawfulness for existing use - Withdrawn

E0013.11 Certificate of Lawfulness for existing use - Invalid.

P0928.11 Proposed new pillars and walls/gates as entrance to property also new front fence and new sunken garden/patio at front of existing dwelling - Withdrawn

E0004.12 Certificate of Lawfulness for the existing use of extensions/works carried out on the site during 2005/2006 Application not determined awaiting further information

P0194.12 New pillars walls and gates – Application on hold – awaiting further information

#### 4. **Enforcement background**

4.1 The Council received a complaint in March 2009 alleging that a number of breaches of planning control; had taken place at Suttons Farm .Staff attempted to contact the owner in writing however there was no response to the Council's letter. Subsequently the Council were notified that the ownership of the property had changed. The new owner contacted the Council in early 2010 and Staff visited the site shortly afterwards.

4.2 After visiting the site, Staff established that there were three alleged breaches. Firstly, an extensive area of hard standing has been laid around the front of the dwelling and forwards of the main front wall (principal elevation) of the original house. The materials used to form this hard surfaced area are impermeable. Staff considered that Planning permission was required for this hard surfaced area as it covers an area significantly greater than the five square metres that is authorized under permitted development allowances for residential dwellings. This potential breach is not being taken forward and the context is explained in paragraphs 4.8 and 4.9 of this report.

- 4.3 The second issue concerns the formation of three stepped levels to the front of the house. The highest of the stepped levels is directly adjacent to the front elevation of the house and is used a patio, there is a middle level and the lowest of the stepped levels is intended to be used as a sunken garden area and contained two brick walled enclosures. The formation of these features has involved significant works of embanking or terracing to support forming a number of stepped levels with retaining walls to the front of the house. Staff consider that the ground level for the patio or first stepped level nearest to the house has been raised significantly and the height of the step above the natural ground level increases as the patio projects outwards from the house and this is supported by a retaining wall. The formation of the other stepped levels has also involved embanking, terracing, excavation and construction of retaining walls and it is considered that these features require planning permission as they are considered to be engineering operations constituting operational development.
- 4.4 The third breach identified by staff concerned brick walls, brick pillars and gates at the entrances into the site that had been increased in height between 2m and 2.2m in height. In most cases a homeowner does not need to apply for planning permission to take down a fence, wall or gate, or to alter or improve an existing fence, wall or gate (no matter how high) providing there is not an increase its height. In this instance however Staff considered that the brick walls, brick pillars and fencing have either been increased in height or are new. As these boundary treatments are located on the front boundary of the site adjacent to Tomkyns Lane they are not permitted development as they are over 1m in height and adjacent to the highway.
- 4.5 In 2010 Staff advised the owner of the breaches of planning control and have written to one of the owners of the property on several occasions advising that a planning application was required in order to regularise these breaches. There were regular communications between both parties, however due to changing personal circumstances of the owners, progress of attempts to resolve the breaches was slow. In 2011, applications for a certificate of lawfulness were submitted, one of which was withdrawn and the other was deemed invalid. A planning application described as new pillars and walls/gates at entrance to property also new front fence and new sunken garden/patio at front of existing dwelling was also withdrawn.
- 4.6 In 2012 an application for a certificate of Lawfulness for the existing use of extensions/works carried out on the site during 2005/2006 was submitted however this has not been determined. A separate planning application for new pillars, walls and gates is also on hold and Staff dealing with both applications have contacted the applicant's agent requesting further information. The personal circumstances of the owners and ownership issues have resulted in no further progress being made with the applications. The Council have written to both of the owners separately in order to move the situation forward.
- 4.7 Given these problems Staff are not prepared to allow the situation to become further protracted due to the time limits in which it can take action. It

is therefore requested that authority be given to issue and serve an Enforcement Notice in order to seek to remedy the breaches.

- 4.8 Staff did considered the issue of the hardstanding laid around the residential dwelling house. It is however not considered expedient to pursue enforcement action on this issue as there would be significant risk in defending any potential appeal relating to this. There are two main elements in choosing this course of action. The first relates to the difficulties regarding the interpretation of permitted legislation in regard to what constitutes the principal elevation of the dwelling house. The legislation states that only one elevation can be considered as the principal elevation of a dwelling house. However in this instance, a reasoned argument could be made for two of the elevations to be considered as the principal elevation. One elevation facing the road has a door opening and a patio however historically the elevation of the side of the house has a door opening that historically been used as the main entrance to the house.
- 4.9 The second area of concern is the fact none of the hard surface would be situated on land between a wall forming the principal elevation of the dwelling house and a highway. Having checked the technical guidance issued by the DCLG, the area of hard surface does not sit directly between the principal elevation and the highway for the elevation that faces directly onto the highway. However, the elevation to the side of the house with the frequently entry point does not face onto a highway of any form.

## 5. **Material Considerations of the Use or Development**

- 5.1 The main issues resulting from the breaches of planning control are the effect of the unauthorised developments on the Green Belt. Firstly whether the development is inappropriate development and secondly if there is any other harm
- 5.2 Staff consider that the relevant planning policies are contained within the Havering Local Development Framework (LDF). These include policies CP14, CP17, DC45, DC51 and DC61 of the Core Strategy and Development Control Policies DPD as well as the Council's Residential Extensions & Alterations Supplementary Planning Document (SPD) and Residential Design SPD. London Plan (2011) policies 7.4, 7.6 and 7.16 and the National Planning Policy Framework (NPPF). are also important material considerations. Staff consider that the following section of the NPPF are relevant in this case; Section 9; "Protecting Green Belt Land"; Section 10; Meeting the challenge of climate change, flooding and coastal change and Section 7 "Requiring good design".

## 6. **Justification for Intended Action**

- 6.1 The key issues resulting from the alleged breaches are the effect of the unauthorised developments on the character and appearance of the Green Belt

## 6.2 Stepped levels incorporating front patio & sunken garden

Turning to the issue of the stepped levels, staff note that three stepped levels have been formed to the front of the house. The highest of these forms a patio adjacent to the front of the house. Staff consider that for this level, the ground level has been raised by some 0.7m and that two other stepped levels are some 1.3m and 1.0m in height respectively. The lowest of the stepped levels forms a sunken garden area. These separate features have resulted in the raising of ground levels, the formation of retaining walls, and as well as the excavation of materials and amount to engineering operations for which planning permission is required by virtue of S55 of the Town & Country Planning Act 1990.

For the sake of clarity S55 of the Act states that; “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

For the purposes of this Act “building operations” includes—

- (A) Demolition of buildings;
- (b) Rebuilding;
- (c) Structural alterations of or additions to buildings; and
- (d) Other operations normally undertaken by a person carrying on business as a builder.

S336 of the Act sets out the following definitions;

“building” includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;

“buildings or works” includes waste materials, refuse and other matters deposited on land, and references to the erection or construction of buildings or works shall be construed accordingly;

“building operations” includes rebuilding operations, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder;

In summary, Staff consider that the, stepped levels including the patio level and sunken garden level consolidate development and by virtue of their size and design, these add noticeably to the bulk of the built development within the site. The unauthorised development therefore materially erodes the openness of the Green Belt and is therefore in conflict with policy DC45.

## 6.3 Boundary treatments

On the issue of the boundary treatments including, fencing, brick walls and brick pillars, Staff considered the unauthorised development against Schedule 2 Part 2 Class A of The Town and Country Planning (General

Permitted Development) Order 1995 (Minor Operations). This is headed, "The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure." It states that development is not permitted if;

- a) If the height of any gate, fence or wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level;
- b) The height of any other gate fence or wall or means of enclosure erected or constructed would exceed two metres above ground level;
- c) The height of any gate, fence, wall or other means of enclosure maintained, improved or altered would as the result of the development exceed its former height or the height referred to in sub paragraph (a) or (b) as the height, appropriate to it if erected or constructed, whichever is the greater; or
- d) It would involve development within the curtilage of, or to a gate, fence wall or other means of enclosure, surrounding a listed building.

The Council contend that the boundary treatments are not permitted development as they are over 1m in height and adjacent to the highway. In regard to the issue of the highway, the Encyclopaedia of Planning Law and Practice states; "A highway is not defined, even for the purposes of the Highways Act 1980, but in accordance with common usage includes not only a made-up road but any way over which members of the public have the right to pass and repass, including a footpath." This part of Tomkyns Lane adjacent to Suttons Farm is used by vehicles and enables access to residential dwellings in Tomkyns Lane. It is a way that the public have a right to pass and repass. Therefore the limitation on the height of any fence or wall is 1 metre.

Staff contend that the brick pillars, walls and gates would due to their positioning appear as an overly dominant feature within the street scene. It is noted that these boundary treatments appear to be of a relatively simple design however their positioning has formed a complete enclosure around the site boundaries to the front of the house and this is a feature which is not typical of the locality or rural green belt setting. These alleged breaches of control are contrary to policy DC61 as they fail to respond to distinctive local building forms and patterns of development and respect the scale, massing and height of the surrounding physical context.

In the opinion of Staff, the fencing and gates by virtue of their size and design, add noticeably to the bulk of the built development locally and therefore erode, in a small but material way, the openness of the Green Belt. Staff highlight that openness is the most important attribute of Green Belts and substantial weight should be afforded to the harm by reason of loss of openness. The unauthorised development is therefore contrary to policy DC45.



6.4 In summary alleged breaches of planning control; have occurred within the last four years and the Council would be acting within the time limit for taking enforcement action, i.e. the developments are captured within the 4 year rule. Staff consider that the developments are contrary to policy DC45 & DC61 of the LDF Core Strategy and Development Control Policies DPD and the NPPF Finally Staff consider that three months is sufficient time to complete the works necessary to comply 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 1<sup>st</sup> 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 consider the above duty and the Human Rights Act 1998 there are no equality or discrimination implications raised.

## BACKGROUND PAPERS

### ***1. Attached OS plans***