

Decision Maker: PLANS SUB-COMMITTEE NO. 3

Date: Thursday 23 January 2020

Decision Type: Non Urgent Non-Executive Non-Key

Title: LAND KNOWN AS STELLA FIELDS, BLACKNESS LANE,
KESTON, BR2 – ENFORCEMENT ACTION - INJUNCTION

Contact Officer: John Stephenson, Head of Planning and Development Support Team
Tel: 0208 461 7887 E-mail: John.Stephenson@bromley.gov.uk

Chief Officer: Assistant Director (Planning)

Ward: Darwin;

1. Reason for report

The site, which is situated in the Green Belt, comprises an area of land that has been subdivided into numerous plots, a number of which have been sold separately. In February 2018 it was reported that a coach had been placed on the land. The coach is being occupied by a male, his female partner and two young children. No planning permission has been granted for such use. Taking into account the continued moving of the coach and ineffectiveness of individual enforcement notices that have been served, Members are asked to consider authorising an injunction to remedy the harmful breach of planning control.

2. **RECOMMENDATION(S)**

That authority be given for enforcement action by way of an injunction to secure the removal of the coach and associated paraphernalia from the land known as Stella Fields and shown on the plan attached to this report.

Impact on Vulnerable Adults and Children

1. Summary of Impact:
-

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Quality Environment
-

Financial

1. Cost of proposal: Estimated Cost difficult to quantify at this stage
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre:
 4. Total current budget for this head: £within current budget
 5. Source of funding:
-

Personnel

1. Number of staff (current and additional): current staff, difficult to quantify at this stage
 2. If from existing staff resources, number of staff hours: Difficult to quantify at this stage
-

Legal

1. Legal Requirement: Non-Statutory - Government Guidance
 2. Call-in: Call-in is not applicable
-

Procurement

1. Summary of Procurement Implications: N/A
-

Customer Impact

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

Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 The land is situated in the Green Belt constitutes a field divided approximately 160 plots. A number of the plots have been purchased by individual persons, the plots remain undeveloped.
- 3.2 The site was attended on 21 December 2017, following a complaint that a Volvo coach had been parked on the land. No one was in attendance.
- 3.3 On 7 February 2018, information was received that the coach was being used for residential purposes. Following a site visit it was established that the owner of the coach was converting it for habitable accommodation for his family to reside in on site.
- 3.4 The owner of the coach advised the Council that his friend owned various plots of land on the field but was unable to confirm the location of these plots. Efforts to contact the owner were unsuccessful.
- 3.5 Enquiries with the company responsible for the sales of the various plots of land were made. The plots on which the coach had been stationed were identified by plot numbers.
- 3.5 A delegated report for the authorisation of an enforcement notice was submitted, prior to the notice being served, information was received that the coach had been moved within the field, this resulted in the new location having to be identified.
- 3.6 Having identified the new plots in which the coach was stationed, an enforcement notice was issued in December 2018.
- 3.7 The owner of the plot of land in which the coach was stationed was contacted, he was unaware that his land was being used for the stationing of a coach.
- 3.8 In early March 2019, a compliance check was made to ascertain whether the enforcement notice had been complied with, it was evident at this visit that the coach had been moved a short distance from its original location. Given that the notice had been complied with, in that the coach had been removed from the plot of land identified in the enforcement notice, therefore no further action could be taken.
- 3.9 The company responsible for the sale of the plots of land were contacted in an effort to establish the current plot number in which the coach was stationed. The company advised the identification would incur a charge.
- 3.10 In June 2019 following a further site visit it was observed that the coach remained in situ, two motor vehicles were parked in close proximity, a shed had also been erected and children's toys were scattered around the coach.
- 3.11 On 29 July 2019 following identification of the current location of the coach, a further enforcement notice was issued for the material change of use of the land, and a copy served on the occupier of the coach.
- 3.12 In early November 2019 a compliance check was carried out on the site, it was established that the coach had again been moved some distance from its original location, on an unidentified plot within the field.
- 3.13 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 Bromley Local 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 that due consideration of the human rights of the defendant have been taken account of.

3.14 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 and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.

- (1) 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, the owner of the coach has no ownership of any of the plots of land within the field in which it is situated. Although he has advised the Council that his friend owns several plots of land within the field. The Council have been unable to make contact with the 'friend', in any case the coach has not been parked on land owned by the 'friend'. Enforcement notices have been served on the owners of the land identified and also on the owner of the coach. Further action has not been taken as the notices have been complied with in that the coach has been moved from the plot numbers shown on the enforcement notices. The number of plots on the land in which the coach is situated exceeds 100 and service of further notices would not be expedient or practical on all the plots within the field. It would therefore appear to be necessary to take action to halt the unauthorised use of the Land as a matter of urgency. Given the action already taken, there is a reasonable apprehension that further breaches of planning control will take place with coach being constantly moved to other plots to comply with each notice issued.

- (2) 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 the scale of the unauthorised change of use of the land is such that it is reasonable to be apprehensive that this will continue. The use of injunction proceedings is the strongest form of enforcement available to the Council and members may feel that this is an appropriate remedy to seek in the circumstances. Any breach of an injunction once granted may give rise to sanctions including imprisonment.

- (3) Planning history and degree of flagrancy – It will require to be demonstrated that conventional measures have failed over a period of time to remedy the breach. Members will also require to demonstrate that they have considered the possible hardship which might be caused to the defendant, and whether he has had, and taken the opportunity to make his case for at least a temporary permission.

As can be seen from the history of this matter it has been made clear to the owner of the coach, that there is a breach of planning control and no attempt has been made in order to regularise the use of the land for the stationing of the coach for residential purposes.

- (4) Failure of conventional methods of enforcement and lack of attempt to try other enforcement methods:- the court may take into account any other steps which have been taken by the Council, but which have failed to take effect.

Members are referred to the commentary in this report which relates to the steps which have been taken but which have proved ineffective in remedying the breach of planning control.

In this case, the Council is of the view that there are no other steps that could be taken to resolve the issue which results in harm caused to the openness of the Green Belt.

- (5) Hardship to the owner – the court in considering the matter of the unauthorised development will take into account considerations of hardship caused to the owner.

The owner of the coach advises that he resides in the coach out of choice. The matter has been referred to Social Services/the Local Authority Housing Department, as there are young children living in the coach, in order to ascertain whether their intervention is required. No concerns have been raised by relevant authorities in relation to the children's care and education.

4. POLICY IMPLICATIONS

Policy 49 and 37 of the Bromley Local Plan, Policy 7.16 of the London Plan and paragraphs 143 and 146 of the National Planning Policy Framework (2018).

5. FINANCIAL IMPLICATIONS

In the event of a successful application for injunction, costs would be sought from the defendant. In the event of an unsuccessful application, the Council might be liable in costs to the defendant of an amount which cannot at this stage be quantified.

6. LEGAL IMPLICATIONS

- 6.1 The Government's Planning Practice Guidance gives the following advice as to how a local authority decides whether it is appropriate to seek an injunction to restrain a breach of planning control.

- 6.2 How does a local authority decide whether seeking an injunction to restrain a breach of planning control is appropriate?

A local planning authority can, where they consider it expedient for any actual or apprehended breach of planning control to be restrained, apply to the High Court or County Court for an injunction to restrain a breach of planning control (section 187B of the Town and Country Planning Act 1990).

In deciding whether it is necessary or expedient to seek an injunction, local planning authorities may find it helpful to consider whether:

- they have taken account of what appear to be relevant considerations, including the personal circumstances of those concerned;
- there is clear evidence that a breach of planning control has already occurred, or is likely to occur;
- injunctive relief is a proportionate remedy in the circumstances of the particular case;
- in the case of an injunction sought against a person whose identity is unknown, it is practicable to serve the Court's order on the person or persons to whom it will apply;
- a local planning authority can apply for an injunction whether or not it has exercised, or proposes to exercise, any of their other powers to enforce planning control. However, proceedings for an injunction are the most serious enforcement action that a local planning authority can take because if a person fails to comply with an injunction they can be committed

to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a significant change of circumstances since the order was made. In these circumstances a local planning authority should generally only apply for an injunction as a last resort and only if there have been persistent breaches of planning control over long period and/or other enforcement options have been, or would be, ineffective. The Court is likely to expect the local planning authority to explain its reasons on this issue.

Non-Applicable Sections:	IMPACT ON VULNERABLE ADULTS AND CHILDREN PERSONNEL IMPLICATIONS PROCUREMENT IMPLICATIONS
Background Documents: (Access via Contact Officer)	Enforcement and Legal files containing exempt information as defined by Schedule 12a of the Local Government (Access to Information) Act 1985 are not available for public inspection