



PLANNING COMMITTEE

2nd April 2015

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

E14/0543 – Former Three Crowns Public House, Sutton Road, Walsall, WS5 3AX

1.0 **PURPOSE OF REPORT**

To advise members of ongoing issues and to request authority to pursue planning enforcement action against unauthorised development including incursion into and damage to a Site of Importance for Nature Conservation (SINC) through these works.

2.0 **RECOMMENDATIONS**

2.1 **That authority is granted for the Head of Planning and Building Control to issue an Enforcement Notice** under the Town and Country Planning Act 1990 (as amended), to require remedial actions to be undertaken as shown below in 2.4.

2.2 **To authorise the Head of Planning and Building Control to institute prosecution proceedings** in the event of non-compliance with an Enforcement Notice or the non-return of Requisitions for Information or a Planning Contravention Notice; and the decision as to the institution of Injunctive proceedings in the event of a continuing breach of planning control.

2.3 **To authorise the Head of Planning and Building Control, to amend, add to, or delete from the wording** set out below stating the nature of the breaches, the reasons for taking enforcement action, the requirements of the Notice, or the boundaries of the site, in the interests of ensuring that accurate and up to date notices are served.

2.4 **Details of the Enforcement Notice**

The Breach of Planning Control:-

Without the required planning permission, the carrying out of works to excavate foundations for the erection of a new building and incursion into and damage to a Site of Importance for Nature Conservation (SINC) through the storage of spoil from the unauthorised excavation works on the SINC land.

Steps required to remedy the breach:-

- Remove from the land (designated as a SINC) all deposited spoil and repair and restore the land using only the specific methods and guidance provided and agreed with the Council's ecologist.

- Repair the boundary hedge to the SINC site to a specification agreed with the Council's ecologist
- Back fill excavations with inert soil/hardcore and restore to previous land levels

Period for compliance:-

Three months.

Reason for taking Enforcement Action:-

Works have been carried out to excavate the land in preparation for the creation of foundations for a proposed house, which does not have a valid planning permission due to non-discharge of pre-commencement conditions prior to commencement of development. The development as it exists is unauthorised. As the site is within the Green Belt, the unauthorised works are by definition harmful to the Green Belt.

The depositing of spoil material arising from these works on land designated as a SINC site has had a significant impact on the ecological integrity of the land, and the damage to a significant hedgerow. This is contrary to the aims and objectives of Walsall's Unitary Development Plan policies GP2, ENV18 and ENV23; the Black Country Core Strategy policy ENV1, and the National Planning Policy Framework.

3.0 FINANCIAL IMPLICATIONS

An appeal against an enforcement notice could be subject to an application for a full or partial award of the appellant's costs in making an appeal if it was considered that the Council had acted unreasonably. Planning applications may also be submitted that require an application fee.

4.0 POLICY IMPLICATIONS

The report recommends enforcement action in order to seek compliance with planning policies. The following planning policies are relevant in this case:

Planning law requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is a material consideration in planning decisions and sets out that *"...due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)"*.

National Planning Policy Framework (NPPF)

The NPPF sets out the Government's position on the role of the planning system in both plan-making and decision-taking. It states that the purpose of the planning system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it emphasises a *"presumption in favour of sustainable development"*.

It is based on 12 core planning principles. Those particularly relevant in this case are:

- Take account of the different roles and characters of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving total communities within it
- Contribute to conserving and enhancing the natural environment
- Encourage the effective use of land by reusing land that has been previously developed
- Actively manage patterns of growth

Key paragraphs of the NPPF relevant in this case:

79. States the essential characteristic of Green Belts is their openness and permanence.

80. Identifies the five purposes of Green Belts which are:

- *to check the unrestricted sprawl of large built-up areas*
- *to prevent neighbouring towns merging into one another*
- *to assist in safeguarding the countryside from encroachment*
- *to preserve the setting and special character of historic towns*
- *to assist in urban regeneration by encouraging recycling of derelict and other urban land*

81. States local planning authorities should plan positively to enhance the beneficial use of the Green Belt and to retain and enhance landscapes and visual amenity. It also encourages improving damaged or derelict land in the Green Belt.

87. States inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances.

88. Requires substantial weight to be given to any harm to the Green Belt and states that very special circumstances will not exist unless the potential harm is clearly outweighed by other considerations.

89. States the construction of new buildings is inappropriate in Green Belt except for specific purposes including:

- *buildings for agriculture or forestry*
- *provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it*
- *replacement of a building provided the new building is the same use and not materially larger than the one it replaces*

90. Certain types of development are not inappropriate provided they do not conflict with the openness of the Green Belt including engineering operations.

109. The planning system should protect and enhance valued landscapes and minimise impacts on biodiversity.

118. Planning permission should be refused for development resulting in loss of deterioration of irreplaceable habitats.

207. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

On **decision-taking** the NPPF sets out the view that local planning authorities should approach decision taking in a positive way to foster the delivery of sustainable development and look for solutions rather than problems and work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

On **planning conditions** the NPPF says:

Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

The Development Plan

The Black Country Core Strategy (BCCS)

http://www.walsall.gov.uk/index/environment/planning/local_development_frame_work/ldf_core_strategy.htm

The relevant policies are:

CSP1: The Growth Network
CSP2: Development Outside the Growth Network
CSP3: Environmental Infrastructure
CSP4: Place Making
HOU1: Delivering Sustainable Housing Growth
ENV1: Nature Conservation
ENV2: Historic Character and Local Distinctiveness
ENV3: Design Quality

It is considered in this case that the relevant provisions of the BCCS can be given full weight as they are consistent with the NPPF.

Saved Policies of Walsall's Unitary Development Plan (UDP)

www.walsall.gov.uk/index/environment/planning/unitary_development_plan.htm

Policies that have been saved and not replaced by the BCCS remain part of the development plan.

The relevant policies are:

GP2: Environmental Protection
ENV1: The Boundary of the Green Belt
ENV2: Control of Development in the Green Belt
ENV3: Detailed Evaluation of Proposals Within the Green Belt
ENV14: Development of Derelict and Previously-Developed Sites
ENV18: Existing Woodlands, Trees and Hedgerows
ENV23: Nature Conservation and New Development
ENV32: Design and Development Proposals
ENV33: Landscape Design

H3: Windfall Sites on Previously Development Land and Conversion of Existing Buildings

It is considered in this case that the relevant provisions of the UDP can be given full weight as they are consistent with the NPPF.

Supplementary Planning Documents

Where relevant BCCS and UDP policies are consistent with the NPPF, the related SPD(s) will also be consistent provided they are applied in a manner consistent with NPPF policy. The SPDs relevant to this application are:

Designing Walsall (2008)

Conserving Walsall's Natural Environment (2008)

5.0 LEGAL IMPLICATIONS

Pursuant to section 171A(a) of the Town and Country Planning Act 1990 (as amended) the carrying out development without the required planning permission or failing to comply with a condition or limitation subject to which planning permission has been granted constitutes a breach of planning control.

Section 171B adds that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. In respect of any other breach (such as change of use or breach of condition) no enforcement action may be taken after the end of the period of ten years from the date of the breach except where the breach of planning control consists of a change of use of any building to use as a single dwellinghouse, in which case a four year period applies.

Officers consider that the breach of planning control occurring at this site commenced within the last four years.

Section 172 of the Town and Country Planning Act 1990 (as amended) provides that the local planning authority may issue an Enforcement Notice where it appears to them:

- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the development plan and to any other material considerations.

The breach of planning control is set out in this report. Members must decide whether it is expedient for the enforcement notice to be issued, taking into account the contents of this report.

Non-compliance with an Enforcement Notice constitutes an offence. In the event of non-compliance the Council may instigate legal proceedings. The Council may also take direct action to carry out works and recover the costs of those

works from the person on whom the Enforcement Notice was served. Any person on whom an Enforcement Notice is served has a right of appeal to the Secretary of State.

The proposal has been screened under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and was determined not to be EIA development.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising from this report

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Pheasey Park Farm

9.0 CONSULTEES

None

10.0 CONTACT OFFICER

Tim Pennifold

Development Management: 01922 652612

11.0 BACKGROUND PAPERS

Enforcement file not published

David Elsworthy

Head of Planning and Building Control

Planning Committee
2nd April 2015

12.0 BACKGROUND AND REPORT DETAIL

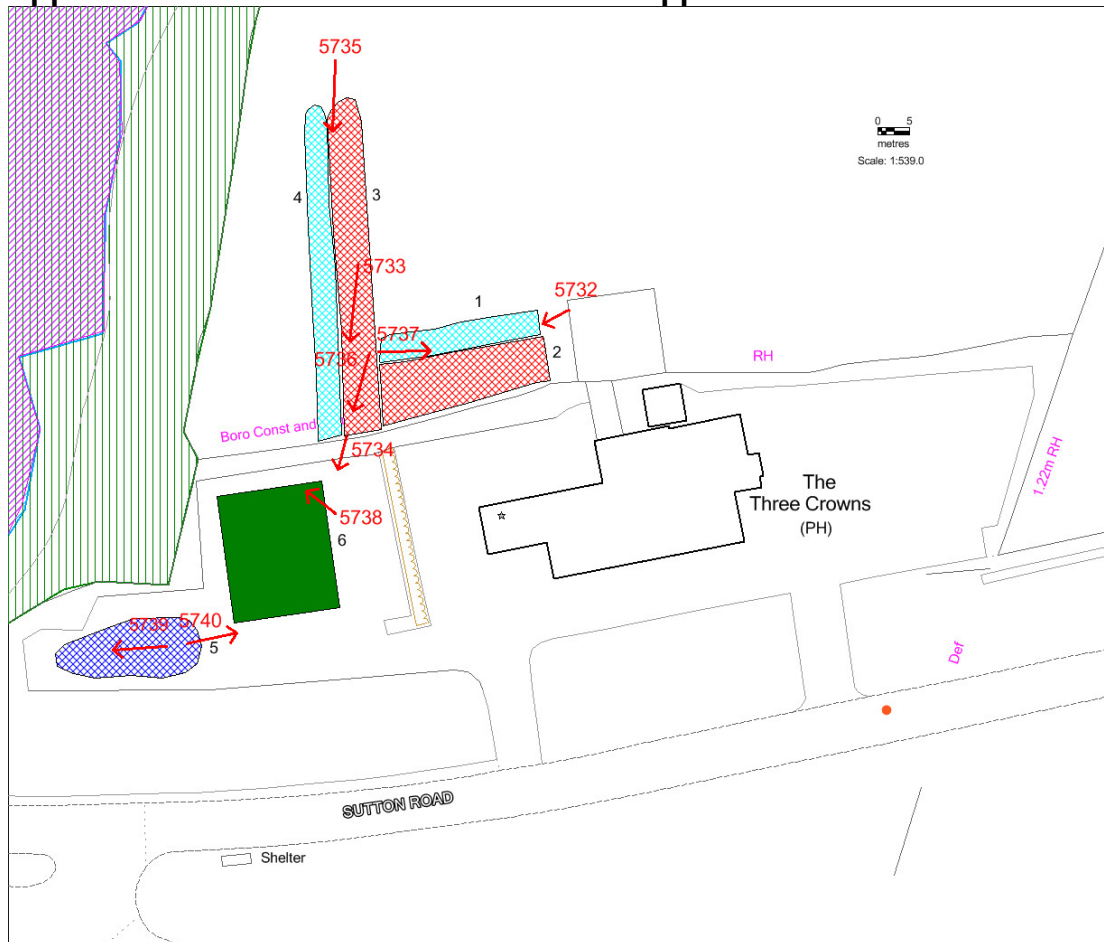
- 12.1 The site of the Former Three Crowns Public House on Sutton Road is located within the Green Belt and was previously granted planning permission 11/0675/FL on 7th November 2011 for: The conversion of Three Crowns Public House into a dwelling & construction of 3 no. detached dwellings.
- 12.2 On the 4th November 2014 reports were received that activity was taking place at the site involving the presence of mechanical diggers.
- 12.3 Officers visited the site on the 10th November 2014 to find that works had been carried out to excavate an area of land to create foundations for a building identified as being plot 2 on the approved plans under 11/0675/FL. The officer also noted that much of the spoil arising from these works had been deposited on land at the rear of the excavated site.
- 12.4 The Council's ecologist visited the site on 27th November and found that sub-soil, earth and clay arising from the excavation works had been stored on land designated as a SINC. The SINC is an important limestone grassland. The area of land is approximately 0.085 to 0.1 hectares of the SINC and is considered to be significantly damaged, including the creation of an access into the SINC area through the removal of significant hedgerows (the hedge forms the boundary of the Three Crowns SINC) allowing heavy plant vehicles to access the land in order to store the potentially contaminated material sourced from excavation works. The land and the hedge identified would now need to be restored and repaired.
- 12.5 Planning Officers wrote to the owner and their planning agent on the 4th December to advise that planning permission 11/0675/FL had expired on the 7th November 2014. The letter advised that although council officers were aware works had been carried out, in their opinion the planning permission had not been lawfully implemented as pre-commencement conditions were required to have been discharged prior to any works commencing on site. As these conditions, which are considered fundamental to the planning permission, had not been discharged consequently, the planning permission had not been lawfully implemented, meaning that the permission had lapsed and any works were unlawful development and a breach of planning control.
- 12.6 In addition the letter also advised that damage had been caused to the SINC site and the land would now need to be restored and repaired immediately. Specific instructions were included within the letter detailing the working methods to be used to rectify the damage caused and restore the land to a sufficient standard to remedy the ecological harm caused.

These works included:

- Removal of grey clay and brick rubble from the site, before Christmas 2014.
- Spread and compact the stored topsoil and vegetation.

- Replant hedgerow to scheme approved in writing by LPA by end of March 2015.
- Monitor re-growth of grassland in the spring using professional ecological expertise to assess site and make recommendations. Take action to restore grassland by following recommendations of ecologist by hand weeding, mowing, reseeding or other measures, the restoration of which may take several years of management to return the damaged area to species-rich grassland.

Approximate location of excavations and tipped material.



Legend (The four digit numbers show the locations and directions of photographs.)

- 1 Location of stripped topsoil and vegetation from SINC grassland.
- 2 Location of stripped grey clay from approximate site of Plot 1 of the proposed development.
- 3 Location of stripped brick rubble from approximate site of Plot 1 of the proposed development.
- 4 Location of stripped topsoil and vegetation from SINC grassland.
- 5 Location of stripped tarmac and top layer of brick rubble from approximate site of Plot 1 of the proposed development.
- 6 Approximate location of site of Plot 1 of the proposed development.

12.7 The owners were also advised not to continue any further development works relating to the lapsed planning permission and that a new planning application should be submitted within 28 days in order to restore planning permission. The Council has not received a new planning application.

- 12.8 A meeting took place between the owner, an elected member and council officers on 8th January 2015. It was agreed at the meeting that the owner would appoint an ecologist to oversee the restoration works and they would provide a written submission of the timetable and schedule of works, with the aim of the works being carried out on site before the middle of March.
- 12.9 Officers wrote again to the owner on 12th January to reiterate and confirm the council officer's advice contained within the original letter dated the 4th December 2014. The letter advised that the services of a suitably qualified and experienced ecologist should be appointed to oversee works to rectify the damage caused to a satisfactory conclusion. All works, must be agreed in advance with the Council's Ecologist in conjunction with planning officers prior to any works taking place to save any further damage to the SINC. The Council's ecological advice was reiterated with instructions that the works should be completed within the following timescale:

No later than the middle of March 2015.

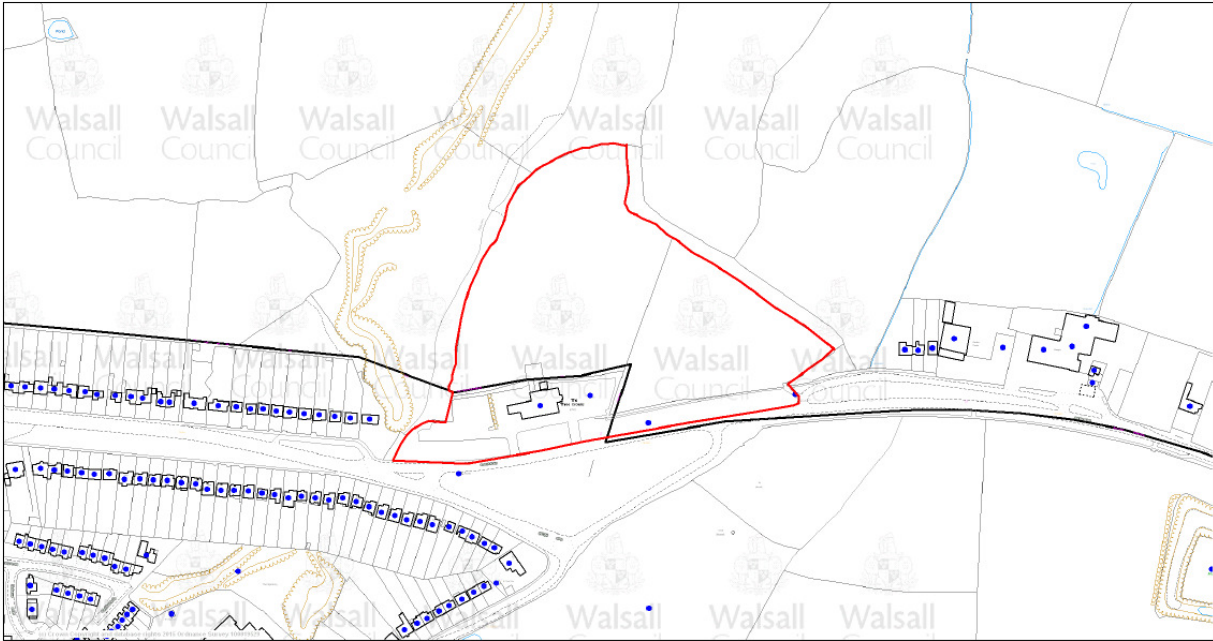
- Remove grey clay and brick rubble from the site urgently.
- Spread and compact the stored topsoil and vegetation on the damaged areas of the SINC urgently.
- Replant hedgerow to scheme approved in writing by LPA by the middle of March 2015.
- Monitor re-growth of grassland in the spring using a professional ecological expertise to assess site and make recommendations. Take action to restore grassland by following recommendations of ecologist by hand weeding, mowing, reseeding or other measures required.

The restoration may take several years of management to return the damaged area to species-rich grassland.

The owner was then advised to contact officers within 7 days to confirm the action they would be taking.

- 12.10 Although no further works have been carried out on the land there has also been no further contact or correspondence from the owner with council officers and no new planning application has been submitted.
- 12.11 In view of the above it is considered expedient that enforcement action is now taken through the issue of an enforcement notice to rectify the breach of planning control and the harm it is causing. Officers also request that should any enforcement notice not be complied with and prosecution proceedings are undertaken, that proceedings should also be brought in regard to non-return of any Requisition for Information (RFI).

Three Crowns P.H and associated land, Sutton Road, Walsall, WS5 3AX



Walsall Council

Scale 1/2500

Date 25/3/2015

Centre = 404827 E 298250 N

Reproduced from the Ordnance Survey mapping
with the permission of the Controller of Her Majesty's
Stationery Office.
(c) Crown Copyright and database rights 2015 Ordnance Survey 100019529