

PLANNING ENFORCEMENT SUB COMMITTEE

DATE OF MEETING: 17TH OCTOBER 2022

TITLE OF REPORT: REVIEW OF PLANNING ENFORCEMENT INVESTIGATIONS IN RELATION TO DEVELOPMENT AT HAWLEY PARK FARM, HAWLEY ROAD, BLACKWATER, CAMBERLEY

Report of: Executive Director of Place

Cabinet Portfolio: Place

Key Decision No. The recommendations in this report do not relate to a key decision and therefore prior notification on the Forward Plan is not necessary.

Confidentiality Non Exempt

1 PURPOSE OF REPORT

- 1.1 This report is made to explain the enforcement investigations undertaken in relation to the development at the abovementioned site and is presented at the discretion of the Executive Director of Place Services. Members have received extensive copies of communications in relation to the ongoing development at this site from concerned local residents and this report will consolidate and update members on the investigations which have been undertaken and the findings of those investigations.

2 OFFICER RECOMMENDATION

The contents of the report are endorsed and noted by the Sub-Committee.

3 BACKGROUND

- 3.1 Planning permission for development of this land was originally approved in 2014 via application 14/01817/MAJOR (The 2014 major permission). This application was a hybrid planning application consisting of outline application for the development of 126 no dwellings, vehicular access from Hawley Road, secondary access from Fernhill Lane, public open space, landscaping and associated works; change of use of land to a Suitable Accessible Natural Greenspace (SANG). Full details of access, layout and landscaping associated with the residential development to be determined at outline stage. All other matters reserved for later approval.
- 3.2 Alongside this, application 14/02112/MAJOR was approved for Change of existing agricultural grazing land to publicly accessible informal open space,

new vehicle access, car parking, new footpaths, landscaping and associated works (The 2014 SANG permission).

3.3 These applications were subject to a joint legal agreement under S106 of the Planning Act (The 2014 Legal Agreement).

3.4 Reserved Matters in respect of the application were subsequently agreed via 16/01552/REM on 11th November 2016.

3.5 Various applications were then submitted to discharge conditions of the 2014 major permission.

3.6 In 2018 an alternative full planning application was submitted for the erection of 158 dwellings, vehicular access from Hawley Road and the provision of SANG, public open space, landscaping, and associated works under application reference 18/00334/FUL (the 2020 permission).

3.7 This planning permission was refused by planning committee on 4th April 2019. An appeal against this refusal of planning permission was lodged and the appeal was allowed on 2nd March 2020. (The appeal decision). The appeal decision was subject to an alternative Legal Agreement under S106 of the Planning Act. (The 2018 Legal Agreement).

3.8 In his decision, the Planning Inspector imposed 20 separate conditions on the 2020 permission. A copy of the appeal decision is attached at Appendix 1 to this report. The conditions differ from those originally imposed on the 2014 permission.

3.9 Various applications to satisfy the conditions imposed by the Planning Inspector have been submitted and details have been agreed – these details are referenced in more detail below. Along with this a number of Non-Material Minor Amendments to vary or change the detail of some approved plans have also been agreed and in one case refused.

3.10 There is currently one undetermined application in relation to the site of note to the enforcement investigations which is application 22/01475/AMCON (target decision date of 13th December 2022). This application is an application made under Section 73 seeking to amend house types and layout to plots 105 – 127 with consequent amendments to Conditions of the permission.

3.11 Local residents have expressed numerous concerns with the conduct of the developers and have raised a variety of issues which they consider constitute a breach of planning control. Officers have investigated but have found either no breach of planning control has currently occurred, or, considered the matters raised do not warrant further action under the planning acts at this time.

3.12 Although customers have been advised that Enforcement Action is discretionary, the same issues are being repeatedly raised notwithstanding that matters have been reviewed and explanations have been provided to the customers concerned.

- 3.13 The main issues are therefore clarified further for Members' information and avoidance of doubt in the main body of this report.

4 MAIN ISSUES

- 4.1 The Council's Planning Local Enforcement Plan dated January 2016 sets out the Council's approach to planning enforcement. A copy is attached at Appendix 2.

- 4.2 Clearly, there is no duty under the Town and Country Planning Acts to take planning enforcement action as the powers given to local authorities are discretionary. In deciding whether to take enforcement action, the Council must decide whether a breach of planning control has occurred and whether unauthorised development unacceptably affects public amenity, this is reflected in Policy PE1 (d) which states;

"In considering whether it is expedient to start enforcement action, the Council will take account of the policies in the current local plan and all other material considerations including the emerging Local Plan and will assess whether the breach of planning control unacceptably affects public amenity or causes harm to land or buildings which ought to be protected in the public interest.

- 4.3 In this case, customers raised numerous issues associated with the development which can be summarised as the following issues, in order of chronology with which the issues were raised with the Planning Enforcement team:

1. Commencement of work on site without discharge of all conditions and dissatisfaction with details agreed via condition.
2. Failure to provide a Construction Management Plan or sign up to the Considerate Contractors Scheme.
3. Failure to implement appropriate tree protection fencing.
4. Surface water flooding from the site.
5. Undertaking work to highways outside permitted construction hours.
6. Operatives working outside permitted hours.
7. Work in relation to Fernhill Lane sewage connection and conflict with protected trees.
8. Occupation of dwellings before connection to off-site sewage network implemented and consequent other breaches of conditions and failure to provide SANGs.
9. Failure to implement the surface water drainage scheme.
10. Failure to implement scheme for boundary treatment along Fernhill Lane.
11. Failure to implement reinforced landscaping/hedging along Fernhill Lane.
12. Failure to implement all roads/footways/streetlights and surface water disposal across the site prior to occupation of any building.
13. Failure to adopt off site sewage connection.
14. Working out of hours.
15. Lack of Maintenance of SANGs (bins overflowing).

4.4 For clarity and precision in relation to each point the enforcement team has investigated and advised:

1. Commencement of work on site without discharge of all conditions and dissatisfaction with details agreed via conditions imposed by the Planning Inspector.

Details in relation to the requirements of conditions were submitted through the following applications:

18/02462/CON – (written scheme of investigation)

18/00334/CON – Condition 3, 4, 5, 6, 8, 9, 12, 17, 18 – Conditions 3, 4, 8 and 9 agreed. Condition 12 partially satisfied. Conditions 5, 6, 17 and 18 not satisfied.

20/02409/CON – Condition 10 – satisfied.

20/02488/CON – Condition 7 – satisfied.

20/02490/CON – Conditions 5 and 6 – satisfied.

20/02489/CON – Conditions 17 and 18 – satisfied.

20/02492/CON – Condition 12 – satisfied.

21/00049/CON – Condition 18 – satisfied.

21/02533/CON – Condition 15 – satisfied.

It is clear therefore that details to discharge the conditions were submitted and considered satisfactory.

In particular, customer concerns were expressed regarding the impact of the proposed foul sewage connection in Fernhill Lane on existing protected trees and the agreement of details pursuant to tree protection and the boundary treatment to the boundary of the site with Fernhill Lane.

The customer was advised that the sewage connection, highways permitted works and any connection would be outside of the red line boundary of the application site and therefore beyond the control of any planning permission enforceable by this Council. Despite this information being provided, a complaint about these matters along with the approved boundary treatment to Fernhill Lane was raised by the customer with the Local Government Ombudsman. The Ombudsman found no fault by the Council in respect of the matters. A copy of the Ombudsman's decision is attached at Appendix 3.

2. Failure to provide a Construction Environmental Management Plan or sign up to the Considerate Contractors Scheme.

The Inspector imposed condition 4 on his 2020 appeal decision requiring the submission and approval of a Construction Traffic Management Plan.

The details were submitted via application 18/00334/CON, however, only those details required via the condition can be enforced.

Whilst the customer was advised additional information to that required by the condition had been submitted, only the details required by the condition could be enforced. As such, no breach of planning control had occurred in this respect.

3. Failure to implement appropriate tree protection fencing.

Officers visited the site and walked the perimeter of the site to check the provision of the agreed tree protection fencing.

The fencing was found to be complete, stabilised and in the correct location indicated in the agreed details.

The customer was particularly concerned that the fencing was not stabilised and that warning notices had not been affixed to the fencing.

Officers were satisfied the fencing was stabilised in accordance with the approved detail and noted it was clearly installed in accordance with the approved details.

As such, no breach of planning control had occurred in this respect.

Whilst the matter at that time had been resolved, recent events have impacted upon the Tree Protection Fencing – this is referenced later in this report.

4. Surface water Flooding on Fernhill Lane and environs.

Customers contacted the enforcement team following surface water flooding which occurred in Fernhill Lane and the surrounding area.

Officers visited the site and noted that the drains in the area appeared to be blocked by silt and thus the water on the highways was not being disposed into the highway drains.

As the highway drainage system is a matter for Hampshire County Council in its role as Local Highway Authority, the issue did not constitute a breach of planning control nor was it an issue within the gift of the District Council and customers were advised to contact Hampshire County Council (HCC). Hart District Council Officers also

referred the matter to HCC directly and alerted the Environment Agency.

5. Undertaking work to highways outside permitted construction hours.

Customers expressed concerns with noise and disturbance arising from work undertaken to Fernhill Lane and to Hawley Road in relation to the development.

These works were undertaken in relation to the Highway Act and were subject to regulation and permitting by HCC.

Officers confirmed that HCC were the permitting authority for these works to the public highway as Local Highway Authority and that these matters were not within the control of HDC and did not constitute a breach of planning control.

6. Operatives working outside permitted hours.

Reports were received that site operatives were working on site outside the permitted hours. Hart District Council Officers made a number of out of hours visits to the site to establish whether a breach of condition was taking place. Initially, it was established that the operatives on site were painting the interior of the show homes and undertaking some landscaping in the vicinity of the show homes.

This was not considered to be a breach of the condition as no 'development' as defined within Section 55 of The Town and Country Planning Act 1990 (as amended) was involved in either activity.

HDC Officers continued to monitor activity and further work in breach of the condition took place at the site on Bank Holiday Monday 30th August 2021, 26th September 2021, 3rd October 2021, 10th October 2021 (all being Sundays) and on 9th October 2021 after 1pm on a Sunday.

A Temporary Stop Notice and a Breach of Condition Notice were issued on 14th October 2021. The notices came into effect immediately and required the developer to comply with Condition 13 of the planning permission by ceasing any development or deliveries on the land outside the permitted hours for construction.

The Breach of Condition Notice remains in force and is further referenced later in this report.

7. Work in relation to Fernhill Lane sewage connection and conflict with protected trees.

Concerns were expressed by customers that notwithstanding the submitted details relating to the sewage connection in Fernhill Lane which had been considered satisfactory, customers considered this

would impact on protected trees and were subject to permit issued by Hampshire County Council in relation to works to the road.

Whilst these concerns were noted, approval for the roadworks in Fernhill Lane is a matter for the HCC as the Local Highway Authority rather than a planning matter and HDC Officers have no regulatory powers afforded to them in this respect.

8. Occupation of dwellings before connection to off-site sewage network implemented and consequent other breaches of conditions and failure to provide SANGs.

Officers visited the site and confirmed that eleven dwellings had been occupied at the site. This accordingly was a breach of conditions 5, 6, 7, 8 and 9.

The developer confirmed that the eleven dwellings had been occupied since 29th October 2021 but this was unknown to the Council until the developer distributed a leaflet in early December 2021 to nearby occupiers advising that the first occupations on the site had taken place and customers raised this with HDC.

In relation to foul sewage arrangements, the connection was planned to have been implemented however trial holes uncovered a gas pipe and a high-voltage cable. This resulted in the work extending beyond the HCC permit, accordingly a revised permit had been submitted.

During this period, Tardis, a specialist waste contractor was engaged to collect waste from the site. They visited and cleared the foul network to ensure full capacity and attended once a week to empty the system. The developer provided the waste transfer notes to clarify matters. The internal waste system had capacity for 9,000 litres of waste and during this period the extraction range was between 1,364 litres and 6,819 litres.

This temporary drainage strategy was maintained until the permanent foul drainage connection was subsequently implemented in Fernhill Lane to the public sewage system.

The developer advised that the surface water drainage works had been implemented in accordance with the approved details and were operating. HCC as the Local Lead Flood Authority (LLFA) confirmed there were no outstanding issues being addressed by them.

The developer confirmed that street works including levels, lighting and footways were complete for the main access and occupied areas and indicated they intended to submit an application to vary conditions (including 8 and 20) to seek a phased discharge of the condition relating to roadways and footways.

The Heras fencing (tree protection fencing) was in situ at this time, however, the approved boundary treatment was not implemented. The

developer therefore engaged a sub-contractor to install the fencing in accordance with the details approved under condition 7.

The SANG had been inspected by the Council and confirmed to be implemented and functioning as a SANG in December 2021.

The developers undertook to agree that no further occupations of any dwellings would take place until the matters referenced had been resolved.

Whilst it is therefore acknowledged that a technical breach of planning control had occurred, it appeared to the Council that due to the limited number of occupations and the measures implemented, the breach had caused no unacceptable impact on public amenities, accordingly it was resolved no further action was taken subject to a review of circumstances in early 2022.

The foul sewage connection and fencing were subsequently implemented accordingly no further action became necessary as the breaches of planning condition were rectified.

9. Failure to implement the surface water drainage scheme.

Customers maintain that the surface water drainage scheme has not been implemented.

This relates specifically to the imposed Condition 6 of the 2020 Appeal Decision.

Condition 6 states:

“No development excepting formation of the approved access shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied on the site until the approved details have been implemented.”

The details relating to the surface water drainage scheme were submitted and approved in writing and as mentioned the LLFA have confirmed there are no outstanding issues being addressed by them.

In this regard, no breach of planning control appears to have taken place at the present time. The customer has however been asked to clarify matters further and if further clarity is provided, this matter will be reviewed collaboratively with colleagues from the LLFA and the Council's internal drainage expert.

10. Failure to implement boundary treatment along Fernhill Lane.

Customers maintain that the boundary treatment along Fernhill Lane is neither complete nor in accordance with the approved details.

This relates to Condition 7 of the 2020 appeal decision which states:

“Notwithstanding the approved details in condition 2, no development above slab level of any dwelling hereby approved shall take place until a scheme for the boundary treatment along the Fernhill Lane boundary to the site has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall provide for fencing and for the existing landscaping/hedging to be reinforced and shall be designed so as to prevent pedestrian access to Fernhill Lane. The approved boundary treatment shall be implemented prior to the first occupation of any dwelling and shall be thereafter retained and maintained in accordance with the approved details.”

Officers have made numerous visits to the site and have recorded that the approved post and rail fencing along the boundary of the site has been installed. Additional post and rail fencing has been installed beyond that agreed via the abovementioned condition. However, due to its position and height, the additional post and rail fencing is permitted development and as such is not a breach of planning control.

Condition 7 also requires that additional planting is undertaken to replace any failed planting, it is therefore reasonable in light of the other conditions imposed to expect the planting to take place in the next planting season following occupation of the properties. The next planting season is the current planting season i.e. between October 2022 and March 2023.

In this respect, should the developer fail to undertake the planting during the current planting season, the matter can be reviewed in due course in line with other priorities, but no earlier than April 2023.

At present, Officers are satisfied there is no current breach of planning control and have advised customers that no further action will be taken at this time.

11. Failure to implement all roads, footways, streetlights and surface water disposal from roads across the site prior to occupation of any building.

Condition 9 of the 2020 appeal decision states:

“No development excepting formation of the approved access shall take place until details of the width, alignment, gradient and type of construction proposed for the roads, footways and accesses, including all relevant horizontal cross sections and longitudinal sections showing the existing and proposed levels, together with details of street lighting and the method of disposing of surface water, and details of a programme for making up of the roads and footways has been submitted to and approved in writing by the Local Planning Authority.

The agreed details shall be fully implemented before any building or use hereby approved is occupied.”

Details were submitted and approved in writing, however, whilst the details have been implemented in relation to the area adjacent to the occupied properties, the work across the entirety of the site has not been implemented. A technical breach of the condition therefore occurred.

An application for a non-material amendment to the wording of this condition was submitted via application 21/03237/NMMA to enable the phased completion of the works on the development site. This permission was granted on 3rd October 2022.

Officers advised the customers that no action would be taken in relation to this matter until a decision was reached on the non-material amendment application as no harm to public amenity had resulted from this breach of condition.

Customers were further advised that if the application were approved, any formal enforcement action would be moot, however, if the application were refused, the Council would consider the matter further.

In these circumstances, given that the application has been approved to enable phased provision of the works/details across the development, no further action is required.

12. Failure to adopt off-site sewage connection.

Condition 5 of the 2020 appeal decision states:

“No development excepting formation of the approved access shall take place until a drainage strategy including details of connection to the off-site foul sewers and increase in capacity where necessary have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied on the site until the drainage works have been completed.”

The details of the drainage strategy including the connection to the off-site foul sewers were submitted and approved in writing. The connection works have subsequently been completed although it is acknowledged that the position of the off-site connection changed.

Officers acknowledged that the connection was made on the week commencing 14th February 2022, as a result a technical breach of planning condition had taken place up until that time.

The customer is particularly concerned that the connection to the public foul sewage system has not been adopted. This is not a matter controlled by the condition. The customer has been advised to raise his concerns with the sewage undertaker (Thames Water) or with the developer directly as the Council has no control over the ownership,

maintenance or connections to the public sewage system. Ownership matters fall outside of the remit of the planning system and outside of the powers afforded to any Local Planning Authority.

Whilst a technical breach of the condition took place as the connection differed from the approved details, the matter caused no harm to public amenity due to the interim waste arrangements made by the developer during the period between occupation of the properties in November 2021 and the permanent connection being made in February of 2022. Accordingly it would not be expedient to take formal enforcement action in these circumstances.

13. Working out of hours

Customers contacted the enforcement team to highlight further out of hours working at the site in breach of the extant Breach of Condition Notice on Bank Holidays and weekends.

As the planning enforcement service does not operate an out of hours service, permission was sought from the Development Management & Building Control Manager to enable officers to make unannounced monitoring visits during evenings and weekends, which was approved at their discretion.

Officers have been monitoring the situation and further information has been obtained. At the time of preparation of this report, Officers are considering this matter further and a verbal update is likely to be provided to Members during the meeting.

14. Lack of Maintenance of SANGs (bins overflowing).

Officers have received reports of customer concern that the SANG is not being adequately maintained. The specific issues raised relate to failure by the developer's sub-contractor to empty bins and that planting and seeding in the SANG has already failed.

Planning Enforcement Officers have liaised with Countryside colleagues as the SANG is currently within a one year maintenance snagging period which commenced in December 2021/ January 2022. The SANG land has not yet been transferred to the Council.

Although no Council decision has been made in relation to the transfer of the SANG, it is regularly being inspected and its condition is being monitored by the Countryside Operations Manager.

Within the last two weeks (at the time of writing this report) the developer has confirmed to Countryside that a failure to empty the bins occurred and that they are liaising with their sub-contractor to ensure the matter does not recur in future.

In terms of the wider condition of the SANG, it is noted that planting across the site has failed, in part due to weather conditions and in part

due to failure of maintenance. Officers will therefore continue to liaise with Countryside colleagues to seek an improvement in the situation, this may include a requirement for replanting of any dead trees across the site, or for example reseeding of any areas of failed landscaping.

As this matter has been recently raised, no formal enforcement action is considered necessary at this time as liaison between Countryside colleagues and the developers is still taking place and an informal approach to remedying the issue is appropriate at this time.

5 OTHER CONSIDERATIONS

- 5.1 Planning legislation and powers afforded to Local Planning Authorities is designed to control the development and use of land in the public interest. The credibility of the planning system relies on the Council's readiness to take effective enforcement action when needed and the Council is committed to providing a speedy and efficient planning enforcement service to respond proportionately to breaches of planning control.
- 5.2 It is important to remember that under The Town and Country Planning Act 1990, or other legislation or statutory instrument, there is no duty for Local Planning Authorities to take planning enforcement action. The powers given within the relevant legislation is discretionary powers. Also, in deciding whether to take enforcement action, the Council must decide whether unauthorised works, use or development would unacceptably affect public amenity.
- 5.3 When matters have been investigated, a matter must be a breach of planning control for further action to be contemplated. The adopted Local Enforcement Policy sets out our approach to enforcement investigations and particularly makes it clear that where a breach is minor or technical and causes no harm to the environment or nearby neighbours, we will take no further action. Similarly, we will try to negotiate a solution wherever possible to achieve a suitable outcome and avoid unnecessary wasted time and costs associated with formal action.
- 5.4 The Council will make strong use of available enforcement powers to remedy any harmful breach where this is expedient in the public interest and follows the law, guidance and relevant evidence for that case. Before formal action can be taken Local Planning Authorities must first have sufficient evidence of a breach of planning control. Any such evidence must show real substance including documenting and detailing the effect of that breach on the land in question, surrounding area and where relevant the amenity of nearby occupiers.
- 5.5 In relation to the matters raised, formal action has been taken where it has been necessary and action has been justified. A significant number of other issues raised by customers are not planning matters or relate to a technical or trivial breach of planning control which has subsequently been resolved.
- 5.6

All matters raised have been investigated and no alternative approaches would be appropriate.

6 EQUALITIES

- 6.1 Under equality legislation, the Council has a legal duty to pay “due regard” to the need to eliminate discrimination and promote equality of opportunity, eliminate unlawful discrimination and promote good relations between people who share protected characteristics under the Equalities Act and those who do not. The recommendation will have no direct impact on equalities issues.

7 CLIMATE CHANGE IMPLICATIONS

- 7.1 There will be no direct carbon/environmental impacts arising from the recommendation.

8 ACTION

- 8.1 That the contents of this report are endorsed and noted.

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Appendices

**Add rows as required to box below*

Ref.	Title of Appendix	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule of the Local Government Act 1972 by ticking the relevant</i>						
		1	2	3	4	5	6	7
1	2020 Appeal Decision							
2	Adopted Local Enforcement Policy							
3	Ombudsman Decision							