

## 5 SEPTEMBER 2023 PLANNING COMMITTEE

6c ENF/2020/00063

WARD: Knaphill

LOCATION: 5 Barton Close, Knaphill, Woking, Surrey, GU21 2FD

DESCRIPTION: Unauthorised construction of an aviary/enclosure in rear garden

OFFICER: Mike Ferguson (Senior Planning Enforcement Officer)

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### **PURPOSE**

To seek Committee approval for enforcement action and to authorise all actions necessary to remedy the breach of planning control including proceedings in the courts.

### **SITE STATUS**

- Urban Area

### **RECOMMENDATION**

1. Issue an Enforcement Notice in respect of the above land requiring the following within six (6) months of the notice taking effect:
  - a) Permanently demolish/dismantle/remove the aviary/enclosure comprising wooden posts and wire mesh (but excluding the outbuilding within it) from the rear garden of the dwellinghouse known as No.5 Barton Close.
2. That the Director of Democratic and Legal Services be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended, and officers be authorised in the event of non-compliance to prosecute under Section 179 of the Town & Country Planning Act 1990 or appropriate power and/or take direct action under Section 178.

### **SITE DESCRIPTION**

The application site is a two-storey mid-terraced house located on the north side of Barton Close, Knaphill within the urban area. The rear garden of the property fronts Redding Way and is bounded by a 2m high close-boarded timber fence.

### **PLANNING HISTORY**

The application site forms part of the former Brookwood Hospital development. The most recent notable planning history is set out in the Delegation Report for PLAN/2022/0688. It is that application that is pertinent to the content of this report:

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- PLAN/2022/0688 “Retrospective planning permission for a rear aviary” was received on 18/07/22 but subsequently REFUSED on 17/07/23.

### **REPORT**

This matter was reported to Planning Enforcement by a member of the public in September 2020 (during a difficult period in terms of staffing and Covid considerations).

The alleged breach of planning control was: “*A large aviary has been erected in the whole of the rear garden of a property in Barton Close.*”

Investigation only subsequently truly commenced in January 2022 and an initial letter was sent to the applicant at that time.

Following a second letter to the applicant in March 2022, return contact was received and a site visit took place on 11/03/22. As the applicant expressed a desire to justify the retention of the aviary, suitable guidance was provided on the process for submitting a retrospective planning application.

The planning application, PLAN/2022/0688 “*Retrospective planning permission for a rear aviary*”, was eventually received on 18/07/22 and validated on 24/08/22 such that enforcement considerations were put ‘on hold’ pending its determination.

It is noteworthy that within the application form it is stated that the development commenced on 01/03/20 and that the aviary was complete by 04/03/20.

PLAN/2022/0688 was REFUSED on 17/07/23 for the following reasons:

1. *The rear aviary, by reason of its siting, scale, massing and appearance is an incongruous addition which fails to respect and make a positive contribution to the host dwelling and the character and appearance of the street scene and wider area. The proposal is therefore considered to be contrary to policies CS21 and CS24 of the Woking Core Strategy (2012), Supplementary Planning Document ‘Woking Design’ (2015) and the National Planning Policy Framework (2021).*
2. *The rear aviary, by reason of its covering of the whole garden, fails to provide an acceptable amenity space for the occupants of the host dwellinghouse detrimental to their residential amenity, contrary to policy CS21 of the Woking Core Strategy (2012), Supplementary Planning Document ‘Outlook, Amenity, Privacy and Daylight’ (2022) and the National Planning Policy Framework (2021).*

There was also an informative in the Decision Notice stating the following: “*The applicant is advised that the rear aviary should be removed in its entirety as it comprises a breach of planning control. Enforcement action will be duly considered by the Local Planning Authority to remedy the breach of planning control.*”

In the Delegation Report for PLAN/2022/0688 it was noted that “*There is an outbuilding/shed to the rear of the garden which is considered to be acceptable in terms of size and massing and is comparable to that situated at No.4 Barton Close*”. Consequently, no assessment has been made as to the length of time this outbuilding/shed has been present or indeed whether (as per that at No.4 Barton Close) it is immune from enforcement action through the passage of time. The Council is not asserting that the outbuilding is now unlawful and rather it is, for the sake of clarity, explicitly excluded from the proposed requirements.

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A compliance period of 6 months is suggested not because of the estimated length of time remediation would physically take but rather to give the applicant ample opportunity to make alternative arrangements to accommodate her parrots.

Contact was made with the applicant again on 19/07/23 regarding the above refusal to first explore they would be willing to remove the aviary on a voluntary basis or indeed whether they would be appealing the refusal decision.

A follow-up email was sent to the applicant on 07/08/23 prompting a response from a planning agent to advise that their client's intention is to appeal against the refusal of planning permission.

As the evidence is that the development was substantially completed in March 2020, this means that the aviary/enclosure has now been present for approximately 3 years and 6 months (which is approaching the statutory time limit of 4 years which would gain immunity from enforcement action and become lawful through the passage of time).

In the interests of transparency, the Senior Planning Enforcement Officer has been clear to the applicant and planning agent that (particularly given how long the unauthorised development has already been present and the length of time an appeal will take) a decision on whether it is appropriate to pursue formal enforcement action will be reached within a matter of weeks regardless of whether an appeal is submitted against the refusal of planning permission.

In the evident absence of informal cooperation, such that other means to remedy the breach of planning control have been exhausted, it is considered that the Senior Planning Enforcement Officer is left with little option but to recommend the taking of enforcement action.

The Council must have regard to its public sector equality duty (PSED) under S.149 of the Equalities Act 2010. This requires consideration to be given to the need to eliminate unlawful discrimination. It is not known whether the applicant falls within one of the protected characteristics. Officers do not consider that the recommendation in this report would have a disproportionate impact on any potential protected characteristic.

It is therefore considered expedient to serve an Enforcement Notice having regard to the provisions of the development plan and to other material considerations and authority is sought to serve an Enforcement Notice.

### **EXPEDIENCY OF TAKING ACTION**

It is considered expedient to take enforcement action for the following reasons:

1. It appears to the Council that the unauthorised development was substantially completed within the last four (4) years and so it is not immune from enforcement action.
2. Permitted Development rights under Schedule 2, Part 1, Classes A to E of The Town and County Planning (General Permitted Development) (England) Order 2015 (as amended) have been removed by Condition 9 of PLAN/1999/0970.
3. The unauthorised development would not constitute Permitted Development under Schedule 2, Part 1, Classes A or E of The Town and County Planning (General Permitted Development) (England) Order 2015 (as amended) anyway because it fails to adhere to all the relevant limitations and conditions.

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4. Permitted Development rights under Schedule 2, Part 2, Class A of The Town and County Planning (General Permitted Development) (England) Order 2015 (as amended) have been removed by Condition 10 of PLAN/1999/0970.
5. The unauthorised development would not constitute Permitted Development under Schedule 2, Part 2, Class A of The Town and County Planning (General Permitted Development) (England) Order 2015 (as amended) anyway because its height exceeds 2 metres above ground level.
6. The unauthorised development is considered to be an incongruous addition which fails to respect and make a positive contribution to the host dwelling and the character and appearance of the street scene and wider area and fails to provide an acceptable amenity space for the occupants of the host dwellinghouse detrimental to their residential amenity contrary to policies CS21 and CS24 of the *Woking Core Strategy* (2012), Supplementary Planning Documents *Woking Design* (2015) and *Outlook, Amenity, Privacy and Daylight* (2022) and the *National Planning Policy Framework* (2021).
7. Paragraph 59 of the NPPF (2021) states that “Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control”. It is considered that enforcement action is proportionate for the reasons listed above.

The above reasons therefore make it expedient to undertake enforcement action and issue the necessary Enforcement Notice.

### **FINANCIAL IMPLICATIONS**

The financial implications including staff resources, the costs of any subsequent appeal, court hearing, legal representation and/or any other costs (including, where appropriate, taking direct action) are all matters that have been considered in the making of this report.

An appeal against an Enforcement Notice could be subject to an application for full or partial award of the Appellant’s costs in making an appeal if it was considered that the LPA acted unreasonably.

If the Committee decide to take enforcement action and the applicant decides to exercise their right of appeal, it is thought unlikely that this case would be determined by Public Inquiry and therefore costs are likely to be comparatively minimal.

If the applicant appeals against the refusal of planning permission then any additional costs associated with an appeal against the Enforcement Notice would be minimal as both appeals would be linked.

### **BACKGROUND PAPERS**

- Site visit photographs dated 11/03/22.
- Delegation Report and Decision Notice for PLAN/2022/0688.

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