

## **INFORMATION ONLY**

### ***ENFORCEMENT REPORT***

#### **Reference and Site:**

16/50274 – Land at Hythe End Farm, Hythe End Road, Wraysbury, Tw19 5AW

#### **Contravention:**

Without planning permission the material change of use of the land from (Sui Generis) ***storage before and after processing and processing of excavated/dredged/builders materials, timber with associated plant and machinery*** to a mixed use comprising ***the storage before and after processing and processing of excavated/dredged/builders materials, timber with associated plant and machinery*** and ***skip hire, skip storage and skip distribution (SG/B8)***

#### **Person(s) responsible:**

- Timothy Fowles
- Fowles Skip Hire
- Fowles Property Limited

#### **Relevant Planning History:**

See appended history

#### **Site and Surroundings:**

The site is an operational waste transfer site, that stores and processes waste building materials, timber and associated plant and machinery. The site is almost totally enclosed by a bund and is screened by views along Hythe End Road by the bund and hedgerow trees. The site is located to the east of Hythe End Road, and is located within the Green Belt and an area liable to flood. The surrounding area comprises a mix of fields and residential properties. The site is accessed via track that runs through land to the west of Hythe End Road, starting on Feathers Lane.

#### **History:**

1. Following a complaint to the Council about the use of the land to store and distribute skips an Enforcement Officer visited the site and noted a large number of empty skips being stored.
2. On 3 August 2016 the Council served a Planning Contravention Notice on Mr Timothy Fowles as an individual that may have an interest in the land and/or carry on operations on the land in connection with the skip use.
3. On 30 August 2016 the Enforcement Team noted that the PCN has not been returned. The matter was subject to debate with Mr Timothy Fowles' Solicitor as to the validity of the Notice. No Judicial Review has been issued to contest this, and no letter before action has been received. Section 171D of the Act says that it is an offence to fail to respond to the Notice and this will be addressed separately.

4. The Enforcement Team note that Fowles Skip Hire operate out of Hythe End Farm and Timothy Fowles is registered with the Environment Agency as the waste carrier under licence number CBDU86036. The Licence was granted on 2 February 2016 and expires 4 March 2019.

**Comments:**

The reasons for taking formal enforcement action and points 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:

<i>Issue</i>	<i>Local Plan Policy</i>	<i>Compliance</i>	
Acceptable impact on highway safety	T5		No
Noise and nuisance	NAP3		No
Acceptable impact on Green Belt	GB1, GB2		No
Flood	F1		No

**Impact on surrounding area and Highway Safety**

The increased traffic adds to the number of heavy goods vehicle movements into and out of the junction of Feathers Lane with Staines Road adding to the potential risk of accidents, due to a significant increase in opposed right turning movements. With unchecked or substantial increases in the volume of heavy goods vehicles travelling to and from the site there is the increased risk of goods vehicles exiting and entering Feathers Lane simultaneously. Due to the size of the vehicles there is the risk that a vehicle turning left into Feathers Lane may need to yield and stop within Staines Road until the other vehicle had completed its manoeuvre. It is difficult to quantify the potential frequency of such incidents, but clearly a major increase in vehicle movements would increase the probability and therefore the risk of potential of ‘hit in rear’ collisions on the public highway, where a left turning goods vehicle may need to unexpectedly stop on the main road. With substantially increased lorry movements since the unauthorised use commenced there appears to be a major increase in heavy goods vehicle movements into and out of the site. There have already been problems with large vehicles negotiating the junction of Staines Road with Feathers Lane, which has resulted in damage to street furniture and the need to install verge protection to avoid significant deterioration of the grass verges.

**Noise and nuisance**

The associated noise and nuisance from HGV movements is excessive and not something that the Council would tolerate in a residential area.

**Green Belt**

The use of the land to store skips stacked has a detrimental impact on the openness of the Green Belt.

### **Flood**

The use of land to store skips reduces the capacity of the flood plain to store water.

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

An Enforcement Officer has visited the site and noted the unauthorised storage occurring. Evidence of skips being delivered has been received by Officers. Fowles Skip Hire website is operational.

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

The change of use requires planning permission as the change is not permitted by Use Classes Order. The unauthorised use is a mixed SG/B8. The authorised use is an SG use.

### **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.**

Unauthorised use only occurred since Fowles acquired site in 2015.

### **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 amenity is remedied. Any lesser steps would continue to cause harm.

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

28 days is deemed by the Local Planning Authority to be a reasonable period of time for the requirements of the Enforcement Notice to be complied with. The issue of the Temporary Stop Notice will stop vehicle movements immediately. 28 days is sufficient to remove the skips from the land.

### **Recommendation:**

#### **ENFORCEMENT ACTION:**

#### **Temporary Stop Notice and Enforcement Notice**

Temporary Stop Notice:

- i. Stop using the land outlined in red for the hire, importation and distribution of empty skips.

Enforcement Notice:

- i. Cease the use of the land for the hire, importation, storage, and distribution of empty skips.
- ii. Remove all skips from the land.

The period of compliance shall be 28 days from the date of this Notice.

**The reasons for serving this Notice are as follows:**

- i. The use of the land for the hire, storage and distribution of skips amounts to an inappropriate use of the land that by definition is harmful to the function and purposes of the green belt and for which there are no very special circumstances that have either been advanced or are apparent that would be sufficient to clearly outweigh the harm that is being caused to the openness of the green belt. As such the use is contrary to Policies GB1 and GB2 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (Incorporating Alterations Adopted in June 2003) and the NPPF Chapter 9.
- ii. The use of the land for the hire, storage and distribution of skips causes an undue burden on the surrounding road network due to the volume of large frequent HGV movements and therefore the use of the land is contrary to saved Policy T5 of the Royal Borough of Windsor and Maidenhead (Incorporating Alterations adopted June 2003).
- iii. The unauthorised use increases the HGV vehicular movements and is significantly above what would be expected in a residential area. This has a detrimental impact on the amenities of the occupiers of neighbouring properties through the increase in noise and disturbance. The unauthorised use is therefore contrary to Policy NAP3 of the Royal Borough of Windsor and Maidenhead Local Plan (Incorporating Alterations Adopted in June 2003)
- iv. This site lies within an area liable to flood. The operator has not demonstrated by means of a flood risk assessment that the use would not impede the flow of flood water, reduce the capacity of the flood plain to store flood water or increase the number of people or properties at risk from flooding. As such the proposal is contrary to Policy F1 of the Royal Borough of Windsor and Maidenhead Local Plan (Incorporating Alterations adopted June 2003).

**Delegated authority**

It is considered by the Borough Planning Manager that action is required immediately to stop and remedy the breach of planning control. The matter will be referred to the Planning Panel at the next available date for their information.

**AUTHORISED BY:**

Jenifer Jackson

Borough Planning Manager \_\_\_\_\_ *Jeni Jackson.* \_\_\_\_\_

Date:

# ENFORCEMENT REPORT

14//50593     2a STRAIGHT ROAD  
                  OLD WINDSOR  
                  SL4 2RL

## **Contravention:**

Use of the outbuilding as a separate residential unit without planning permission.

## **Person(s) responsible:**

Miss Denise Buttigieg

## **Relevant Planning History:**

- 11/00661     Two storey and first floor front extensions and front bay windows, side chimney, front and rear dormers to provide loft accommodation, attached garage and carport with accommodation over accessed via external stairs - Permitted
- 13/01701     Two storey and first floor front extension and front bay window, side chimneys, front dormer to provide loft accommodation, attached garage and carport with accommodation over accessed via external staircase (Retrospective) - Permitted
- 15/02156     Change of use of first floor over garage into independent dwelling. (Retrospective) - Refused

## **Site and surroundings:**

The property site lies to the north side of Straight Road next to the junction onto the roundabout which links Old Windsor, Windsor and Datchet and vehicular access to the site is via Straight Road. The site comprises of a 4 bedroom dwelling with a garage/carport and a parking area to the south-east of the main dwellinghouse. Additional habitable accommodation is provided above this garage and this is accessed via a separate external staircase to the front of the property.

## **History:**

1. The Enforcement section received a complaint on the 11<sup>th</sup> December 2015 alleging that the extension was being used as a separate residential unit.
2. An enforcement officer visited the site on the 16<sup>th</sup> December and found no one present and was also unable to access the building. Another visit, made on the 8<sup>th</sup> January 2015, found a gentleman present who gave his name as Hamza Katib. He advised that he had been resident there since May 2013. The flat consisted of a living area, a bedroom, a bathroom containing a toilet, shower and basin, and a galley kitchen.

There is no thoroughfare from the main dwelling to the extension.

3. After months of meetings, telephone calls, e-mails, liaising with the owner's representative, an application was received and registered in July 2015. The application was for a "Change of use of first floor over garage into independent dwelling. (Retrospective)" [15/02156]. This application was refused on the 18<sup>th</sup> January 2016.
4. In February 2016 a letter was sent to the landowner, referring to the recent refusal of planning permission and requesting what action was proposed for the cessation of this unauthorised use. No further contact has been received from her.
5. A visit carried out at the property on the 6<sup>th</sup> September 2016 showed that the tenant continues to occupy the unauthorised flat. The building remains independent with the same facilities as before.

Consequently it is now proposed that the Council take enforcement action to ensure the cessation of the unauthorised use of this extension. The matter will now be put to the Development Management panel for authorisation of the proposed enforcement action.

## **Comments:**

The Local Planning Authority considers it expedient to issue an Enforcement Notice in this instance for the reasons set out below.

## **Recommendation to panel:**

That enforcement action be taken and an Enforcement Notice be issued requiring the following:

- a) Cease the use of the building edged blue on the attached plan as a separate residential dwelling;

**The reason for serving this Notice is as follows:**

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

1. The building is positioned within an area that has a high risk of flooding (flood zone 3) and therefore constitutes vulnerable development as defined in the NPPF Technical Guidance 2012. As a result the use of the building as a separate residential unit increases the number of people at risk from flooding and therefore fails to comply with Policy F1 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (Incorporating Alterations Adopted in June 2003).
2. The use of the building as an independent dwelling amounts to unacceptable development which is harmful to the character of the area. The unauthorised use results in additional noise and disturbance arising from movements associated with the use and as such negatively affects the amenity of the occupants of the main house and neighboring properties. The use is therefore contrary to Policy H11 and DG1 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (Incorporating Alterations Adopted in June 2003).
3. The dwelling does not have the levels of amenity expected for independent dwelling in that there is no private outdoor amenity space. The main bedroom is served only by one small rooflight and no outdoor amenity space has been provided. The proposal would therefore fail to comply with the core principles of the National Planning Policy Framework (NPPF) which require a high standard of amenity for all current and future occupiers of land and buildings to be provided.

**Ground (b)** - That the breach of control alleged has not occurred

An Enforcement Officer has visited the site as recently as the 6<sup>th</sup> September 2016 and noted that the unauthorised use continues. The tenant was present during that visit and she confirmed that he resides there and continues to pay rent to the landlady for the use of the extension as a residential unit.

**Ground (c)** - That there has not been a breach of planning control

The use of the extension does not accord with Section 55 2 (d) of the Town and Country Planning Act 1990 (as amended). Namely 'the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;'



**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 planning enforcement section became aware of this unauthorised use in December 2014. In addition to this Council Tax records show that council tax payments began in February 2013 and the tenant advised that he moved in in May 2013.

**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 Notice requires the cessation of the use and the removal of amenities within the structure which facilitate its separate residential use. Any lesser steps would continue to cause harm.

**Ground (g)** - That the time given to comply with the notice is too short

Three calendar months is an established and upheld time period for works such as this.