



# REGULATORY SERVICES COMMITTEE

14 November 2013

# REPORT

**Subject Heading:**

Alleged breach of planning control at,  
Rainham Road Service Station ,  
14,Rainham Road, 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 and  
prosecution will have financial implications

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

Ensuring a clean, safe and green borough	[x]
Championing education and learning for all	[]
Providing economic, social and cultural activity in thriving towns and villages	[]
Value and enhance the life of our residents	[x]
Delivering high customer satisfaction and a stable council tax	[]

## SUMMARY

This report concerns alleged breaches of planning control at Rainham Road Service Station, 14, Rainham Road, Rainham (the Land).

In January 2006 a planning permission was granted on appeal for a change of use of a petrol filling station to a hand car wash and car sales area. A number of conditions were attached to the planning permission. The main condition imposed by the Planning Inspectorate referred to the washing or cleaning of vehicles which shall only take place within the wash bay approved and no other part of the site. Some of the other conditions required details of schemes to be submitted and approved in writing by the Council. The schemes required details of materials and details of powered tools,(for the washing and cleaning of vehicles), staff and customer parking, refuse storage and drainage.

In April 2007 further complaints were received by the Planning Enforcement Service, in relation to the washing of vehicles outside the wash bay area and that no conditions subject of the appeal were discharged.

Further investigations were carried out by staff, which led to an additional planning application being submitted which was subsequently refused, whereupon a further Enforcement Notice was served in relation to the washing of vehicles outside the wash bay and failure to submit schemes subject of the previous appeal.

In June 2009 both the planning application and the enforcement notice were subject of appeal to the Planning Inspectorate. The enforcement notice was upheld and varied whilst the Planning application was allowed with Conditions which were similar to those granted by the Planning Inspectorate in 2006.

In April 2010 a scheme in relation to the condition imposed by the Planning Inspectorate in relation to Parking spaces was discharged in part. This identified on plan the area set aside as acceptable for the parking of customer and staff vehicles. In relation to other conditions there was insufficient detail and were therefore not discharged.

In February 2010 further complaints were received that a container type cabin had been placed in the designated parking area and was being used for office/storage.

Staff have visited the site and noted that the washing and valeting of vehicles is still taking place in the open air and not in the wash bay. There is a container type cabin building being used as office/storage with an attached outbuilding being used as a waiting room. In addition there is a large canvas type canopy held in place by a metal structure erected on the site which is in use as a shelter for vehicles being valeted after their initial wash. All of these additions require planning permission and to date there have been no further applications.

Staff have discussed the breaches of planning control with both the operator and owner of the site, including writing to the owner, who has engaged a planning agent . However the breaches continue.

At this juncture there does not seem to be a quick way forward and further negotiations and possible further applications may not fully overcome the harm therefore Authority is sought for Enforcement Notices to be issued and served.

## RECOMMENDATIONS

In relation to the unauthorised development:

That Members consider it expedient that Enforcement Notices be issued and served to require within three months:

1. Remove the container, outbuilding and the canopy and structure holding in place the said canopy from the Land.
2. Remove from the Land all waste materials and rubble resulting from compliance with (1) above.

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.

In relation to the breach of conditions:

That Members consider it expedient that Enforcement Notices be issued and served to require within three months:

1. Cease the washing and cleaning of vehicles except in the wash bay and former garage forecourt building approved by planning permission (P0758.08 granted on appeal and detailed as condition 2 in the Planning Inspectorate Decision dated 3 August 2009.
2. Other than non-powered portable hand tools, cease the use of all other equipment used for the washing and cleaning of vehicles until a scheme has been submitted and approved in writing by the local authority and the cleaning and washing of vehicles shall be in full accordance with the approved scheme. ( Condition 4, P0758.08)
3. Cease the use of the building until parking spaces for customers and staff are

marked out on the site in accordance with the approved scheme (Condition 6, P0758.08) submitted and approved on 31 March 2010 and shown on plan GN/01 and the approved spaces shall be retained thereafter for the parking of vehicles and for no other use.

4. Cease the use for storage of equipment and materials in the customer and staff parking areas (approved by Condition 6, P0758.08 on 31 March 2010 and shown on plan GN/01)
  
5. Remove all car washing, cleaning equipment and all other storage including chairs and return the area ( as shown on GN/01)to car parking only. (Condition 6, P0758.08)

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.

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

## REPORT DETAIL

### 1. **Site Description**

1.1 The site at 14 Rainham Road, Rainham is a former petrol filling station converted to a car wash with a wash bay. It is adjacent to residential properties.

### 2. **Relevant Planning History**

2.1 P1129.91 Installation of jet wash –refused

A0017.94 Forecourt shop fascia and canopy fascia and pole sign, pump spreader boxes – approved.

P1418.94 New jet wash facility – refused.

P0971.97 Part demolition of existing forecourt shop, construct, new enlarged shop and installation of jet wash. Removal of two existing pumps refused appeal decision.

P0179.98 Part demolition of existing forecourt shop construction, new enlarged

shop and installation of jet wash and clear roof over proposed jet wash bay –approved.

P0409.02 Extension to shop, extension to provide store and installation of car wash- part approved, car wash element refused.

P1106.03 Construction of covered car wash bay, new drainage alterations to boundary treatment works to forecourt –refused.

P1780.03 Vehicle wash bay and shop extension –refused.

P1212.05 Change of use to hand car wash area and car sales –refused  
Appeal allowed with conditions.

P1704.05 Change of use to car sales site for second hand cars – refused.

P0758.08 Change of use of former garage forecourt shop to form part of adjoining car wash unit - refused .  
Appeal allowed with conditions.

Q0023.10 Discharge of Conditions ( scheme re tools – not discharged)  
( scheme re Parking – part discharged )

### 3. Enforcement History

3.1 **24 October 2002:** Planning Enforcement Notice, “ without planning permission change of use of the said land from a petrol filling station to a mixed use of a petrol filling station and washing of vehicles together with the erection of temporary structures in connection with vehicle was use”

**29 May 2003:** Appeal dismissed.

**19 April 2005:** Prosecuted for breach of notice- guilty – fine £10,000 .  
costs £3252.50.

**7 November 2008:** Planning Enforcement Notice, Breaches of Conditions imposed by the Planning Inspectorate 26 January 2006 under planning reference P 1212.05.

(i) The washing of vehicles other than within the wash bay.

(ii) Use of powered portable hand tools without providing details relating to noise.

(iii) Use of site for customer and staff parking without providing details

(iv) Use of site without discharging drainage condition.

(v) Developing site without providing details of materials.

Appeal dismissed notice varied.

## **4.Planning Contravention**

Development/Use:-

4.1 The alleged breaches of planning control in relation to unauthorised development and use by

- (i) the stationing of a container for the purposes of office/storage,
- (ii) the stationing of an outbuilding ( adjacent to the container) for the purposes of storage/waiting room, and
- (iii) the erection of a canopy with supporting structure for the purposes of shelter for the cleaning and valeting of vehicles

Conditions:

4.2 It is also alleged that there are further breaches, on site, in relation to the breach of conditions, in as much that conditions 2,4 and 6 of planning permission reference P0758.08 allowed on appeal and detailed in the Planning Inspectorate Decision dated 3 August 2009 have not been complied with.

4.3 For ease of reference I have set out the approved conditions pursuant to planning permission reference P0758.08.

**4.4 Condition 2:**

“The washing and cleaning of vehicles shall not take place anywhere on the site except in the wash bay and former garage forecourt building hereby approved”.

**4.5 Condition 4:**

“Other than non-powered portable hand tools, no equipment shall be used for the washing or cleaning of vehicles except in full accordance with a scheme to be first submitted to and approved in writing by the local planning authority”.

**4.6 Condition 6:**

“The building shall not be used for the purposes hereby permitted until parking spaces for both customers and staff have been marked out in the site in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. The approved spaces shall be permanently retained for the parking vehicles thereafter and for no other purpose”.

## **5 Staff Comments**

5.1 The issue is whether it is expedient for the Council to serve Planning Enforcement Notices having regard to the provisions of the development plan and any other material considerations.

## Development/Use:

- 5.2 Planning Enforcement Staff have visited the site and have noted that there is a large blue shipping type container in use as office/storage. There is a yellow sign above the door bearing the legend "Reception". Adjacent and partially attached is an outbuilding (white in colour) consisting of plastic material with a plastic roof. It is some 2.5m in height with windows. This building has plastic, white garden chairs inside and has storage racks attached which contain equipment for use of car washing. It appears to be in use for storage of equipment and as a customer waiting room. In front of this there is a metal structure some 3m in height with a canvas type canopy attached, which resembles a giant umbrella, where underneath vehicles are valeted after initial washing. There are also plastic garden chairs outside.
- 5.3 These unauthorised developments are located in the north east corner of the site and are close to residential properties in particular the boundary of 1 Victory Road.
- 5.4 Staff are of the opinion that the additional items brought on to the site are visually harmful and intrusive by their design, colour, location and unsightly appearance. The use of the container as an office/ storage and the adjacent outbuilding for the purpose of storage/waiting room causes additional noise and disturbance to residents. As does the use of the canopy structure under which the workers on the site vacuum and wipe over vehicles previously washed.
- 5.5 The relevant planning policies of the Local Development Framework, Core Strategy and Development Control Policies DPD, DC 61(urban design)
- 5.6 DC61 states that planning permission will not be granted where the proposal results in unacceptable overshadowing loss of sunlight/daylight overshadowing or loss of privacy to existing and new properties and has unreasonable adverse effects on the environment by reason of noise, impact, hours of operation, vibration and fumes between and within developments.
- 5.7 Both the owner and the leaseholder have been advised of the need to remove, the container, the adjacent outbuilding and the structure with the attached canopy. All of which remain unauthorised and require planning permission.  
If a planning application were to be submitted staff do not consider that further conditions can overcome the adverse effects of the breaches on the amenity of neighbouring occupiers..

## Conditions:

- 5.8 Staff have witnessed breaches of Conditions 2, 4 and 6 of Planning Permission P0758.08 allowed on appeal and detailed in Planning Inspectorate Decision, dated 3 August 2009.

5.8. Condition 2: The washing and cleaning of vehicles is taking place in other parts of the site and not in the wash bay. In particular in the north east corner of the site where vacuuming, valeting and the finishing of vehicles is taking place.

The workers appear to be operating a production line process whereby the finishing service is completed in this part of the site.

5.9 Staff are of the opinion that the washing and cleaning of vehicles other than in the wash bay causes unacceptable noise and disturbance to residents.

It should also be noted that when the site was visited there was a considerable water in areas other than the wash bay and could cause water spillage to residential properties.

5.9 Condition 4: Details of other than non-powered hand tools were submitted and considered. However there were insufficient details supplied for the condition to be discharged. This decision was communicated, to the applicant, by a decision notice issued on 21 April 2010. No further details have been submitted.

5.10 Referring to the second requirement of Condition 4, industrial type vacuum cleaners are being operated and used in the north east corner of the site, and are mainly operated under the unauthorised canopy.

5.11 Staff are of the view that the powered equipment used in open areas of the site, causes unacceptable noise and vibration to residents.

5.12 Condition 6: Details of parking spaces for customers and staff have been submitted to the Council in plan form number GN01.

This shows laid out parking areas for visitors to the west of the site and for staff and visitors to the north east of the site. On 31 March 2010 the Council issued a decision notice part discharging this condition, accepted the plan GN/01 as the approved parking area.

5.13 There is unauthorised development and the storage of equipment including the placing of chairs (previously mentioned in this report) within the north east parking area.

5.14 Staff are of the view that the parking area set out in plan GN/01 are not marked out or permanently retained as required for the purpose of parking.

5.15 The relevant planning policies of the Local Development Framework, Core Strategy and Development Control Policies DPD, DC33 (car parking) DC55 (noise) and DC 61 (urban design)

5.16 DC33 states that there should be no adverse impact on the amenity of residents and the interests of the users of adjacent premises with regard to car parking.

5.17 DC 55 states that planning permission will not be granted if it will result in



exposure or vibrations above acceptable levels.

5.18 DC61 states that planning permission will not be granted where the proposal results in unacceptable overshadowing loss of sunlight/daylight overshadowing or loss of privacy to existing and new properties and has unreasonable adverse effects on the environment by reason of noise impact, hours of operation, vibration and fumes between and within developments.

5.19 Both the owner and leaseholder have been advised of the need to comply with the Conditions.

5.20 The planning agent, acting for the owner, is considering whether or not to submit a planning application for a building which would fully enclose the car wash operation. However at this stage this is not a firm proposal and there is no guarantee that such an application should one be submitted would be approved as each application must be considered on its own merits.

5.21 In conclusion, Staff are firmly of the opinion that the siting of the container, outbuilding and canopy with structure supporting the canopy are unacceptable in planning terms. Further that the planning conditions attached to the planning permission reference P0758.08 granted on appeal are not being complied with. Staff therefore are seeking authorisation to serve Enforcement Notices.

## **IMPLICATIONS AND RISKS**

### **6 Financial implications and risks:**

6.1 Enforcement action including defence of the Council's case in any appeal or prosecution may have financial implications.

### **7 Legal implications and risks:**

7.1 Taking enforcement action, contesting appeals against the enforcement notice  
And if considered expedient, prosecution will require Legal Services resources.

### **8 Human Resources implications and risks:**

8.1 No implications identified.

### **9 Equalities implications and risks:**

9.1 Section 149 of the Equalities Act 2010(EA) came into force on 1 April 2011

and 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 and Section (DDA) and Section 76(A) of the Sexual Discrimination Act 1975(SDA) so that due regard must be had by the decision maker to specified equalities 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 the Protection of amenity in public law outweighs any individual rights.

## **BACKGROUND PAPERS**

1. Planning appeal decision reference P1212.05, dated 26 January 2006
2. Enforcement Notice issued 7 November 2008
3. Planning appeal decision against the above Enforcement and Planning application reference P 0758.08 dated 3 August 2009.
4. Discharge of Condition Notice reference Q0023.10 with plan GN01(car parking area).
5. Site plan.