

Enforcement and possible unauthorised development

1. Introduction

This report considers current matters of enforcement and possible unauthorised development. Authority to take planning enforcement action is delegated to the Head of Planning. Matters that require a Committee decision are reported, together with delegated decisions to take action.

It is not an offence to carry out works without planning permission and the National Planning Policy Framework (NPPF) states that enforcement action is discretionary and that local planning authorities should act proportionately in responding to suspected breaches of planning control. Local authorities are also advised to take action only where it is appropriate to do so. The purpose of this report is normally, therefore, is to report to Committee matters that are breaches of planning control but where it is recommended that it is not expedient to take enforcement action.

2. Policy

The Council's Approach to Planning Enforcement is set out in the adopted Local Enforcement Plan. The essential thrust of the Plan is that we will not condone wilful breaches of planning law but we will exercise our discretion about taking enforcement action if it is considered expedient to do so. The priorities with regard to enforcement are:

- To focus our resources to ensure that the most pressing and harmful issues are addressed appropriately.
- In determining the expediency of enforcement action we will have regard to the seriousness of any harm which is evident as a result of a breach of planning control.
- Matters which can potentially have a serious impact on the safety or amenity of residents or occupiers of property or on the natural environment will take priority over minor infractions and matters of dispute between neighbours.

3. Items

Each item contains a full description, details of any investigation, and an assessment of the situation and concludes with a recommendation.

This report relates to:

Item 1 Delegated Decision to take Enforcement Action

Item 2 Updates on Current Enforcement Cases

All information, recommendations and advice contained in this report are understood to be correct at the time of writing this report. Any change in circumstances will be updated verbally at the Committee meeting. Where a recommendation is either

altered or substantially amended between preparing the report and the Committee meeting, a separate sheet will be circulated at the meeting to assist Members in following the modifications proposed.

4. Human rights

The Human Rights Act 1998 (the Act) has incorporated part of the European Convention on Human Rights into English law. Any recommendation either to take or not to take enforcement action has been assessed to make sure that the decision is compatible with the Act. If there is a potential conflict this will be highlighted in the individual report on the relevant item.

5. Financial implications

There are no direct financial implications arising from this report. However, in the event of an appeal, further resources will be put towards defending the Council's decision. Rarely, and in certain circumstances, decisions on planning enforcement cases result in the Council facing an application for costs arising from a planning appeal. Officers will aim to alert Members where this may be likely and provide appropriate advice in such circumstances.

Keith Holland
Head of Planning

BACKGROUND PAPERS

Rushmoor Local Plan Review (1996-2011)[saved policies]

Rushmoor Core Strategy (October 2011)

Rushmoor Local Enforcement Plan (2016)

National Planning Policy Framework (NPPF)

Item1

Delegated Decision to take Enforcement Action

The Following Decision is reported for INFORMATION purposes only. It relates to a decision to take enforcement action that has already been made by the Head of Planning in accordance with the Council's adopted Scheme of Delegation.

Address	61A Tongham Road, Aldershot
Ward	Aldershot Park
Decision	Issue Enforcement Notice
Decision Date	9 Oct 2017
Reasons	Planning permission was granted in April 2016 (ref 16/00090/FULPP) for the erection of a 1-bedroom house with associated landscaping. The development is under construction and is nearing completion, however a 2-bedroom house has been constructed.
Alternatives	No Action would result in the failure to provide off-street parking in accordance with the Council's adopted parking standards for a 2-bedroom dwelling in an area with high demand for on-street parking. This may give rise to indiscriminate on-street parking, to the detriment of highway safety. Therefore enforcement action is necessary.
Case Officer	Mark Andrews
Associated Documents	Enforcement Reference 17/00173/CONDS

Item 2 Updates on Current Enforcement Cases

Item 2.1

Site Location **44 Gravel Road Farnborough**

Breach

Failure to implement tree protection works, and carrying out of works resulting in damage to a tree subject to a TPO.

Background

Planning permission was granted in November 2015 for a development of four, three bedroomed terraced houses at the rear of 44 Gravel Road (Ref: 15/00694/FULPP). A condition attached to the permission required implementation of a scheme of tree protection prior to commencement of works.

It was brought to the Council's attention in March 2017 that the works being carried out on site did not accord with the terms of the permission and had caused extensive damage to the root system of a TPO Copper Beech at the front of the property.

Following the interview of the developer and an owner of the site under caution at the Council Offices in March 2017, and the subsequent reporting of the case to the Committee on 26 April 2017, it was decided to pursue prosecution against the developer.

Commentary

At Basingstoke Magistrates' Court on Thursday 5 October, the development company admitted a charge of causing or permitting damage to a copper beech tree at the property protected by a Tree Preservation Order (TPO) since 1975.

The company was fined £1,000, reduced from £1,500, as the developer had admitted the charge at the earliest opportunity. In addition, the developer was also ordered to pay a victim surcharge of £100 and the council's costs of £915.

The Court heard that damage to the tree was caused during the digging of a trench for foul drainage pipework to connect the new houses into the public sewerage network undertaken on behalf of the developer in January 2017. Constraints set out in a condition of the planning permission for the site detailed the line of the drainage trench and specified that it should be dug by hand to protect the TPO tree's roots. However, although the developer was not on site when the drainage trench was dug, they admitted failing to make sure that the trench was dug by hand rather than with a mechanical digger; and also that the trench was dug on the correct line as approved and shown on the plans approved for the development. This meant the trench was dug too close to the roots of the protected tree, causing severe damage to them.

The Court heard that the tree had been surveyed on three occasions since. The third survey confirmed that although the tree had incurred damage to more than 40% of

its roots and was showing signs of stress, it did not appear to be dying. However, the long-term future of the tree was subject to on-going remedial action, which the Court recommended the developer continue. The full impact upon the tree will not be fully known until tests have been completed over the next two years.

Recommendation

It is recommended that this report be **NOTED**.

Item 2.2

Site Location **Grasmere House, 33 Cargate Avenue, Aldershot**

Breach

Unauthorised change of use from a care home with an ancillary garage and store to a 14 bedroom House in Multiple Occupation (HMO) and a one-bedroom house

Background

The Council issued an Enforcement Notice in respect of the unauthorised change of use from a care home with an ancillary garage and store to a 14 bedroom House in Multiple Occupation (HMO) and a one-bedroom house at Grasmere House, 33 Cargate Avenue, Aldershot. The steps required by the Notice were:

- Cease using the property as a 14-bedroom House in Multiple Occupation and a one-bedroom house.
- Remove the fence and gate that facilitate the creation of a separate house from the rear parking area.
- Remove the false door and any kitchen and sanitary ware from the outbuilding at the rear.
- Reinstate the garage for parking purposes in accordance with the details shown on drawing number 0275/2, as approved under planning permission 95/00266/FUL.

The date for compliance with the Notice was 11 October 2017.

Commentary

The Case Officer visited the site on 13 October 2017 in the presence of Mr Mandozai, one of the owners, where it was noted that in the main building, five of the rooms remain occupied but the rest have been vacated.

The residential use of the outbuilding had ceased and the kitchen units and sanitary ware had been removed, but the plasterwork behind the garage door had not been removed and the ground floor of the building is not yet available for parking. The fencing and gate still remain around the parking area.

It is concluded that while substantial progress has been made towards compliance with the terms of the Enforcement Notice, there is still some way to go before full compliance can be confirmed.

Mr Mandozai indicated that he should be able to relocate the remaining tenants to other premises by the end of October. It is therefore intended that the Case Officer will re-inspect the premises on 7 November 2017 with a view to confirming that the terms of the Enforcement Notice have been fully complied with. Members will be updated verbally of the results of this inspection.

Recommendation

It is recommended that this report be **NOTED**.

Item 2.3

Site location 10 Grosvenor Road, Aldershot

Alleged breach Change of use of unit to massage parlour

Recommendation No further action

Description

The site is located on the west side of Grosvenor Road and occupies the ground floor retail unit, currently occupied by Shanghai Therapy Massage.

Alleged breach

Change of use of unit from retail (Use Class A1) to massage parlour (Sui Generis).

Investigation

A site visit was carried out and it was observed that Shanghai Therapy Massage occupies the premises. The authorised planning use of the property is retail (Use Class A1). A premises providing massage would fall outside any use classes and is therefore Sui Generis (without class). Planning permission is required for any change of use to or from a Sui Generis Use.

Letters were sent to Shanghai Therapy Massage on 26th September and 3rd October requesting they contact the Planning Department to discuss how they intend to deal with the unauthorised change of use. In the absence of a response, Shanghai Therapy Massage were advised that this matter will be referred to the Development Management Committee.

Commentary

The main issues in this case are the principle of the change of use, the impact on Aldershot Town Centre, the impact on the amenities of the occupiers of adjacent properties and highway safety considerations.

With regard to the principle of the change of use, the site is within the defined town centre and outside the retail core. As such Core Strategy Policy SS1 (Spatial Strategy) is relevant. This policy seeks to maintain and enhance town centres by encouraging a range of facilities and uses consistent with the scale and function of the centre. Having regard to the above, the principle of the change of use is considered acceptable, subject to usual planning considerations (see below).

In terms of the impact on Aldershot Town Centre, a key issue is whether the use maintains the vitality and viability of the town centre. In principle, a health related use attracting visiting member of the public is considered to be acceptable in this location. The Draft Submission Plan allocates the site as part of the secondary shopping frontage (Policy SP1.2) and based on the most recent frontage survey (October 2017) there is no conflict with the policy approach of retaining at least 50% of units in the frontage in A1 use. Policy SP1.2 also sets out that the site is expected to provide an active frontage. The property currently has extant planning permission for a 'traditional' shop front (ref 16/00677/FUL), which will provide an active shop front. These works will take place in December 2017 as part of the Activation Aldershot Shop Front Grant. It was recognised that improvement to the shop front were required and it was on this basis that the grant was given. In this area, it is considered important to retain an active shopping frontage and the acceptability of the massage parlour would be dependent on this being maintained.

It is considered that the use of the premises as a massage parlour would not harm vitality and viability of Aldershot town centre and is acceptable in this regard.

With regard to the impact on neighbouring amenity and highway safety, the use of the premises is not considered to function significantly differently to the authorised retail use and does not give rise to any significant loss of neighbouring amenity or detrimental impact on highway safety.

In conclusion, it is considered that the current use of the premises is acceptable in principle and that an application to continue the present use would receive a recommendation for the grant of planning permission.

Full recommendation

It is recommended that no further action be taken.