

DECEMBER 2023 PLANNING COMMITTEE

6g ENF/2018/00108

WARD: Heathlands

LOCATION: Land To The South Of Brookwood Lye Road, Woking, Surrey, GU24 0HD.

DESCRIPTION: Unauthorised material change of use of the land to residential comprising a caravan site for gypsies/travellers and associated ancillary storage.

OFFICER: Mike Ferguson (Senior Planning Enforcement Officer)

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

- Green Belt (only relevant to the Surrey Wildlife Trust (SWT) owned land to the east of the site)
- Thames Basin Heaths SPA Zone B (400m-5km)
- Flood Zones 2 and 3 (only relevant to the front part of site)
- Surface Water Flood Risk area (medium risk)
- Tree Preservation Order (626/0251/1979)

RECOMMENDATION

1. Issue an Enforcement Notice in respect of the above land requiring the following within two (2) years of the notice taking effect:
 - a) Permanently cease the unauthorised residential use of the land edged red on the attached location plan (comprising a caravan site and associated ancillary storage).
 - b) Permanently remove all caravans and mobile homes, any structures/vehicles capable of human habitation, other vehicles/trailers, walls/fences that demarcate pitches, building materials, and any other paraphernalia associated with the unauthorised use from the land edged red on the attached location plan.
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.

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3. Due to the nature of the use of the land edged red on the attached location plan, the situation can and will likely rapidly change. It is therefore further recommended that the Planning Committee delegate authority to the Head of Planning to pursue such enforcement action as is necessary in respect of any additional and future breaches of planning control at the site and to instruct the Director of Legal & Democratic Services to issue further Enforcement Notices. Any prosecutions will be authorised by the Director of Legal & Democratic Services under this standing delegation.

SITE DESCRIPTION

The site is located on the southern side of Brookwood Lye Road (A324). Access to the site is directly off Brookwood Lye Road. To the east of the site is dense woodland (and part of this Tree Preservation Order (TPO) protected woodland has long since been encroached into). To the west of the site is land on which there is a lawful basis for gypsy/traveller occupation albeit much of that has been vacated as the use has unlawfully migrated eastwards and onto the land area in question. To the south of the site is the South-Western main railway line (Waterloo to Basingstoke).

It is an understatement to say that the locality is currently somewhat of a blot on the landscape and has been for several years. This locality also presents a problem for the Council in terms of its current state versus the envisaged end result as set out in the Site Allocations DPD. There has long since been a lawful basis for gypsy/traveller occupation on specific parcels of land in this locality (to the west of the land area in question) but there is no lawful basis for the current use of the land area against which enforcement action is being considered.

In recent years the number of caravans seen to be unlawfully present on the land in question has been in the ballpark of 30 (albeit this was evidently a changing number). Negotiations with the key landowner in recent times has resulted in a significant reduction in the number of caravans unlawfully present (this being reduced to just 5 at the time of the most recent site visit on 17/11/23). The locations of these 5 caravans are shown approximately by the blue dots on the indicative location plan. This now presents a very different scale of planning breach and poses a lesser logistical problem to resolve than the former situation did.

The land area in question is indicated by the red line on the location plan and it incorporates Title Deeds SY485483 (in the name of Felix Connors), SY845583 and part of SY840539 (both Thameswey owned) and part of SY694554 (SWT owned). These separate Title Deed areas are approximately shown by the black dashed lines on the indicative location plan. This information is based upon Land Registry documents obtained on 22/11/23 (but this will be re-checked prior to any notice being served).

PLANNING HISTORY

It had been hoped in recent years that a 'planning' solution existed such that PLAN/2017/1307 "*Demolition of an existing one-storey dwelling and ancillary structures associated with the existing caravan park (SG) which provides 13 permanent and 2 temporary pitches at Five Acres, to construct a replacement two-storey dwelling and a replacement caravan park comprised of 19 permanent pitches with hard and soft landscaping and relocated access (Amended/additional information/plans received 20 January 2021)*" refers to a resolution to grant planning permission in February 2021 subject to a legal agreement. However, no such legal agreement has been signed and so the planning permission has not actually been issued. The land area to which PLAN/2017/1307 would have related is shown approximately by the red dotted line on the indicative location plan.

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It is important to understand that Policy GB2 (land at Five Acres) of the Site Allocations DPD adopted in October 2021 removes the site from the Green Belt and allocates the site to deliver the number of permanent Gypsy and Traveller pitches as proposed in PLAN/2017/1307. Please see pages 209-216 of <https://www.woking2027.info/allocations/siteallocationsdpd.pdf> for further details.

At present there is no immediate prospect of this unmet need for gypsies/travellers being addressed due to the key landowner being unwilling to sign the legal agreement (despite discussions over the last two years to try and change this position).

If it had progressed to implementation, this gypsy/traveller site for 19 pitches would have superseded the existing lawful position on areas of land to the west of that new gypsy/traveller site such that those land areas would have been released so as to (potentially) enable the progression of bricks and mortar development also.

The lawful basis for gypsy/traveller occupation on specific parcels of land (to the west of the land in question) is broadly illustrated on the indicative location plan by way of the two areas with purple dashed lines that provide for a total of 10 pitches (7 + 3). There were a further 3 pitches within the land area between these two lawful areas but due to these being personal and temporary permissions they are no longer extant.

As an aside, it is noted that there is at present an application (not yet validated) that seeks permission for "*Change of use of land for the stationing of permanent residential mobile homes*". This application relates to a land area incorporating that on which there is a current lawful basis for 3 gypsy/traveller pitches.

The land area against which enforcement action is being recommended has lawful agricultural use only.

ENFORCEMENT HISTORY

There are two extant Enforcement Notices that do have some relevance to the current circumstances. However, neither adequately covers the current breaches of planning control and so they do not provide a mechanism for resolving matters without a new notice being served.

EO492 (dating back to 2003) is pertinent to most of the land area in question (but it does not cover the encroachment into the SWT owned woodland). Also, the requirements of that notice are such that they refer to two specific touring caravans and so (unfortunately) the limitations of the wording are such that the present situation is not fully encapsulated.

EO585 (dating back to 2010) only covers a small portion of the land area in question at the far end nearest the railway line and so again it does not adequately cover enough land area to fully encapsulate the current breaches of planning control.

REPORT

The history of the site and of adjacent land (both from a planning perspective and from an enforcement perspective) are sufficiently complex that it is not possible to explain all of the details in a deliberately comparatively concise report such as this.

A renewed effort to understand the issues at this land off Brookwood Lye Road and the immediate environs re-commenced in November 2021, with site visits occurring on

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30/11/2021, 30/03/2022, 31/05/2022, 15/03/2023, and 17/11/2023. It was important to gain a full understanding of the complex planning history to establish the relevant lawful and unlawful uses, to understand the pertinent policy position, and to engage with the key landowner to seek resolution.

There have been concerted efforts in the last two years to explore viable 'planning' solutions given the acknowledged unmet need for the provision of gypsy/traveller accommodation (whilst in parallel seeking improvements in the appearance of the land and a reduction in the number of caravans present). There has been a significant improvement in terms of what is present now in comparison to what was present at the beginning of this period and what is apparent on available aerial imagery from recent years. The significantly reduced use of the land means there is a substantively lesser scale of problem such that the likelihood of having to engage assistance from other departments and agencies is similarly diminished.

Despite the positive improvements there have been, there is still a large area of land on which there is a breach of planning control such that, with discussion and non-formal options having apparently been exhausted (and to avoid immunity from enforcement action being a potential future issue), it is considered the time has arrived for further enforcement action to change the current status quo.

The legal agreement pertaining to PLAN/2017/1307 would have included planning obligations as follows:

- £5,658 SAMM (TBH SPA) contribution.
- Prevention of the re-establishment of any previous gypsy/traveller pitches on the site and adjacent land on implementation of that permission.

Whilst it is still recognised that there is a need for gypsy/traveller pitches (ideally in this vicinity) the current arrangement is simply not satisfactory from a planning perspective. It is also considered that (in the absence of a legal agreement and the associated planning conditions) it is not appropriate to simply under-enforce and grant planning permission on part of the land in question by way of an Enforcement Notice.

The arguably unusual step of having a compliance period of 2 years is considered necessary and proportionate in this instance. The thinking behind this is that it gives all parties (and particularly those unlawfully living on the affected land) ample time to consider their options and to make alternative arrangements thereby having minimal impact on potentially vulnerable family groups and any argument that their human rights are infringed. It also gives the key landowner ample time to come back to the table and either sign the legal agreement as per PLAN/2017/1307 or to propose viable alternate schemes on the land. The key landowner could also consider applying for permission for a greater number of pitches on the land where there is already a lawful use and/or where there once was. It is considered that 2 years provides a reasonable timescale within which viable applications for gypsy/traveller pitches can be submitted, assessed, determined, and (if approved) implemented. It would also give time for those unlawfully present on the land (or at least some of them) to migrate back to the specific parcels of land on which there is a lawful basis for gypsy/traveller occupation.

Officers are mindful of a practical consideration in so far as even if PLAN/2017/1307 did go ahead there is no obvious strategy in place or provision for where families would reside whilst that permission was being implemented. Whilst gypsies/travellers may not be keen to approach Housing for assistance because of a probable aversion to bricks and mortar, they are entitled to do so. There is also specific reference to travellers/gypsies in the Homelessness Code of Guidance which states that where a duty to secure accommodation for travellers arises, but an appropriate site is not immediately available, the Council may need to provide temporary accommodation until a suitable site becomes available. The key landowner indicated (in discussion in March 2023) that it would likely take approximately 12 months to make a site habitable once permission had been granted. In practical terms, the taking of

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enforcement action with a lengthy compliance period (2 years being considered appropriate) would have the dual benefit of protecting that land and preventing the unlawful use from becoming immune whilst also offering a suitable temporary solution for families who may otherwise have nowhere else to go.

The bungalow (which was incorporated within the land area application to PLAN/2017/1307) is currently unoccupied and appears uninhabitable at the present time. There is a lawful basis for the presence of caravans within the curtilage of that bungalow (there being a possibility of ancillary use when the bungalow is occupied or otherwise the incidental storage of caravans). It is further relevant that the occupation of a caravan during the refurbishment of the bungalow would not be considered a breach of planning control as there would be no change of use of residential land. At the present time it is suspected that one caravan is likely being lived in and a few others are just being stored or are uninhabitable. Consequently, the curtilage of the bungalow is deliberately excluded from the land area against which enforcement action is currently being recommended.

An examination of available imagery suggests that the breach of planning control (in terms of the unauthorised use of land) commenced sometime after March 2017.

Thameswey are landowners of part of the land against which enforcement action is being recommended. Thameswey are aware of the (subject to authorisation) intended enforcement action against land in which they have an interest.

SWT are landowners of a vast swathe of land to the east, but part of this land has been encroached into and is being occupied by gypsies/travellers. It is understood that the key landowner and SWT are in contact about the use of their land and the potential purchase or transfer of part of it. SWT will be contacted before any Enforcement Notice is served.

In this instance, it is considered that an appeal and a Public Inquiry are highly probable. Indeed, it must be understood that the complex nature of the site and of gypsy/traveller need in the borough are such that the Planning Inspectorate may decide in favour of the appellant or at least may very well grant planning permission in some capacity. This is an unusual situation where such an outcome may not be the worst as it would still bring this matter to a formal conclusion one way or another thereby moving on from the current ambiguity (or an unsatisfactory situation whereby a significant unauthorised use of land becomes immune from enforcement action and thereby lawful through the passage of time). Whatever the final outcome transpires to be, the taking of enforcement action will stop the clock and will represent a firm line in the sand, thereby placing the onus on those currently breaching planning controls to act.

The respective landowners will be given forewarning of the intended (subject to approval) enforcement action such that if, by the date of intended serving, caravans have been removed from parts of the land then the current red line boundary may have to be reduced and notices re-drafted before being served.

However, the landowner has also verbally indicated a strong wish to avoid receiving an Enforcement Notice. It is acknowledged that the state of the land at the time of the most recent visit on 17/11/23 was vastly improved in comparison to earlier this year and in 2022 (and the land now presents rather differently than may be the general perception of anyone viewing publicly available aerial imagery which is not up to date). That said, even a significant reduction in the number of caravans present means there is still an ongoing unlawful use of the land.

If enforcement action is authorised by the Planning Committee, it is the intention to notify the landowners of such immediately. It will then be the intention to delay serving the notice for a short period (until mid-January 2024) to give the landowners a short window of opportunity to

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resolve the breaches before the notice is served. It is considered that this is a reasonable course of action bearing in mind that the aim is to resolve the breaches of planning control (not to punish) and that this may also avoid a time consuming and costly appeal process. If by mid-January 2024 the breaches as described are still ongoing then the notice would be served as per the terms authorised. If by then the circumstances have changed (e.g. the residential use on all or part of the land has ceased for example) but there remains a lesser breach of planning control, then it is likely that a suitably amended notice will be served.

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 use of land commenced within the last ten (10) years and so is not immune from enforcement action.
2. The development comprises inappropriate development within the Green Belt which is by definition harmful. The proposed development would also reduce openness and would conflict with the purposes of the Green Belt resulting in encroachment of the countryside having an urbanising and detrimental visual effect by reason of the siting of the caravans, the spread of development on the site, the parking and associated domestic paraphernalia. No Very Special Circumstances exist which would clearly outweigh the harm caused to the Green Belt by reason of inappropriateness, the loss of openness and conflict with the purposes of the Green Belt. The proposed development is therefore contrary to Policies CS6 and CS14 of the Woking Core Strategy 2012, Policy DM13 of the DM Policies DPD 2016, Policy SA1 of the Site Allocations DPD (2021) and the National Planning Policy Framework (2023).
3. The development would, by reason of the siting of the caravans, the spread of development on the site, the parking and associated domestic paraphernalia result in a development which would have an urbanising and detrimental impact on the open and rural character and appearance of the site and surrounding area contrary to Policies CS14, CS21 and CS24 of the Woking Core Strategy (2012), Policy DM13 of the DM Policies DPD (2015), SPD Woking Design 2015 and the National Planning Policy Framework (2023).
4. The site forms part of the allocations GB1 and GB2 of the Site Allocations DPD with GB1 being designated for residential development and GB2 for traveller pitches as required by policy SA1 of the Site Allocations DPD. The land has been released from the Green Belt for these intended purposes. The development therefore conflicts with the intended purpose of releasing land from the Green Belt and would prejudice the delivery of the allocations and compromise the Council's ability to provide residential development and to meet its Gypsy and Traveller needs in a planned manner contrary to policies SA1, GB1 and GB2 of the Site Allocations DPD.
5. The development does not provide for an appropriate design and layout of a traveller's site and would lead to unsatisfactory living conditions for future occupiers as required by Policy SA1 of the Site Allocations DPD and Policy CS14 of the Woking Core Strategy (2012).
6. In the absence of arboricultural information, it has not been demonstrated the development would result in acceptable arboricultural impacts and that the protected trees within and adjacent to the site, which are of high public amenity

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value, are capable of being retained. The development has also resulted in loss of protected trees. The proposal is therefore contrary to Policy CS21 of the Woking Core Strategy (2012), Policy DM2 of the DM Policies DPD (2016) and the National Planning Policy Framework (2023).

7. In the absence of drainage information, it has not been demonstrated that the development would not increase the risk of surface water flooding to the site or on adjacent land contrary to Policy CS9 of the Woking Core Strategy (2012), Policy SA1 of the Site Allocations DPD and the National Planning Policy Framework (2023).
8. In the absence of land contamination information, it has not been demonstrated that there are no existing contaminants on site or if there were, appropriate mitigation can be provided to ensure there is no unacceptable risk of pollution within the site contrary to policies DM5 and DM8 of the DM Policies DPD (2016) and the National Planning Policy Framework (2023).
9. In the absence of any ecology information, it has not been demonstrated there be no harm to protected species or their habitats or appropriate mitigation could be provided to overcome any identified harm. The development is contrary to Policy CS7 of the Woking Core Strategy (2012) and the National Planning Policy Framework (2023).
10. In the absence of a S106 Legal Agreement to secure contributions towards mitigation measures, the Local Planning Authority is unable to determine that the unauthorised development comprising the net additional caravans would not have an adverse effect on the integrity of the Thames Basin Heaths Special Protection Area, either alone or in combination with other plans and projects in relation to urbanisation and recreational pressure effects, contrary to The Conservation of Habitats and Species Regulations 2017 (the "Habitats Regulations"), saved Policy NRM6 of the South East Plan 2009, Policies CS8 and CS17 of the Woking Core Strategy (2012) and the Updated Thames Basin Heath Avoidance Strategy (2022).
11. Paragraph 59 of the NPPF (2023) 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. In this instance, particularly bearing in mind the current financial landscape, it is notable that the consequent costs are likely to be significant.

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.

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If the Committee decide to authorise the taking of enforcement action and the applicant decides to exercise their right of appeal (which is considered very probable in this instance), it is thought likely that this case would be determined by Public Inquiry and therefore costs are likely to be comparatively high as Counsel would need to be engaged.

Notwithstanding the above, the key landowner has verbally indicated a wish to take swift remedial action if enforcement action is authorised due to an apparent desire to avoid receiving an Enforcement Notice. This, if it occurred, would be a positive and cost-effective outcome. The key landowner has also been informed that the subsequent granting of planning permission (that may potentially negate the need for an appeal process to run its full course) can supersede an Enforcement Notice.

BACKGROUND PAPERS

- Illustrative site plan.
- Aerial imagery.
- Sample site visit photographs dated 17/11/23.
- Committee Report and Draft Decision Notice for PLAN/2017/1307 (available online).

RECOMMENDATION

1. Issue an Enforcement Notice in respect of the above land requiring the following within two (2) years of the notice taking effect:
 - a) Permanently cease the unauthorised residential use of the land edged red on the attached location plan (comprising a caravan site and associated ancillary storage).
 - b) Permanently remove all caravans and mobile homes, any structures/vehicles capable of human habitation, other vehicles/trailers, walls/fences that demarcate pitches, building materials, and any other paraphernalia associated with the unauthorised use from the land edged red on the attached location plan.
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3. Due to the nature of the use of the land edged red on the attached location plan, the situation can and will likely rapidly change. It is therefore further recommended that the Planning Committee delegate authority to the Head of Planning to pursue such enforcement action as is necessary in respect of any additional and future breaches of planning control at the site and to instruct the Director of Legal & Democratic Services to issue further Enforcement Notices. Any prosecutions will be authorised by the Director of Legal & Democratic Services under this standing delegation.