

Runnymede Borough Council

PLANNING COMMITTEE

Wednesday 8 December 2004 at 7.30 p.m.

in the Council Chamber

at the Civic Offices, Addlestone



Members of the Committee

Councillors G.B. Woodger (Chairman), Mrs. F.M. Angell (Vice-Chairman), J.R. Ashmore, Mrs. F.J. Barden, J. Broadhead, J.B. Dean, J.R. Furey, H.W.V. Meares, Mrs J. Norman, D.W. Parr, R. Pate, B.J. Relph, N. Thewlis, A.P. Tollett, and J.R. Whiteley.

A G E N D A

Notes:

- i) Any report on the Agenda involving confidential information (as defined by section 100A(3) of the Local Government Act 1972) must be discussed in private. Any report involving exempt information (as defined by section 100I of the Local Government Act 1972), whether it appears in Part 1 or Part 2 below, may be discussed in private but only if the Committee so resolves.
- ii) The relevant 'background papers' are listed after each report in Part 1. Enquiries about any of the Agenda reports and background papers should be directed in the first instance to **Mr. B.A. Fleckney, Administration and Leisure Department, Committee Section, Civic Offices, Station Road, Addlestone (Tel. Direct Line: 01932 425620). (Email: bernard.fleckney@runnymede.gov.uk).**
- iii) Agendas and Minutes are available on a subscription basis. For details, please ring Mr. B.A. Fleckney on 01932 425620. Agendas and Minutes for all the Council's Committees may also be viewed on www.runnymede.gov.uk.
- iv) **Public speaking on planning applications only is allowed at the Planning Committee. For details please contact Mrs T Eeles, the Administrative Section of the Technical Services Department. (Tel Direct Line: 01932 425174)**
- v) In the unlikely event of an alarm sounding, members of the public should leave the building immediately, either using the staircase leading from the public gallery or following other instructions as appropriate.

LIST OF MATTERS FOR CONSIDERATION

PART I

Matters in respect of which reports have been made available for public inspection

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PART II

Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection

- a) Exempt Information
(No reports to be considered under this heading)
- b) Confidential Information
(No reports to be considered under this heading)

1. NOTIFICATION OF CHANGES TO COMMITTEE MEMBERSHIP

2. MINUTES

To confirm and sign the Minutes of the meeting of the Committee held on 10 November 2004 as a correct record (Appendix 'A').

3. APOLOGIES FOR ABSENCE

4. DECLARATIONS OF INTEREST

If Members have an interest in an item please record the interest on the form circulated with this Agenda and hand it to the Legal Representative or Committee Administrator at the start of the meeting. A supply of the form will also be available from the Committee Administrator at meetings.

Members who have previously declared interests which are recorded in the Minutes to be considered at this meeting need not repeat the declaration when attending the meeting. Members need take no further action unless the item in which they have an interest becomes the subject of debate, in which event the Member must leave the room if the interest is personal and prejudicial.

5. PLANNING APPLICATIONS (DTS)

A list of the planning applications to be determined by the Committee is attached.

If Members have particular queries or interests in certain applications, the application files will be available for inspection and Officers present from 7.00 p.m. prior to the meeting in the ante room of the Council Chamber. This will be an informal opportunity for Members to see further details of applications and representations and to discuss and clarify issues. Copies of all letters of representation will also be placed on the table in the Chamber prior to the meeting and will be available for inspection by Members.

OFFICERS' RECOMMENDATION that –

the said applications be determined as indicated and any permission granted be subject to the conditions authorised.

(TO RESOLVE)

Background Papers

A list of background papers is available at the Technical Services Reception.

6. ENFORCEMENT ACTION - 24 RIVERSIDE, EGHAM (DTS)

1. Purpose of Report

1.1 **To seek the authorisation of the Committee to serve an enforcement notice in respect of a rear outbuilding erected on the above-mentioned site without planning permission. (Site plan at Appendix 'B').**

2. Site

2.1 The existing dwelling is a chalet style, two-storey dwelling, sited close to the River Thames on the northern side of Windsor Road. The site is accessed via the vehicular access to the Runnymede Warehouse site. The application site is L shaped and has an area of 0.23ha (0.57a). Its northern boundary fronts onto the River Thames. The site is within the Green Belt, the flood plain and an Area of Landscape Importance.

3. History

3.1 The existing dwelling has been extended a number of times under the following applications:

EGH.49/211 Garage – granted.

- EGH.62/8031 Conservatory – granted.
- RU.86/0523 Increase roof height to provide two bedrooms and shower room at first floor level – granted
- RU.02/1159 Detached two storey dwelling following demolition of existing dwelling and four garages – refused.
- RU.03/0968 Detached two storey dwelling and detached double garage following demolition of existing dwelling and outbuildings – withdrawn October 2003
- RU.04/0087 Erection of two storey dwelling following demolition of existing dwelling and outbuildings – refused March 2004
- RU.04/0983 Erection of single storey side porch to replace existing porch on river elevation; insertion of side dormer windows to extend habitable accommodation and alterations to single storey sun lounge including balcony over – refused October 2004.

4. Unauthorised Building

- 4.1 The outbuilding measures approximately 4 metres by 6 metres. It has a pitched roof with a maximum height of approximately 4.8 metres. The outbuilding is located approximately 4.9 metres from the rear of the existing dwelling.
- 4.2 The Enforcement Section has investigated the site following reports that an outbuilding was being erected. The owner stated that the works comply with his permitted development rights. The height and proximity of the outbuilding to the dwelling mean that it does not comply with permitted development rights. Planning permission is therefore required. No such retrospective application has been sought or granted.

5. Planning Considerations

- 5.1 The site is in the Green Belt, Area Liable to Flood and Area of Landscape Importance. The main consideration in this case relates to the impact of the building on the openness of the Green Belt and compliance with relevant local plan policies. The main policy in this instance is Policy GB6 of the Local Plan.
- 5.2 The existing property is a chalet style two-storey dwelling with a floor area of some 163 sq m. The property has, however, been extended since May 1986. In May 1986 it was a single-storey dwelling with a floor area of 114 sq m. The existing dwelling has been increased in size by 43% over and above that which existed on the site in May 1986. Previous planning applications which have sought to erect larger replacement dwellings or further extensions to the property, most recently RU.04/0983, have been refused permission because they do not comply with the relevant Green Belt policies.
- 5.3 As the unauthorised outbuilding lies within 5 metres of the dwelling it would be counted as an extension to the dwelling as defined by Policy GB6. The outbuilding has a floor area of approximately 24 metres. This would increase the total floor area figure to 187 sq m. This would represent an increase in floor area since May 1986 of some 64%. This clearly exceeds the 30% figure set out in the adopted Local Plan.
- 5.4 The outbuilding is bulky with a ridge height of approximately 4.8 metres. It spreads the development across the site and increases the prominence of the dwelling in the Green Belt. It is considered to be harmful and detrimental to the visual amenities and openness of the Green Belt.
- 5.5 Given its location to the rear of the dwelling it is not considered to have a detrimental impact on the Area of Landscape Importance.
- 5.6 This site lies within a high risk area of the River Thames flood plain. However, the increase in floor area is unlikely to result in direct and adverse effect on a water course, or have a cumulative impact which would result in a significant effect on flood storage capacity or flood flows. In such circumstances paragraph 58 of PPG25 : 'Development and Flood Risk'

advises that such structures are unlikely to raise significant flooding issues. Indeed such structures fall within the Standing Advice where consultation with the Environment Agency on such matters is not required.

5.7 The owner of the property has not put forward any very special circumstances to justify such inappropriate development in the Green Belt.

6. Enforcement Considerations

6.1 The unauthorised outbuilding is considered to be unacceptable in planning terms. It is then necessary to consider whether it is expedient to take enforcement action to rectify the breach of planning control.

6.2 PPG18 (Enforcement) states that planning enforcement is not to be used to punish those who develop without permission and that every effort should be made to bring unauthorised development into the planning system by seeking applications for breaches where it seems that they are not wholly contrary to Green Belt policy and there appears to be no merit in seeking a planning application. It is therefore considered expedient to pursue enforcement action in this case for the reasons set out in Section 5 above.

6.3 The owner of the site has not submitted a planning application neither has he demolished the unauthorised outbuilding. The Council is not aware of any very special circumstances on behalf of the owner of the land.

6.4 In these circumstances it is considered to be expedient to seek the demolition of the unauthorised outbuilding.

7. Human Rights 1998 Considerations

7.1 Members will be aware that the European Convention on Human Rights secures certain fundamental human rights. The Human Rights Act 1998 came into force on 2nd October 2000 and enables individuals to invoke their convention rights. The Act makes it unlawful for a local authority to act in a way which is incompatible with a convention right.

7.2 The taking of enforcement action, including the issue of injunctive proceedings, can amount to an interference with a person's rights under Article 8. Nonetheless such measures:

- are in accordance with the law;
- pursue the legitimate aim of protecting the rights of others through preservation of the environment; and
- may be necessary in a democratic society where the interference answers a pressing social need and in particular is proportionate to the legitimate aim pursued.

7.3 The proposed action can amount to an interference with the right under Article 1 of the First Protocol to the peaceful enjoyment of the property. Again, however, such interference is permissible if it is in accordance with the law and the public interest.

7.4 Article 8 of the Convention states:

Right to respect for private and family life

"Everyone has a right to respect for his private and family life, his home and his correspondence."

"There shall be no interference by a public authority with the exercise of this right except if such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the Country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others."

7.5 Article 1 of the First Protocol states :-

Protection of Property

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

"The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions as penalties."

- 7.6 It is recognised that the action proposed in this report could amount to an interference with the owner and his family's home and private and family life (which fall within the protection of and are consistent with the objective and purposes of Article 8). Those interests must be balanced against the public interest in pursuing the legitimate aims in Article 8, particularly the economic well-being of the Country (which includes the preservation of the environment), and the objections to the confirmed breaches of planning control on this site are considered to be serious, and the breaches are a flagrant and continued abuse of the planning system.

8. Conclusions

- 8.1 Members must fully and fairly balance the considerations referred to in this report when deciding to authorise any of the actions referred to in Sections 5 and 6 to bring an end to the continuing breaches of planning control. Members will wish to have regard to the human rights issues detailed in Section 7 and will wish to consider whether the action they authorised is a proportionate remedy in all the circumstances of the case.
- 8.2 Members will take into account all the considerations material to this case. On the one hand there is the personal circumstances of the family, the likely distress and difficulties caused by the service of any statutory notices or the institution of any proceedings and the convention rights of the owner and his family. On the other hand there is the significant harm to the visual amenities and openness of the Green Belt which is contrary to the main aims and objectives of the area's Green Belt designation.
- 8.3 The Committee is requested to consider all the facts and the issues in relation to this case and determine whether further legal action is both reasonable, compatible with the Human Rights Act 1998, proportionate to the legitimate aim being pursued, and necessary to bring about the cessation of the continuing breaches of planning control and prevention of further breaches of planning control.

OFFICERS' RECOMMENDATION that –

the Director of Administration and Leisure be authorised to issue an enforcement notice under Section 172 of the Town and Country Planning Act requiring:

- i) the demolition of the existing outbuilding to the rear of the dwelling and the removal of all resulting materials, rubble and debris from the site;**
- ii) the taking of appropriate action in carrying out necessary works or prosecution under Sections 178 and 179 of the Town and Country Planning Act 1990 in the event that this notice once effective is not complied with.**

Reason for Issuing of Enforcement Notice

The outbuilding constitutes an inappropriate development in the Green Belt resulting in a substantial increase in floorspace over and above the size of the dwelling on site at May 1986 and would have a harmful impact on the openness of the Green Belt, spreading development across the site, contrary to Policies PE1 and PE2 of the Surrey Structure Plan 1994, Policy LO4 of the approved Surrey Structure Plan October 2004 and Policies GB1 and GB6 of the Runnymede Borough Local Plan Second Alteration April 2001 and the advice in Planning Policy Guidance Note 2 : 'Green Belts'. Furthermore very special

circumstances have not been put forward which would outweigh the harm to the Green Belt as identified.

(TO RESOLVE)

Background Papers

Exempt.

7. RESCISSION OF ENFORCEMENT NOTICE - FULLBROOK SCHOOL (DTS)

1. Purpose of Report

1.1 **The purpose of this report is to seek approval to rescind the authority to serve an enforcement notice on Fullbrook School, which was given by the Committee on 13 May 2004.**

2. Background Information

2.1 Two unauthorised temporary double classroom units were sited in the western corner of Fullbrook School, adjacent to the boundary with nos. 9-11 Faris Barn Drive. One of these units was subsequently granted temporary planning permission (ref. RU.03/1240) until 31 December 2004 to provide additional classroom accommodation pending completion of a two storey classroom extension, ref. RU.04/0102.

2.2 Planning permission was refused (RU.04/0271) and authorisation given to issue an Enforcement Notice in respect of the second mobile double classroom unit on grounds of noise, disturbance and visual impact on neighbouring residents.

2.3 Following the above refusal a revised application (RU.04/0702) was submitted and approved for the relocation of the second classroom unit to the far north-eastern corner of the site, to replace a smaller single timber classroom unit. This was to be carried out by 31st October 2004.

3. Report

3.1 A recent inspection of the site found both double classroom units removed from the western corner of the site, adjacent to the rear boundary with nos. 9-11 Faris Barn Drive. The single timber classroom unit located to the far north-eastern corner of the site has been removed from the site and the double classroom unit has been re-sited in its place in accordance with planning permission RU.04/0702.

3.2 The removal of the temporary classroom units from the western corner of the site has now mitigated the need to serve the Enforcement Notice on the School, previously authorised by the Planning Committee on 13 May 2004. Approval is therefore sought to rescind the enforcement authority.

OFFICERS' RECOMMENDATION that -

the authority for enforcement action at Fullbrook School, in respect of the temporary double classroom unit previously located in the western corner of the site to rear of nos. 9 to 11 Faris Barn Drive, be rescinded.

(TO RESOLVE)

Background Papers

Relevant extracts from RU.04/0702 and RU.04/0271

8. LAND FORMERLY KNOWN AS BROOKSIDE NURSERY AT STROUDE ROAD AND CLOCKHOUSE LANE WEST (DTS)

1. **Purpose of Report**

1.1 **To update Members regarding this site.**

1.2 **To seek the authorisation of the Committee to serve planning enforcement notices in respect of an unauthorised hardcore base, and a series of outbuildings and the uses contained within and around said outbuildings.**

2. **Site**

2.1 The site is a large piece of land bordered by Stroude Road, Clockhouse Lane West, the M25 and Wickham Lane. A plan is attached as Appendix 'C'.

3. **History**

3.1 Records show the site to be known as 'Brookside Nursery'. Relevant planning history is as follows:

3.2 **RU.80/0126. GRANTED:**

Erection of two polythene growing tunnels of 2800 sq ft, tool shed of 96 sq ft and layout of roads, paths and access in association with use of land between Stroude Road and Wickham Lane, Egham, as a nursery garden (as amended on 29 February 1980 and 16 April 1980).

3.3 The application was made by a Mr. Browning of Egham, who stated that he was a landscape gardener and wished to use the land for nursery purposes.

3.4 Objection letters on file indicate that the land was used at the time as a paddocks for grazing horses.

3.5 Officer reports at the time state that no buildings were present at the site.

3.6 This permission was conditioned to ensure that the land, and the buildings permitted, were to be used for nursery garden purposes only, and that no retail or other activities could take place on the site.

3.7 The plans approved showed an existing vehicular access point off of the corner of Wickham Lane and Clockhouse Lane West, leading to a proposed hard-surfaced parking space area at the southern tip of the site. The bridge currently at the site is shown on plans from this time as existing.

3.8 The large polythene tunnels approved were to be located in the approximate position now occupied by the buildings on the site. A large wooden building measuring 12 foot by 18 foot at the base, and reaching up to approximately 13 foot in height was permitted.

3.9 **RU.80/0227. REFUSED:**

The erection of polythene houses for the growing of tropical foliage plants, with ancillary buildings for office and staff use and car parking facilities.

3.10 This application was submitted at the same time as the one mentioned above, but by a different applicant. It appears that the two applicants were both applying for planning permission prior to agreement to buy the land, and that in the event the application referred to above was approved, whilst this one was refused.

3.11 **81/0062. GRANTED:**

Erection of a greenhouse of 8' x 6' by 6'8" high for a temporary period of 5 years.

- 3.12 The applicant (Mr. Browning) sought temporary permission for a greenhouse, which was granted.
- 3.13 **RU.81/0718. GRANTED:**
Application to vary condition 7 of planning consent issued under ref: RU.80/0126 to permit use of nursery for retail sales purposes.
- 3.14 This permission was limited to a period of five years, and was personal to the applicant, Mr. Browning.
- 3.15 It is of note that a hard surfaced car parking area for customers was required by the Council at the southern end of the site, accessed via the bridge evident today.
- 3.16 **RU.82/0020. GRANTED:**
Erection of greenhouse.
- 3.17 The application was for the erection of a glass house, and was made by Mr. Browning. The glass house in question is not present at the site today.
- 3.18 **RU.82/0021. GRANTED:**
Retrospective advert regulations application for display of a sign.
- 3.19 The sign was 8 foot high, and read 'Brookside Nursery – Plants for Sale'. The sign is no longer present at the site.
- 3.20 **RU.82/0039. REFUSED:**
Erection of detached chalet bungalow and garage
- 3.21 The application, made by Mr. Browning, was for the erection of a large bungalow on the land, to be occupied by the applicant and his family. It was refused, but it is clear from the file that the nursery use was extant and established.
- 3.22 **RU.82/0751. REFUSED:**
Use of land for wholesale and limited retail sales for a temporary period of five years as amplified by document accompanying letter of 25.10.82,
- 3.23 The Council refused the application, stating that the previous concession to retail was personal, limited to a five year period, and related to the specific circumstances of the applicant at that time
- 3.24 **RU.90/1123. REFUSED:**
Erection of greenhouses, admin building and associated car park area in connection with use of land as nursery, together with limited sale of surplus produce on retail basis (as amplified by letter dated 8.1.91 and plan received 10.1.91).
- 3.25 The officer's report to Committee at this time states that the land was being used to graze animals, and that there were a few timber buildings on the site. The application states that the original owner was unable to continue using the land for nursery purposes due to problems with land drainage. It is conceivable therefore that though the use as a nursery (as granted in 1980) was still the last use to be permitted, this had been abandoned, or replaced by an animal grazing use.
- 3.26 **RU.95/0964. GRANTED:**
Erection of field shelter

- 3.27 The most recent planning application was made by a Mr. Jones. The officer's report from the time states that the land was split into three separate paddocks, and notes that stables were existing on the site. The applicant stated that he wished to house three ponies in the proposed structure. It seems clear from the file therefore that the nursery use had been replaced by grazing.
- 3.28 It is further noted in the officer's report that the owner of the land had cleared away a lot of the old buildings and greenhouses that had previously been on the site following a request to do so from the Enforcement Section. The buildings cleared would be those passed in the 1980's on the condition that they stay only for a period of five years.
- 3.29 The building permitted is not present at the site in the location approved at present.

4. **2004 PLANNING ENFORCEMENT INVESTIGATION:**

- 4.1 The Council's Planning Enforcement Section has been investigating the site since early 2004. The details of the investigation are as follows:

February 2004

- 4.2 Following reports of tree felling, officers met the owner at the site. He stated that he wished to return the land to its previous use as a nursery, and that he would ultimately apply for planning permission to this end. He stated that he was in the process of clearing the site, and that this would take approximately 8 weeks. A set of ramshackle buildings on the site were to be removed as part of this clearance, according to the owner.
- 4.3 The trees that had been felled on the site were not protected, and no breach of planning control was apparent at this stage.

March 2004

- 4.4 The outer rim of the land had been cleared of trees, making a striking visual difference to the site as viewed from Stroude Road and Clockhouse Lane West. The trees on the site were not protected, and as such the owner was within his rights to fell them. Officers asked the Forestry Commission to check that a Felling Licence was not required, and they confirmed that it was not. The Environment Agency (EA) and County Highways Department were also informed in order that they could attend to any concerns they might have had. In the event the County Highways Department asked the owner to move some new boundary planting back into the site, as he had placed it upon verges not in his ownership. The EA warned the owner as to development affecting the Hurst Drain, but stated ultimately that they would prefer to assess the merits of a planning application if one could possibly be obtained by the Council.
- 4.5 The site was now effectively split in two. On the western side was open land, on the eastern side was a ramshackle set of old buildings which were exposed by the tree felling. Officers began to obtain old photographs of the site to attempt to disprove any claim that they were lawful by virtue of being present for more than four years. It was apparent that some old buildings had existed concealed within the woodlands for many years, but unclear as to whether these had been added to recently.
- 4.6 The owner again stated his wish to use the land as a nursery, and indicated that he would apply for a Certificate of Lawfulness to cover the buildings.
- 4.7 Notwithstanding the research that needed to be done regarding the outbuildings, it was important to note that no breach of planning control was apparent at the site at this time.

May 2004

- 4.8 The owner of the site introduced some hardcore at the southern end of the site. Officers were informed that this was to allow for the parking of vehicles on the site in conjunction with the proposed nursery use. It was noted that new vehicular access points had seemingly been created as part of this operation, though the landowner stated that they were existing, and that he had reinstated them.

4.9 It was considered that though the site was in the Green Belt, the proposed use as a nursery might be granted planning permission if the details of the scheme were satisfactory. It was agreed that reasonable time would be allowed for a full planning application to be made, in order that the Planning Committee could assess the merits of the proposals, and that the relevant consultee bodies could formally be consulted.

4.10 A five week deadline was set for the submission of an application to cover the above.

June 2004

4.11 A planning application was received in relation to the site. It was ultimately made invalid because there was insufficient information submitted to make it a valid planning application. The owner's agent was asked to provide the additional necessary information.

August 2004

4.12 Piles of earth and sand appeared on part of the land adjacent to the M25. It transpired that this section was being used by workers from the motorway-widening scheme, and that planning permission was not therefore required for this.

September 2004

4.13 Officers met with the landowner and his planning agent on the site to discuss the invalid application, which despite further submissions, still lacked sufficient information to be registered as a valid application. It was stated that one month would be allowed for the production of the documents, and that after that time a report would be submitted to the Planning Committee, with or without the information required to validate the planning application.

October 2004

4.14 The information required has not been submitted, and the agent has stated that he is unlikely to meet the timescale set out by Officers.

4.15 In summary, the facts are:

- (a) The tree felling which exposed the site was lawful.
- (b) The compound of ramshackle buildings now apparent had previously been hidden by trees to a large extent. No record exists of planning permission having been granted for many of these, though it seems probable that the owner can show that some of them are over four years old, and that they are lawful. This includes the two caravans on the site, which Officers believe are occupied at least some of the time by workers from the yard.
- (c) Officers have looked at all available photographs of the site from the last few years, including aerial pictures. These photographs probably disprove a claim of lawfulness on some of the buildings. Due to tree coverage it is not possible to state that all buildings are unlawful.
- (d) The creation of a hard surface at the southern end of the site (nearest to the junction of Stroude Road and Clockhouse Lane West) requires planning permission, but no permission has been obtained. It is of note that a hardstanding for parking has been permitted in this location in the past, though it is not clear if this was ever implemented.
- (e) Officers feel the use of this part of the land for the sale of pot plants (something which appears to be occurring on a regular basis, though to a very limited extent) requires planning permission.
- (f) Recently the northern part of the land (adjacent to the M25) has had large piles of earth and/or sand deposited upon it, while the boundary to the motorway has been removed. This is being carried out by the highway workers, as part of the widening, and does not require planning permission.

4.16 There are four apparent breaches of planning control:

- (1) Creation of a hardstanding.
- (2) Use of parts of the land for plant sales/general storage.
- (3) Apparent erection of buildings enclosing a hard surfaced yard area.
- (4) Probable use of the old caravans on the site for residential purposes by the workers in the yard area.

4.17 During the investigation, Officers have had to weigh up the following two contrasting considerations, which Members will now have to bear in mind:

4.18 In the first instance:

No record exists of planning permission having been granted for many of the ramshackle buildings and assorted uses within, including the apparent use of two old touring caravans as overnight accommodation. It seems probable that the bulk of these buildings are not new, but without supporting evidence it is not possible to state that these are lawful. However the Council has no evidence to suggest that they are unlawful. If a certificate of lawfulness were applied for, then the onus rests with the land owner, not the Council, though he need only show that his assertion is correct on the balance of probability, rather than beyond a reasonable doubt.

4.19 The creation of a hardstanding in May 2004 required planning permission. The owners were warned formally that the operation was being carried out at their own risk, and that should permission not be obtained, enforcement action was inevitable. Permission has not been obtained.

4.20 On the other hand:

Whilst the recent changes to the site are visually striking, the fact is that the bulk of the contentious works (tree felling, storage of large piles of earth and sand) do not require planning permission. Enforcement action would not affect these matters, and they in turn cannot affect any decision as to whether to take action.

The use of the site as a nursery (the use proposed by the owner) is not by its nature an inappropriate use or contrary to Green Belt policies. It may be that this nursery use has been abandoned or superseded, this is a consideration when assessing the prospect of allowing such a use to be re-introduced. If such a use was approved, it is unlikely that objection would be raised to a hardstanding/parking area to facilitate the use, particularly given that works of this type have been approved in the past.

4.21 No evidence has been put forward to support the view that the buildings and uses revealed by the tree felling are lawful, it is equally difficult for Officers to be sure as to the exact history of development. It is generally agreed that some form of stables and storage sheds have been present at the site for a number of years, and to describe the buildings and uses as a breach of planning control therefore would be to ignore this important fact. Research will of course continue to be undertaken to try and 'pin down' which, if any, of the buildings are unlawful.

5. Planning Considerations

5.1 The site is situated in the Green Belt where Policy PE2 of the Surrey Structure Plan 1994 seeks to prevent development which would conflict with the purposes of the Green Belt or adversely affect its open character, except in very special circumstances.

5.2 The relevant Green Belt planning policies state that within the Metropolitan Green Belt there will be a presumption against inappropriate development and that the openness and the visual amenities of the Green Belt will be protected.

5.3 Policy GB1 of the Local Plan, adopted in April 2001, indicates that there is a strong presumption against development within the Green Belt that would conflict with the purposes of the green belt or adversely affect its open character. The purposes of the Green Belt, and the aims of Green Belt policies are not met by the current unauthorised development at the site.

- 5.4 The Green Belt policies in the Development Plan are in accordance with the advice given in PPG 2 that there is a presumption against inappropriate development. PPG2 makes clear that planning permission should not be granted for inappropriate development, which by definition is harmful to the Green Belt, except in very special circumstances.
- 5.5 Paragraph 3.8 of PPG2 and Policy GB7 of the adopted Local Plan state that “the re-use of buildings inside a Green Belt is not inappropriate development providing there is a strict control over any associated uses of land surrounding the building which might conflict with the openness of the Green Belt and the purposes of including land in it”. PPG2 paragraph 8.3(b) gives the following examples: extensive external storage, or extensive hardstanding, car parking, boundary walling or fencing.
- 5.6 In addition paragraph 3.15 of PPG2 states that “the visual amenities of the Green Belt should not be injured by proposals for development within or conspicuous from the Green Belt which although they would not prejudice the purposes of including land in Green Belts, might be visually detrimental by reason of their siting, materials or design”.
- 5.7 PPG18 underlines the necessity for the Local Planning Authority to consider carefully whether or not it is necessary to deal with the breach of planning control by means of enforcement action, and to explore whether or not it is possible to permit the activity or development to continue; reminds Local Planning Authorities of their power to withdraw an Enforcement Notice or waive or relax its requirements; and makes clear that there is ample scope for the consideration of personal circumstances.
6. Enforcement Considerations
- 6.1 PPG18 (Enforcement) states that planning enforcement is not to be used to punish those who develop without permission, and that every effort should be made to bring unauthorised development into the planning system by seeking applications for breaches where it seems that they are not wholly contrary to adopted policy. It was made clear to the owner that any works carried out without permission are at their own risk, as they may become the subject of enforcement action. The law is quite clear that development without planning permission is not illegal, and that the service of stop notices cannot be used simply as a holding measure until an application is received or to forcibly generate an application.
- 6.2 The clearing of the site in February 2004 had a drastic effect, but was wholly lawful. The buildings and uses revealed by the tree felling were possibly not lawful, but it was accepted that time would need to be given in order for a Certificate of Lawfulness application to be made. It is also of note that the Council only possess limited information regarding this matter, and therefore a longer time than normal was allowed for the owner to collate evidence.
- 6.3 The creation of a hardcore base on the southern tip of the site in May 2004 required planning permission, and as such was a breach. In light of the site’s planning history, it was felt that the proposed use as a nursery might be acceptable (it was considered to be in 1980), and that a parking area to facilitate this would normally be allowed (again it was in the 1980’s). It was decided to allow a reasonable period for the submission of an application.
- 6.4 The owner and his agent have co-operated in full with Officers in terms of access to the site, and have provided verbal information when requested. An application was received in June 2004, but did not contain enough information to be validated. A meeting on the site in September 2004 clarified the information that was required, but to date this has not been forthcoming.
- 6.5 Whilst a detailed planning application would serve to inform the Environment Agency, the County Council and the Planning Committee, generous deadlines have not been met.
- 6.6 The arguments and information that would be provided by the appellant as part of any applications would probably be the same as those put forward at appeal in the event of notices being served. Though the Committee does not have the benefit of access to this information at this time, it is felt better to take action now and to then address at a later date whatever information is within a possible appeal, than to wait any longer for an application.

6.7 The current works, viewed in isolation from any application to use the land as a nursery, or any evidence to show their legality, are contrary to the adopted policies listed above.

7. Human Rights Act 1998 Considerations

7.1 Members will be aware that the European Convention on Human Rights secures certain fundamental human rights. The Human Rights Act 1998 came into force on 2nd October 2000 and enables individuals to invoke their convention rights. The Act makes it unlawful for a local authority to act in a way which is incompatible with a convention right.

7.2 The refusal of planning permission and the taking of enforcement action, including the issue of injunctive proceedings, can amount to an interference with a person's rights under Article 8. Nonetheless such measures:

- are in accordance with the law;
- pursue the legitimate aim of protecting the rights of others through preservation of the environment; and
- may be necessary in a democratic society where the interference answers a pressing social need and in particular is proportionate to the legitimate aim pursued.

7.3 The proposed action can amount to an interference with the right under Article 1 of the First Protocol to the peaceful enjoyment of the property. Again, however, such interference is permissible if it is in accordance with the law and the public interest.

7.4 Article 8 of the Convention states:

Right to respect for private and family life

"Everyone has the right to respect for his private and family life, his home and his correspondence."

"There shall be no interference by a public authority with the exercise of this right except if such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the Country, for the prevent of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

7.5 Article 1 of the First Protocol states:

Protection of Property

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

"The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions as penalties."

7.6 It is recognised that the action proposed in this report could amount to an interference with the owner and his family's home and private and family life and the commercial interests of the owner and the occupiers (which fall within the protection of and are consistent with the objective and purposes of Article 8). Those interests must be balanced against the public interest in pursuing the legitimate aims in Article 8, particularly the economic well-being of the Country (which includes the preservation of the environment), the objections to the confirmed breaches of planning control on this site being serious and well documented and the breaches themselves being a flagrant and continued abuse of the planning system.

8. Conclusions on the Enforcement Considerations

8.1 Members must fully and fairly balance the considerations referred to in this report when deciding to authorise any enforcement action against the unauthorised developments and

uses on this site. Members will wish to have regard to the human rights issues detailed in Section 7 and will wish to consider whether the action they authorise is a proportionate remedy in all the circumstances of the case.

- 8.2 Members will take into account all the considerations material to this case. On the one hand there are the personal circumstances of the families and workers, the likely distress and difficulties caused by the service of any statutory notices or the institution of any proceedings and the convention rights of the landowners, their family and the occupiers. On the other hand there is the significant harm to the Green Belt contrary to the main aims and objectives of its Green Belt designation.
- 8.3 The Committee is requested to consider all the facts and the issues in relation to this case and determine whether further legal action is both reasonable, compatible with the Human Rights Act 1998, proportionate to the legitimate aim being pursued and necessary to bring about the cessation of the continuing breaches of planning control and prevention of further breaches of planning control.

OFFICERS' RECOMMENDATION that -

- (i) **notwithstanding the prospect that further research may show some of the developments referred to in this report to be lawful, the Director of Administration and Leisure be authorised to issue enforcement notice(s) under Section 172 of the Town and Country Planning Act 1990 requiring:**
- (a) **The removal of the hardcore base at the southern tip of the land (and its removal from the site).**
 - (b) **All buildings, structures and hardsurfaces within the site to be removed from the site.**
 - (c) **The cessation of all storage uses on the site.**
 - (d) **The cessation of the use of any or all caravans or buildings on the site as residential accommodation.**
 - (e) **The removal of all or any caravans on the site.**
 - (f) **The cessation of any sales from the site.**
 - (g) **The closure of all unauthorised vehicular access points into and out of the site.**
- (ii) **the Director of Administration and Leisure be authorised to take appropriate action in carrying out necessary works or prosecution under Sections 178 and 179 of the Town and Country Planning Act 1990 in the event that these notice(s) once effective are not complied with.**

Reasons for Issuing of Enforcement Notice(s)

1. **The hardcore, the buildings, the structures, hardsurfaces, vehicular access, the storage uses, the caravans with their spread of development across the site, the height, positioning and materials are inappropriate developments in the Green Belt producing hard, prominent, unsightly features detrimental to the visual amenities of the Green Belt and the openness of the Green Belt, contrary to Policies PE1 and PE2 of the Surrey Structure Plan 1994, Policy LO4 of the Surrey Structure Plan 2004 (approved October 2004), Policy GB1 of the Runnymede Borough Local Plan Second Alteration April 2001 and Planning Policy Guidance Note 2 'Green Belts', January 1995.**

2. **The Planning Authority do not consider that very special circumstances have been put forward in support of the application to justify the granting of planning permission contrary to Policies PE1 and PE2 of the Surrey Structure Plan 1994, Policy LO4 of the Surrey Structure Plan 2004 (approved October 2004), Policy GB1 of the Runnymede Borough Local Plan Second Alteration April 2001 and Planning Policy Guidance Note 2 : 'Green Belts', January 1995.**

(TO RESOLVE)

Background Papers

Relevant extracts from planning application files

9. PLANNING APPLICATIONS DETERMINED BY DIRECTOR OF TECHNICAL SERVICES

A list of planning applications recently determined by the Director of Technical Services under his delegated powers is attached at Appendix 'D'. If Members have any particular matters they wish to raise, prior notice to the Chairman would be of assistance.

(FOR INFORMATION)

Background Papers

None

10. APPEAL DECISIONS

The Planning Inspectorate has recently determined the appeals mentioned below. The appeal decisions are available for inspection in the Members' Room.

	<u>Site/Development</u>	<u>Decision</u>
a)	Foxwoods, Trumps Green Road, Virginia Water - planning appeal regarding erection of 4 No 5 bed detached dwellings and demolition of existing derelict house (03/1483)	DISMISSED
b)	Foxwoods, Trumps Green Road, Virginia Water - planning appeal regarding failure to determine application within prescribed period for erection of 5, five bed detached dwellings (04/0437)	DISMISSED
c)	78 Bousley Rise, Ottershaw - planning appeal regarding demolition of existing bungalow and associated outbuildings and replacement with a new dwelling (03/1226)	DISMISSED
d)	White Timbers, Woodham Park Way, Woodham - planning appeal regarding erection of a single dwelling (03/1329)	DISMISSED

(FOR INFORMATION)

Background Papers

Appeal Decision

11. STANDING ORDER 42 - URGENT ACTION

Acting in accordance with Standing Order 42 the following action has been undertaken by the Officer shown below after consultation with the Chairman.

<u>Officer</u>	<u>Action Taken</u>	<u>Central Index No</u>
Director of Administration and Leisure	Withdrawal of Enforcement Notice in respect of Greenside, Chestnut Avenue, Virginia Water	564

(FOR INFORMATION)

Background Papers

Proforma on HCA SO 42 file

12. EXCLUSION OF PRESS AND PUBLIC

If Members are minded to consider any of the foregoing reports in private, it is the

OFFICERS' RECOMMENDATION that -

the press and public be excluded from the meeting during discussion of the following reports under Section 100A(4) of the Local Government Act 1972 on the grounds that the reports in question would be likely to involve disclosure of exempt information of the description specified in appropriate paragraphs of Part I of Schedule 12A of the Act.

(TO RESOLVE)

PART II

Matters involving Exempt or Confidential information in respect of which reports have not been made available for public inspection

a) Exempt Information

(No reports to be considered under this heading).

b) Confidential Information

(No reports to be considered under this heading).