

THE FOLLOWING REPORT IS FOR INFORMATION ONLY

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ENFORCEMENT REPORT

Reference and Site:

16/50256 – Land between Lightlands Lane and Strande View Walk and Strande Lane, Cookham.

Contravention:

The erection of a building without planning permission.

Person(s) responsible:

Mr Samuel James Driver

Relevant Planning History:

Reference	Description	Decision
16/01289	Certificate of lawfulness to determine whether a moveable poultry shed is lawful.	Refused 14.06.16.
15/02564	Construction of a log cabin for occupation by an agricultural worker in connection with the operation and management of an egg laying poultry farm to be established on the holding for a temporary period of 3 years.	Refused 18.02.16.
15/02565	Erection of one purpose built poultry shed elevated on a raised platform for the keeping of up to 1750 egg laying chickens including a separate integral egg packing room at one end of the building.	Refused 18.02.16.
15/02567	The erection of one purpose built poultry shed elevated on a raised platform for the keeping of up to 1350 egg laying chickens.	Refused 18.02.16.
15/02749	The erection of a general purpose portal framed agricultural storage building for the keeping of hay and straw and a bulk feed storage hopper.	Refused 18.02.16.

Site and Surroundings:

The site is largely an open field located to the east of Lightlands Lane. Open land lies to the north and north-west, while Strande View is to the south-west and Strande Lane to the south. The site is currently occupied by three timber chicken sheds, a timber shed on wheels, a shipping container raised above the ground and timber posts and wire fencing enclosing the public right of way that crosses the site close to the eastern boundary. The site is enclosed by established hedgerows and trees. A line of protected oak trees crosses the field from east to west about 30 metres north of the southern boundary. The site is located in the Green Belt and in an area where there is a high probability of flooding (Flood Zone3).

History:

1. Following a complaint to the Council regarding the erection of a “chicken polytunnel,”an enforcement officer visited the site. The Officer noted that a metal framework had been erected, measuring 32m long (in 16 sections), 3.5m high and 7.6m wide.
2. Given the planning history, it was considered that the metal framework was for a building that required planning permission. Given the planning policy constraints for the site, covered in the previous applications, it was not considered that planning permission would be granted. Accordingly, on the same day as the initial site investigation and while workers were on site still erecting the building, a letter was handed to the land owner advising that the building should be removed by 5pm that day and that failure to do so may result in enforcement action being taken.
3. Land Registry confirms that the land owner is Mr. Samuel James Driver.

Comments:

An enforcement Notice was issued on 21st July 2016 as a matter of urgency as the site is in an area at high risk from flooding and the development was ongoing at the time. As a matter of fact and degree, the erection of the building constitutes development for which express planning permission is required. The building is therefore clearly a breach of planning control which causes harm as it is contrary to the development plan and there are no material considerations which would indicate a contrary view. For these reasons it was considered expedient to take urgent action.

The reasons for taking formal enforcement action and addressing each potential ground of appeal are set out below.

Ground (a) – that planning permission should be granted.

Main issues and policies relevant to the planning merits.

The main strategic planning considerations applying to the site and the associated policies are:

	High risk of flooding
Local Plan	F1

Development within the area liable to flood

The site is located in the functional flood plain, Flood Zone 3b, where water has to flow or be stored in times of flood. Only water-compatible uses and essential infrastructure (listed in Table 2 of the Technical Guidance to the NPPF), that has to be there, should be permitted in this zone. As the building is neither water-compatible nor classed as essential infrastructure it should not be permitted on this site.

Ground (b) – that the breach of control alleged has not occurred.

An Enforcement Officer has visited the site and noted the metal framework (the main structure) for the building is substantially complete.

Ground (c) – that there has not been a breach of planning control.

The structure is of a size which is significant in planning terms given its dimensions. It may be capable of movement but it would have a permanent character. The fact that the structure may be capable of being moved is not determinative in establishing permanence. The length of time that the structure would remain *in situ* is sufficient to be of consequence in the planning context, and that degree of permanence is a clear indicator that, for the purposes of the 1990 Act, the structure can be described as a building for development control purposes.

The erection of a new building is not specifically listed in the definitions of ‘building operations’ at section 55(1A) of the Act, but this list is not exhaustive. The erection of a new building falls within the final clause of the definition as being work normally undertaken by a person carrying on business as a builder. The building has been erected on the site and the work involved in the erection of the building amounts to a significant building operation, given its size and permanent nature.

Ground (d) – that at the time the Enforcement Notice was issued it was too late to take enforcement action against the matters stated in the Notice.

The building was substantially complete but still under construction when the Enforcement Notice was issued.

Ground (f) “that the steps required by the notice are excessive and that lesser steps could remedy any injury to amenity that has been caused”.

The requirements of the Notice are the minimum the Council can stipulate to ensure the breach of planning control, and resulting injury to the flood zone, is remedied. The steps required to remedy the injury are reasonable and proportionate to the breach. Any lesser steps would continue to cause harm.

Ground (g) – that the time given to comply with the Notice is too short.

14 days is deemed by the Local Planning Authority to be a reasonable period of time for the requirements of the Notice to be complied with. The development is primarily a metal frame and no specialist contractor or plant is required to carry out the requirements of the Notice.

Recommendation:

ENFORCEMENT ACTION:

- a. Remove from the Land the building in the approximate position shown with the blue coloured cross on the attached plan; and
- b. Remove from the Land all materials associated with the building.

The period of compliance shall be 14 days from when the Notice becomes effective.

The reason for serving the Notice is as follows:

The building has been erected on land that lies within the functional flood plain (Flood Zone 3b), and is a type of development not permitted in this flood zone. The building would impede the flow of flood water, reduce the capacity of the flood plain to store flood water and increase the number of

people or properties at risk from flooding. It is therefore contrary to saved policy F1 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (incorporating alterations adopted June 2003) and to advice contained in National Planning Policy Guidance on flooding and paragraphs 100 to 103 of the National Planning Policy Framework, March 2012.

AUTHORISED BY:

Jenifer Jackson,
The Council's authorised officer on behalf of Royal Borough of Windsor & Maidenhead.
Town Hall, St Ives Road,
Maidenhead, Berkshire, SL6 1RF
Date: 18 November 2015

Appendix 1: Copy of Enforcement Notice

ISSUED 21st July 2016

THE ROYAL BOROUGH OF WINDSOR & MAIDENHEAD

ENFORCEMENT NOTICE

Relating to
Land between Lightlands Lane and Strande View Walk and Strande Lane
Cookham



Jenifer Jackson, Borough Planning Manager
Town Hall, St Ives Road, Maidenhead, Berkshire, SL6 1RF

Ref: 16/50256/ENF

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN & COUNTRY PLANNING ACT 1990 ("the Act")
(as amended by The Planning & Compensation Act 1991)

ENFORCEMENT NOTICE

ISSUED BY: ROYAL BOROUGH OF WINDSOR & MAIDENHEAD

THIS IS A FORMAL NOTICE which is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) Section 171A (1) of the Act, at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of this Notice and the enclosures to which it refers contain important additional information.

1. THE LAND TO WHICH THIS NOTICE RELATES

Land between Lightlands Lane and Strande View Walk and Strande Lane, Cookham, shown edged red on the attached plan ("the Land")

2. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission the erection of a building

3. REASONS FOR ISSUING THIS NOTICE

- a. It appears to the Council that the above breach of planning control has occurred within the last 4 years;
- b. The building has been erected on land that lies within the functional flood plain (Flood Zone 3b), and is a type of development not permitted in this flood zone. The building would impede the flow of flood water, reduce the capacity of the flood plain to store flood water and increase the number of people or properties at risk from flooding. It is therefore contrary to saved policy F1 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (incorporating alterations adopted June 2003) and to advice contained in National Planning Policy Guidance on flooding and paragraphs 100 to 103 of the National Planning Policy Framework, March 2012.

4. WHAT YOU ARE REQUIRED TO DO

- c. Remove from the Land the building in the approximate position shown with the blue coloured cross on the attached plan; and
- d. Remove from the Land all materials associated with the building.

5. TIME FOR COMPLIANCE

Fourteen days after this notice takes effect.

6. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on the 25th August 2016, unless an appeal is made against it beforehand.

DATED: 21st July 2016

SIGNED:

Jenifer Jackson
The Council's authorised officer on behalf
of Royal Borough of Windsor & Maidenhead.
Town Hall,
St Ives Road,
Maidenhead,
Berkshire, SL6 1RF

Ref: 16/50256/ENF

ANNEX

EXPLANATORY NOTES

It is recommended that you read the explanatory notes which follow carefully

Service:

A copy of this enforcement notice has been served on the following persons:

Mr Samuel James Driver

234 Loddonbridge Road

Woodley

RG5 4BS

Mr Samuel James Driver

The Bridge House

Bisham Road

Marlow

SL7 1RP

Your right of appeal

You can appeal against this Notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before the date specified in paragraph 6 of the Notice. Please refer to the enclosed leaflet of information for details of who to contact to obtain information on the appeal process. You can obtain appeal forms and a guidance booklet on the appeal process from The Planning Inspectorate. On receipt of the appeal forms please note:-

- (a) One is for you to send to the Secretary of State if you decide to appeal together with a copy of the enforcement notice.

- (b) The second copy of the appeal form and the notice should be sent to the Council.
- (c) The third copy is for your own records.

NB – Appeals can now also be submitted online via the Planning Portal website (www.planningportal.gov.uk/pcs).

What happens if you do not appeal?

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 6 of the notice, and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in paragraph 5 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

Grounds of Appeal

If you appeal against this Enforcement Notice, you must submit to the Secretary of State, either when giving notice of your appeal or within 14 days on which the Secretary of State sends you a notice so requiring, a statement in writing specifying the grounds on which you are appealing against the Enforcement Notice. The written statement should also contain a brief synopsis of the facts on which you propose to rely in support of each of the grounds of appeal

The Grounds of Appeal are set out in section 174 (2) of the Act.

Deemed Application

If you appeal against this Enforcement Notice under Section 174(2)(a) [also known as Ground A] (namely that in respect of the breach of planning control planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged), then a fee is payable.

The payment of the fee arises under Regulation 10 of the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, as amended. The fee payable is double that which would ordinarily be payable.

In this instance the total fee payable is £160.00

The full amount should be sent to the Royal Borough of Windsor and Maidenhead, Town Hall, St Ives Road, Maidenhead, SL6 1RF (cheques should be made payable to the Royal Borough of Windsor and Maidenhead)



Title: Land Between Lightlands Lane And Strande View Walk and Strande Lane, Cookham
Scale: 1:1,250
Date: 21/07/2016

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