

Report Title:	Unauthorised Traveller Development at Shurlock Road, Waltham St Lawrence
Contains Confidential or Exempt Information?	Report Part I. Appendices Yes – Part II Not for publication by virtue of paragraphs 1 and 2 of Part 1 of Schedule 12A of the Local Government Act 1972.
Member reporting:	Cllr Wilson - Lead Member for Planning.
Meeting and Date:	Cabinet Prioritisation Sub-Committee. 18 January 2017.
Responsible Officer(s):	Russell O'Keefe – Strategic Director Jenifer Jackson, Head of Planning Victoria Goldberg, Team Manager (Enforcement) Arron Hitchen, Senior Enforcement Officer
Wards affected:	Hurley and Walthams

REPORT SUMMARY

Following the Supreme Court decision the Council should now consider how to dispose of the matter to resolve the breach of planning control. This report appends an enforcement report that sets out a detailed history of this matter and also options now available to the Council.

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION:

That Cabinet Prioritisation Sub-Committee notes the report and:

- i) The Council takes action under Section 178 of the Town and Country Planning Act 1990 to carry out all steps required by the Enforcement Notice to clear the site and resolve the breach of planning control**
- ii) The Council continues to engage the services of Shergroup Enforcement.**
- ii) All key operational decision making be delegated to the Head of Planning, in consultation with the Lead Member for Planning and the Council's Monitoring Officer in association with any legal advice from Select Business Services: Legal Solutions during the site clearance, to take such action to ensure the termination of the unauthorised development at Shurlock Road including, but not limited to, specific tasks as so described in the report.**

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 1.1 Officers have considered the Service Impact Assessment (Final) and looked at the Planning Policy that the development is in breach of and are of the firm opinion that the now illegal use of the land is clearly contrary to the Royal Borough's Planning Policy, Local Plan 1999 (Including Alterations Adopted in June 2003) including green belt and the flood plain.
- 1.2 The planning merits of the use of the land as a traveller site have been tested by the Local Planning Authority, Planning Inspectorate and assessed by the Secretary of State. It can be seen from the Inspector's recommendation and the comments of the Secretary of State that it 'strongly supports' the Council's planning case. It is evident that no very special circumstances exist and the now illegal use is not only contrary to Policy but does have a continuing adverse impact on local residents.
- 1.3 Enforcement action was instigated under the Town and Country Planning Act 1990 (as amended). It is an offence under the Legislation for failing to comply with the requirements of an Enforcement Notice. This legislation is compliant.
- 1.4 The impact on the traveller community by taking direct action has to be balanced against the impact on other residents within the Borough, for whom the protection of the Green Belt plays an important part in their social, environmental and economic well-being

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Option	Comments
Do nothing;	Not recommended
Take proceedings in the criminal courts for breach of the enforcement notice pursuant to s.179 TCPA 1990;	Not recommended
Continue to resolve to take direct action pursuant to section 178 of the TCPA 1990;	Recommended
Apply to the High Court for an injunction pursuant to s.187 (B) of the TCPA 1990;	Not recommended

3. KEY IMPLICATIONS

3.1 Unauthorised Traveller Development at Shurlock Road, Waltham St Lawrence

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
Termination of unauthorised development at Shurlock Road, Waltham St Lawrence,	Continued unauthorised use, and continued concern of residents in Waltham St Lawrence	Incursion terminated as soon as practically possible. Eviction action commences 48 hours following letter to quit and all works completed within 15 working days.	All works completed within 10 working days of the commencement of action.	All works completed within 7 working days of the commencement of action	TBC

4. FINANCIAL DETAILS / VALUE FOR MONEY

4.1 Whilst the Travellers at Shurlock Road remain in unauthorised occupation the Royal Borough will continue to face legal and other costs in taking appropriate action. The contract sum with Shergroup is £116,000 and approved by this committee.

5. LEGAL IMPLICATIONS

5.1 Town and Country Planning Act 1990 (as amended) applies.

6. RISK MANAGEMENT

6.1 Unauthorised Traveller Development at Shurlock Road, Waltham St Lawrence

Risks	Uncontrolled Risk	Controls	Controlled Risk
The Shurlock Road occupants instigate legal	HIGH	Robust legal defence of its actions by the	MEDIUM

Risks	Uncontrolled Risk	Controls	Controlled Risk
action against the council by way of challenge to the Sub-Committee's decisions (Leave to apply for JR, or injunction)		council	
Inadequate communications with the Traveller community at Shurlock Road, showing the Royal Borough's intent and readiness, and willingness to work with them in mitigating the effects of the eviction process	HIGH	Communications will continue to be an important part of the Council's work, working through the contractor and the council's own Press team	MEDIUM
Failure to keep the local settled community fully in the picture and involved as appropriate as actions develop during the eviction process, including information to road users about possible road closures and other local disruption	MEDIUM	Communications locally, especially with Waltham St Lawrence residents, by the council and through Thames Valley Police	LOW
On taking possession of the site the contractor/council find ground contamination which will take time to assess and which may require remediation action that will delay the programme of	MEDIUM	This risk is unknown but from site visits made by council staff it is not believed to be significant. Proper ground assessment will be undertaken as thought necessary	LOW

Risks	Uncontrolled Risk	Controls	Controlled Risk
scheduled works			
Livestock including horses and goats, as well as domestic animals and chickens, cannot be accommodated	MEDIUM	The action plan allows for animal welfare. The field on the other side of Shurlock Road, which belongs to the council, could be used to accommodate horses.	LOW
Caravans and other plant and paraphernalia removed by the contractor cannot be stored	MEDIUM	The council will be obliged to store these assets for only three days before they can be sold.	LOW

7. POTENTIAL IMPACTS

7.1 Material considerations; This covers inter alia:

- Breach of planning policy especially in relation to the Green Belt and to flood risk
- Responsibilities of the council under Section 11(2) of the Childrens Act 2004
- Responsibilities of the council under s.149 of the Equality Act 2010
- National planning policy for traveller accommodation needs
- Planning history
- Health, social services and other needs
- Human rights considerations
- Proportionality and weight should direct action be agreed

Summary of material considerations:

- 7.2 The continued use of the land for residential purposes with associated infrastructure, structures and hardstanding is in clear breach of an extant enforcement notice and is a criminal offence.
- 7.3 Section 11(2) Children Act 2004 notes that the Local Planning Authority must make arrangements for ensuring that its functions are discharged having regard to the need to safeguard and promote the welfare of children and persons discharging those functions must have regard to this need.
- 7.4 Section 149 of the Equality Act 2010 provides that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination harassment victimisation against gypsies or travellers, advance equality of opportunity and foster good relations.

- 7.5 The Council must consider the accommodation needs of the gypsy and traveller community in the context of the current national policy in the Planning Policy for Travellers sites, and that the Council has not succeeded in finding the necessary sites to meet that need and therefore it is currently not fulfilling the requirements of the PPTS.
- 7.6 All health, social service and any other needs require consideration on an individual basis, the individual needs of the families must be weighed in the balance. Human rights considerations in particular Article 8, give a right to respect for a person's home. Where a dwelling has been established without planning permission there is a conflict between this right and the right of others in the community to environmental protection.
- 7.7 It is for members to judge the weight that should be attached to each consideration, whilst remembering that the best interests of the children are a primary consideration. If they conclude that the circumstances of the occupiers, and the hardship suffered if enforced against, are insufficient to outweigh the upholding of the Council's legitimate aim of enforcement of the criminal law in the public interest, then Members must consider what option to pursue to secure compliance with the Enforcement Notice. The appended Enforcement report details these material considerations in more depth and also fully sets out the planning history for the site.

8. CONSULTATION

- 8.1 At Waltham St Lawrence there has been regular informal consultation and discussion with a residents group about the particular traveller issues there, facilitated by Councillor Cox.
- 8.2 The Member Working Group under the chair of the Lead Member for Planning has continued to meet to review progress towards ensuring the successful clearance of this site.
- 8.3 An Officer Core Group, under the chairmanship of the Head of Commissioning for Adult Social Care and Housing, has met frequently since February 2013, to review all actions and to plan for the possible eviction. The group includes representation from Children's Services, Adult Social Care, Finance, Legal Services, Press and Public Relations Team, Planning and Enforcement, Shared Legal Solutions, and Procurement. There has been regular liaison with Thames Valley Police.
- 8.4 The Press and Public Relations Team will produce a communications action plan (Shauna Hichens) to operate alongside Shergroup's plan. All interested parties including Ward Members will be consulted on this. It includes provision for the press on the day of eviction, as required.
- 8.5 Consultation with Counsel has continued.
- 8.6 The adjacent boroughs have been kept fully informed and have been asked for advice about possible sites. There has also been liaison with Buckinghamshire and Oxfordshire County Councils.

9. TIMETABLE FOR IMPLEMENTATION

- 9.1 Should the decision to take Direct Action be confirmed by the CPSC and assuming no legal challenge, and unless a different date is agreed, the eviction process will commence following the Landowner and occupants being served with a 48 hours notice of the Local Planning Authority's intention to exercise its powers to enter the land and carry out the steps required by the enforcement notice

10. APPENDICES

- 10.1 Enforcement report and Service Impact Assessment - Part II

11. BACKGROUND DOCUMENTS

- 11.1 Enforcement Notice was issued on 24 December 2009;
Royal Borough of Windsor and Maidenhead Local Plan 1999 (Incorporating Alterations, Adopted June 2003);
Town and Country Planning Act 1990;
Planning Policy Guidance.

12. CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Commented & returned
Cllr Dudley	Leader of the Council	10 January 2017	
Cllr D Wilson	Lead Member for Planning		approved
Cllr Coppinger	Lead Member for Adult Services and Health		
Nick Davies	Head of Commissioning for Adult Social Care and Housing		
Matthew Tucker, Solicitor	Select Business Services: Legal Solutions SBS	10 January 2017	approved

REPORT HISTORY

Decision type:	Urgency item?
Key decision; Officers and the council's legal advisors believe that all relevant information to enable the Sub-Committee to make a decision has been collected and presented to Members	Yes/ The report recommends, in part, that the Council takes action under Section 178 of the Town and Country Planning Act 1990 to carry out all steps required by the Enforcement Notice to clear the site and resolve the breach of planning control. This will re-affirm the Council's resolutions from February and April

2013 and should members continue to resolve to take direct action officer will need to be in a position to carry out the Council's resolve in a swift and timely fashion to minimise the risk that the Council's resolution will be challenged in the Courts before it can be acted upon. Therefore, any delay in carrying out the resolution may seriously prejudice the Council's interests.

It is further officer recommendation that all key operational decision making be delegated to the Head of Planning, in consultation with the Lead Member for Planning and the Council's Monitoring Officer in association with any legal advice from Select Business Services: Legal Solutions during the site clearance, to take such action to ensure the termination of the unauthorised development at Shurlock Road including, but not limited to, specific tasks as so described in the report and therefore officers recommend to the Mayor that he/she agrees that the proposed action is reasonable and any action will be taken by authorised officers whilst having due regard to Council key objectives and risk management.

Under the regulations, if a report for Cabinet or one of its Sub Committees has not been listed on the Forward Plan at least 28 calendar days prior to the meeting, the approval of the relevant O&S Chairman is required to include the item on the agenda.

The Chairman of the Planning & Housing Overview & Scrutiny Panel has agreed to a report being added to the agenda for a Cabinet Prioritisation Sub Committee on 18 January 2017 that had not previously been listed on the Forward Plan.

The Part I and Part II item relates to potential enforcement action at the Shurlock Road traveller's site. In addition, please note that the Mayor has agreed to a waiver of the call-in process as any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests.