



DEVELOPMENT CONTROL COMMITTEE

Date: 22nd April 2008

Report of Head of Planning and Building Control - Regeneration

Land on east side of Chapel Lane, Pheasey

1.0 PURPOSE OF REPORT

To inform members of investigations into the lawfulness and impacts of the use of the land by for motorbike riding, and to seek authority to enforce should it become appropriate.

2.0 RECOMMENDATION

2.1 That Members authorise the continuation of investigations, and delegate authority to the Assistant Director – Legal and Constitutional Services, in consultation with the Head of Planning and Building Control, to issue an enforcement notice under section 172 of the 1990 Act, or such other action as may be appropriate.

2.2 That authority is granted to the Assistant Director – Legal and Constitutional Services, to commence prosecution proceedings, in the event that any notice which is issued is not complied with.

3.0 FINANCIAL IMPLICATIONS

None arising from the report.

4.0 POLICY IMPLICATIONS

The report indicates how planning policies may apply in this case, and also takes into account consideration being given under different legislation.

5.0 LEGAL IMPLICATIONS

None arising from the report.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising directly from this report.

7.0 ENVIRONMENTAL IMPACT

The report indicates preliminary assessments of environmental impact.

8.0 WARD(S) AFFECTED

Pheasey Park Farm

9.0 **CONSULTEES**

Pollution Control Division - WMBC

10.0 **CONTACT OFFICER**

Philip Wears - Planning Enforcement Team: 01922 - 652411

11.0 **BACKGROUND PAPERS**

Enforcement file not published.

David Elsworthy, Head of Planning and Building Control

12 BACKGROUND AND REPORT DETAIL

- 12.1 A plan showing the location of the land is attached to this report. The land comprises roughly 8 hectares of grassland on the side of a valley, with Chapel Lane on its west side and Pinfold Lane on its north side. Access is via field gates on these two road frontages. The grass is not long, suggesting that grazing has been taking place, but at its southern end the land is wider and here the passage of motorbikes has worn a 'circuit' into the grass surface (see attached plan). There are no constructed humps, or hollows or other visible signs of dedicated motor biking use.
- 12.2 The surroundings comprise other pasture land and scattered dwellings and farmsteads, with a cricket club ground on the opposite side of the lane. The area forms part of the Green Belt and the Great Barr Conservation Area.
- 12.3 Complaints have been received by the Council's Pollution Control Officers and Planning Officers regarding noise nuisance from the use of motorbikes particularly on Saturdays and Sundays. These allege that the level of activity has been growing and on a recent Saturday 15 different motorbikes and 2 quad-bikes were present within a 7 hour period, together with a stock-car. Officers are given to understand that the activity commenced in 2005 in an intermittent way but began to build up in late 2007.
- 12.4 The joint investigation by Pollution Control and Planning Officers is continuing, in particular into the interpretation of the legislation. Under planning regulations planning permissions is granted by law (permitted development), subject to certain qualifications, for temporary changes of use on open land such as this. Normally these are restricted to taking place on no more than 28 days in any one calendar year, but "motor car and motorcycle racing including trials of speed , and practising for these activities" are a use for which the automatic planning permission is restricted to no more that 14 days. (The intention appears to be to strike a balance between the interests of the people enjoying the activity, and the interests of the people adversely affected by it.) If the use is to be for a longer period, planning permission is required. The Article 4 Direction (which restricts certain permitted development rights in part of the Conservation Area) does not affect this aspect of the permitted development rights.
- 12.5 Pollution Control Officers and Planning Officers have recently written to the land owner reflecting the powers available to control noise nuisance under the Environmental Protection Act, and the application of the planning regulations. The owner has also been requested to provide information. Information has also been provided to officers by local people.
- 12.6 By the time of the Committee meeting it appears likely that the entitlement to automatic planning permission will have been used up for this calendar year, irrespective of the particular interpretation of the regulations which is adopted. At the time of writing it is not known if the owner will cease the use. It is hoped however to update Members at the meeting.

- 12.7 The level of nuisance experienced by local residents is still being assessed in consultation with Pollution Control Officers. Officers estimate that over 20 dwellings could be affected because as well as some individual dwellings, there is a group of 'barn-conversion' dwellings near the north end of the land, and a group of dwellings to the south near Chapel Farm. The distances of these from the motorbike 'circuit' range from about 175 metres to 400 metres. The cricket club ground on the opposite side of Chapel Lane is considerably closer.
- 12.8 If the use continues and planning enforcement action is appropriate, the legalities mean action could be complex. The serving of an enforcement notice could not be relied on to ensure no further activity this year, if an appeal is lodged. The unauthorised activity can continue during an appeal against the notice, and the appeal process is unlikely to deliver a decision much before the end of 2008.
- 12.9 Even if the notice is upheld, a new permitted development allowance could become available on 1st January 2009. A notice might not take away this allowance because it is technically a grant of temporary planning permission.
- 12.10 Pollution Control Officers are already considering whether there is a justification to serve an Abatement Notice under the Environmental Protection Act, in order to require the noise level to be reduced.
- 12.11 Harm to the appearance of the Conservation Area from damage to the road verges could be another justification for taking planning enforcement action. Officers are also exploring the scope for an Article 4 Direction (restricting permitted development rights). The recommendation reflects this complicated situation.

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