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DATE: 4 October 2011

## PLANS SUB-COMMITTEE NO. 2

Meeting to be held on Thursday 13 October 2011

### SUPPLEMENTARY AGENDA

**THE CHAIRMAN TO MOVE THAT THE ATTACHED REPORT, NOT INCLUDED IN THE PUBLISHED AGENDA, BE CONSIDERED A MATTER OF URGENCY ON THE FOLLOWING GROUNDS:**

“In the light of the substantial scale and extensive environmental damage caused by the recent deposit of waste material on the land, urgent consideration should be given to authorising appropriate action to ensure that no further waste material is deposited and the material is removed from the land to restore it to its former condition.”

S5.2	Cray Valley East;	1 - 4	PSC2 131011 Land at Lower Hockenden Farm, Star Lane, Orpington - Unauthorised Deposit of Waste Material, Formation of Vehicle Access and Construction of Hardstanding
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**THE CHAIRMAN TO MOVE THAT THE ATTACHED REPORT, NOT INCLUDED IN THE PUBLISHED AGENDA, BE CONSIDERED A MATTER OF URGENCY ON THE FOLLOWING GROUNDS:**

“Following the decision by PSC on 15-9-11 works on site have been suspended. A new planning application has been received which will be reported to a forthcoming committee but the applicant has requested that the decision to issue a stop notice is urgently reviewed so that construction work on the scheme permitted in 2010 is not subject to further delays.”

S5.3	Copers Cope	5 - 8	Land r/o 80 High Street, Beckenham - Reinstatement of Fire Damaged Building
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*Copies of the documents referred to above can be obtained from*  
[www.bromley.gov.uk/meetings](http://www.bromley.gov.uk/meetings)

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Report No.  
DRR/11/108

## London Borough of Bromley

### PART 1 - PUBLIC

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**Decision Maker:** Plans Sub Committee 2

**Date:** 13 October 2011

**Decision Type:** Urgent Non-Executive Non-Key

**Title:** LAND AT LOWER HOCKENDEN FARM, STAR LANE, ORPINGTON - UNAUTHORISED DEPOSIT OF WASTE MATERIAL, FORMATION OF VEHICLE ACCESS AND CONSTRUCTION OF HARDSTANDING.

**Contact Officer:** Tim Bloomfield, Development Control Manager  
Tel: 020 8 313 4687 E-mail: tim.bloomfield@bromley.gov.uk

**Chief Officer:** Chief Planner

**Ward:** Cray Valley East

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1. Reason for report

A substantial volume of waste material has recently been deposited in a field forming part of Lower Hockenden Farm, Star Lane. A new vehicle access has been created from Star Lane and high entrance gates erected. Hardcore has been deposited near the entrance to the field to form a large area of hardstanding. The site is within the Green Belt and deposited material significantly detracts from the open character and appearance of the surrounding area.

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2. **RECOMMENDATION(S)**

1. Authority be given to issue an Enforcement Notice requiring the deposit of waste material to cease and the deposited material to be removed from the land.
2. In the event of further waste material being deposited on the land after the issue of the enforcement notice further authority be given to take injunction proceedings in the County Court to prohibit the unauthorised tipping of waste material on the land.

### Corporate Policy

1. Policy Status: <please select>.
  2. BBB Priority: <please select>.
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### Financial

1. Cost of proposal: <please select>
  2. Ongoing costs: <please select>.
  3. Budget head/performance centre:
  4. Total current budget for this head: £
  5. Source of funding:
- 

### Staff

1. Number of staff (current and additional):
  2. If from existing staff resources, number of staff hours:
- 

### Legal

1. Legal Requirement: <please select>
  2. Call-in: <please select>
- 

### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
- 

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes.
2. Summary of Ward Councillors comments:

### 3. COMMENTARY

- 3.1 On 30 September 2011 information was received that hardcore and rubble was being deposited in a field forming part of Lower Hockenden Farm, Star Lane, adjacent to a telecommunications mast.
- 3.2 The site was visited on 3 October 2011 and it was confirmed that an access had been formed into the field from Star Lane and metal gates installed in a new opening in the hedge. From this entrance a large expanse of flattened hardcore extended approx. 30-40m into the field. A digger was in the process of levelling and compacting the hardcore to form a large hardstanding.
- 3.3 Beyond the extent of hardcore there was a large depression in the middle before the land rises to the northern boundary. Waste material had been deposited in the dip and the digger operator stated that the field was being levelled in order that it could be cultivated.
- 3.4 The operator produced an Exemption Certificate dated 25 August 2011 from the Environment Agency, addressed to the leaseholder of Lower Hockenden Farm. This document gave Confirmation of Registration under the Environmental Permitting Regulations 2010 and gives exemption for the deposit of non harmful material subject to a number of conditions. One condition relates to the need to obtain planning permission for the activity before operations commence. No such permission has been sought or granted.
- 3.5 On 5 October 2011, a further site visit was carried out by officers from the Environment Agency and LB Bromley. There was evidence of extensive deposit of waste material including rubble, concrete brick, metal, plastic and timber. The leaseholder of Lower Hockenden Farm, Mr Mark Harvey, was present and stated that the material had originated from the Sitec waste transfer site at Cornwall Drive off Sevenoaks Way, St Pauls Cray. He was advised to cease work and secure the site to prevent any further tipping. This was confirmed in writing on 6 October when the leaseholder was advised not to carry out any further tipping and would be required to remove the tipped material.
- 3.6 It is estimated that approx. 1000 tons of waste material has so far been deposited on the land. The activity involves extensive engineering operations and a material change of use of the land which require planning permission. The depth of the tipped material has raised ground levels by up to 2m and has materially changed the appearance of the landscape when viewed from Star Lane. The site is within the Green Belt and the deposit of waste material significantly detracts from the openness and rural character of the area to the extent that enforcement action is considered to be expedient.
- 3.7 A further site visit on 7 October indicated that no further tipping appeared to have occurred but a significant amount of waste material remains on the land. The metal entrance gates were padlocked and large concrete blocks had been placed behind the gates to deter unauthorised access. Further visits will be made to monitor the situation before the matter is considered by committee.
- 3.8 Members are requested to authorise enforcement action in respect of the operational development and the material change of use requiring:
- the deposit of waste material to cease
  - the removal of the waste material from the land
  - restoration of the land to its former condition and appearance
  - removal of the entrance gates

- closure of the access onto Star Lane and reinstatement of the hedge along the road frontage

- 3.9 In the event of further tipping taking place after the notice is issued it is further recommended that an application is made to the Courts to take injunction proceedings against to prohibit the deposit of waste and require the restoration of the land.
- 3.10 In reaching a decision to apply to the County Court for an injunction, the Committee must therefore take various matters into account:-

The London Borough of Bromley is the Planning Authority for the area and as such has a duty to enforce planning control, taking into account relevant legislation, Government guidance and its own policies as set out in the Unitary Development Plan. It must, however, also demonstrate that the use of an injunction is in the public interest, and it must give consideration to all possible remedies and be convinced that no alternative means of enforcement would be effective, and that due consideration of the human rights of the defendant have been taken account of.

- 3.11 In considering an application for an injunction, the Court will apply various tests set out in the Porter judgement which must be satisfied and it will have to be demonstrated that, in reaching a decision to seek this form of enforcement, the Committee has also taken into account all material considerations.

**(a): Necessity** – whilst the court will not question the correctness of the planning status, it is bound to come to a broad view as to the degree of damage resulting from the breach and the urgency or otherwise of bringing it to an end.

*In this case, it is estimated that approx. 1000 tons of waste material has been deposited on the land without planning consent. This has resulted in a material change of use of the land due to the carrying out of extensive engineering operations which requires planning consent. The depth of the tipped material has raised ground levels by up to 2m which has resulted in a material change of the landscape when viewed from Star Lane.*

*Members will need to consider reasons for the urgency . Members may feel that in view of the location within the Green Belt the deposit of waste material significantly detracts from the openness and rural character of the area, and in view of the previous enforcement history at the site it may be appropriate in the this instance to institute injunction action in order to rectify the breach.*

**(b): Proportionality** – it is essential to demonstrate that the use of an injunction is appropriate and necessary for the attainment of the public interest objective sought but also that it does not impose an excessive burden on the individual whose private interests are at stake.

*In this case, members may wish to consider the importance of preserving the character of the Green Belt and as such believe that the use of an injunction would be proportionate in this case in order to rectify the breach.*

*Members should note that any breach of an injunction once granted may give rise to sanctions including imprisonment.*

**(c): Planning history and degree of flagrancy** - There have been recent planning applications for the conversion/change of use of existing farm buildings at Lower Hockenden Farm but no relevant applications on the land where tipping of waste is taking place.

Report No.  
DRR/11/107

## London Borough of Bromley

### PART 1 - PUBLIC

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**Decision Maker:** Plans Sub Committee 2

**Date:** 13 October 2011

**Decision Type:** Non-Urgent                      Non-Executive                      Non-Key

**Title:** **LAND R/O 80 HIGH STREET, BECKENHAM –  
REINSTATEMENT OF FIRE DAMAGED BUILDING**

**Contact Officer:** Tim Bloomfield, Development Control Manager  
Tel: 020 8 3134687 E-mail: tim.bloomfield@bromley.gov.uk

**Chief Officer:** Chief Planner

**Ward:** Copers Cope

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#### 1. Reason for report

- 1.1 The site is situated to the rear of 80 High Street, Beckenham and to the south of residential properties in Church Avenue, Beckenham. It comprises a commercial dance school and associated buildings which were accommodated in several large brick-built units dating from the 1950's
- 1.2 Following an extensive fire in 2008 the units were virtually destroyed. Earlier this year the site was cleared of rubble and debris leaving the original brick walls and a gable end wall.
- 1.3 A complaint was received alleging that rebuilding works had commenced to re-instate the fire-damaged buildings without planning permission and included an increase in the height of the original walls. A supplementary report was presented to Plans Sub Committee on 15 September 2011 and it was resolved to authorise the issue of a stop notice if works on site did not stop.
- 1.4 Since that decision work on site has been suspended and a planning application has been submitted. As works have ceased enforcement and stop notice proceedings have not been issued. The applicant has requested that the decision to authorise the stop notice should be reviewed and has submitted the following supporting information:

*“Agenda Item S5.2 considered an objection to the progression of ongoing reinstatement works at the above site. It is understood, on the information considered, that the Committee's decision was to recommend the issue a Stop Notice should on-site works proceed in advance of determination of a subsequent retrospective application for planning consent. It is noted that this was contrary to the Officer's written recommendation, which highlighted the works to be of a relatively minor nature given*

*the intent to reinstate a building of similar dimensions and scope to that which previously existed.*

*I would highlight, at an on-site meeting held on the morning of 15th Sept'11, (during which the fullest extent of the reinstatement proposals and boundary variations were outlined) that the Officer's subsequent written recommendations to Committee were verbally expressed and the works were intended to proceed (at our own risk) on this basis pending determination of the retrospective application and subject to ongoing enforcement review. We were not made aware that matters were to be placed before Committee on that date nor were given an opportunity to offer representation or clarity regards the reinstatement proposals at that time prior to issue of the Committee's decision.*

*I also understand, as borne out by reference to the Officer's Report and subsequent verbal confirmation from even the Objector's Advocate, that the Committee were not minded of the sites previous Grant of Planning Consent under an application determined July 2010 for a more comprehensive fire damage reinstatement scheme (which incorporated additional first floor accommodation, equating to an approx 25% overall increase in floor area to a far greater overall scale and height).*

*In view of the financial constraints subsequently imposed by the Client the approved scheme was considered beyond economic reach. It was therefore intended, subject to a degree of internal rationalisation, to seek reinstatement on a predominantly like-for-like basis which, in our opinion - being for reinstatement of existing and not being beyond the original confines, did not warrant further application nor grant of consent.*

*Modern, economic redesign of the reinstatement structure during the course of the works gave rise to a nominal increase in eaves height (proposed as 4No brick courses) on the sites existing western boundary wall to achieve an internal ceiling height reflective of that which previously existed. It is proposed that the overall height of the reinstatement structure would nevertheless be lower than that which originally existed by virtue of a shallower pitch. This effectively brings about a nominal increase/variation to the originally existing accommodation, giving rise to a technical planning contravention requiring a retrospective application submission - which was subsequently detailed and hand delivered on Tuesday 20th September 2011.*

*It is our contention that the Committee's decision to recommend the issue of a Stop Notice is flawed based upon insufficient information, as it did not take appropriate account of the nature and scope of the previously existing accommodation, did not consider the scope and context of the previous Grant of Planning Consent dated July 2010 and provided an inappropriate and disproportionate response to a minor infraction, as reinforced by the Officer's recommendation to Committee.*

*In accordance with the Committee's stated intent and given the legal ramifications we have temporarily suspended works on site but have sought to return this matter urgently to Committee for appropriate review at the earliest possible convenience in order for operations to resume and thereby minimise any financial loss. I understand that the next appropriate Committee sits on the 13th October 2011 and respectfully request that this decision be afforded a full review at this time, if not earlier.*

*In the interim I am mindful that the delay to operations on site is incurring financial penalties and the Authorities disproportionate response based on insufficient information is likely to give rise to a potential claim for damages, which I am sure you*



*will appreciate, I am keen to avoid. I would suggest immediate retraction of the Committee's stated decision to issue a Stop Notice on the basis of the foregoing in order that on-site operations may proceed and would consequently suggest acceptance of the Officer's recommendation.*

*I believe that the proportionate response proposed within the Officer's recommendation is a position with which the Member's would have concurred had they been fully minded and appreciative of the foregoing which it would appear they were not."*

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## **2. RECOMMENDATION(S)**

- 2.1 That Members note receipt of the new planning application and,
- 2.2 Confirm that further consideration be given, if appropriate, to the expediency of enforcement proceedings after the determination by the Council of that application.

### 3. COMMENTARY

- 3.1 Complaints were received in early September that building works were being carried out on the site allegedly without planning permission. Of particular concern was an increase in the height of the original brick walls by approx. 300mm.
- 3.2 A site visit on 9-9-2011 confirmed that 4 additional courses of brickwork had been added to the surviving west wall which forms the boundary with the adjoining residential property at 42 Church Avenue, Beckenham.
- 3.3 Permission was granted in July 2010 for a part one/two storey replacement building for continued use as light industrial (Class B1) and leisure (Class D2). A Building Regulations application was submitted in September 2010 for the reinstatement of the fire damaged building for use as a dance school which has not yet been determined.
- 3.4 The approved plans indicated accommodation on the first floor of the replacement building to provide an entrance foyer, a fourth dance studio and an office. In order to achieve the additional headroom this resulted in an increase in the height of the proposed building by approx 1.7m on the east elevation facing the High Street.
- 3.5 On the north facing elevation the proposed replacement building was between 1.7m and 3.0m higher than the original building. The overall footprint of the replacement building was similar to the original although various changes to the elevational appearance were proposed.
- 3.6 The detailed design has since been amended to incorporate a shallower pitched roof to the new building. This involves material changes to the previous scheme and forms the basis of a revised application which has been submitted and will be reported to committee in due course. The revised design incorporates a reduction in roof pitch from 27.5 degrees to 22.5 degrees which will result in a reduction in ridge height by 0.38m. The reduction in overall height will assist in reducing the impact of the replacement building on the surrounding properties.
- 3.7 Although the redesign of the roof involves an overall reduction in ridge height, it has been necessary to increase in the height of the walls by 4 courses of brickwork to provide a base for the roof trusses. A detailed sectional drawing submitted with the new application indicates an increase in the height of the walls by approx. 0.3m above the original eaves level in order to achieve an internal head height of 4.1m. The planning merits of the increase in eaves height will be assessed as part of the consideration of the current application but should be viewed in the context of the overall reduction in ridge height.
- 3.8 A stop notice may be issued when the Council resolves that it is expedient that any activity specified in an enforcement notice should cease before the period of compliance specified in the notice. However, since it was resolved to issue the stop notice works on site have ceased and a revised application has been received. Given the former existence of a building of similar size on the same site which was destroyed by fire, that it has now been confirmed that relatively minor revisions to the permitted scheme are being sought, and the proposed reduction in height of the proposed building, the issue of enforcement proceedings and a stop notice is not considered to be necessary.
- 3.9 It is therefore concluded that it would not be expedient to take enforcement action at this stage and the Council should first determine the current planning application.