

REPORT OF THE ASSISTANT DIRECTOR (PLANNING)
TO THE DEVELOPMENT CONTROL COMMITTEE
26 September 2005

Enforcement Programme

1.0 Introduction and Report Summary

- 1.1 This report seeks the approval of Committee to take enforcement action, in four new cases.
- 1.2 The Contact Officer for this report is Paul Yaxley, Enforcement Officer (01235 540352 Direct line or 01 235 520202 extension 352).

2.0 Recommendation

It is recommended that authority be delegated to the Chief Executive, in consultation with the Solicitor & Monitoring Officer and the Chair and/or Vice-Chair of the Development Control Committee to take enforcement action in the following cases if in their judgement it is considered expedient to do so:-

- (i) To cease any residential use, and secure the removal of, an unauthorised dwelling at the rear of 6 Swinburne Road, Abingdon.*
- (ii) To secure the blocking up of two unauthorised window openings and the reduction in size of the two storey garage/playroom tower at 10 Hids Copse Road, Cumnor Hill, to accord with the approved plans relating to Notice of Permission CUM/18082/1*
- (iii) To cease the unauthorised use of agricultural land for the storage of building materials and non agricultural items, and to secure the removal of a fenced compound which facilitates the unauthorised use, on land adjacent to The Red House, Coxwell Road, Faringdon.*
- (iv) To secure the removal of an unauthorised raised and enclosed patio area to the rear of The Maybush (Public House), Newbridge, Kingston Bagpuize.*

3.0 Relationship with the Council's Vision

- 3.1 The content of this report is in line with the objectives A, C and D of the Council's Vision Statement.
- 3.2 This report relates to Enforcement Strategies 13, 15 and 16 and complies with Enforcement Policies E2 and E3.

4.0 Mr J. Hartley-6 Swinburne Road, Abingdon.

- 4.1 Following complaints received the Enforcement Officer visited the site in July last year, and observed that a purpose built dwelling had been built in what was formerly the rear garden of 6 Swinburne Road. The garden had been divided roughly in half by a six-foot panel fence including

a personal gate, which gave the impression that the dwelling and approximately 24 foot of the garden had been annexed from number 6 and an ancillary use was less likely. The dwelling although unfurnished appeared to consist of; a living room area including a fitted kitchenette and having an external patio door on to a paved patio area at one end, a shower/cloakroom with W.C. and separate airing cupboard off a central entrance hallway, and a separate bedroom at the other end of the dwelling. There is evidence that mains supply water and electricity and electric night storage/convactor heaters, have been connected.

- 4.2 Mr. Hartley contends that the building was built as permitted development (Workroom & Potting Shed, Store, W.C. & Washroom) and subsequently converted into living accommodation. This contention is not however supported either by neighbours or the Council's own Building Control Inspector for the area. Mr. Hartley has been asked on several occasions to submit evidence to demonstrate that the 'Outbuilding' was constructed, or used, to comply with permitted development regulations this he has failed to do. Attached as **APPENDIX 1** is a copy of a letter written to Mr. Hartley on 2nd August, in which the council's concerns are reiterated to him and that as a consequence, enforcement action is considered to be the only option available to Council.
- 4.3 Notwithstanding the fact that the building may be unoccupied (it has previously been occupied), your officers consider that it is a dwellinghouse. Circular 10/97 states, "...the criteria for determining use as a dwellinghouse include both the physical condition of the premises and the manner of use. Where a single, self-contained set of premises comprises a unit of occupation, which can be regarded as a separate planning unit from any other part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse: and are used as a dwelling, whether permanently or temporarily, by a single person or more than one person, living together as, or like, a single family, those premises can properly be regarded as being in use as a single dwellinghouse..". The above definition owes a lot to the judgement *Gravesham B.C. v S.O.S. & O'Brien* 8/11/82, which concerned a building used as a weekend chalet. Here it was held that a characteristic of a dwellinghouse to be looked for was its ability to afford to those who use it the facilities required for day-to day domestic existence. The case also dealt with the point that although the chalet was not occupied in the winter months, this did not deprive the building of its essential residential character.
- 4.4 It is recommended that authority to take appropriate enforcement action be delegated to the Chief Executive in consultation with the Solicitor & Monitoring Officer, the Committee Chair and/or Vice Chair, if in their judgement it is considered expedient to do so.
- 4.5 This recommendation for the authorisation to take enforcement action could, if implemented, amount to an interference with Mr Hartley's right to respect for this part of his alleged home, under Article 8 of the European Convention on Human Rights. The erection of the dwelling is considered to be inappropriate development, likely to cause planning harm due to intensified use of the driveway to the rear by vehicles and pedestrians associated with the building. The use of the building as a self-contained dwelling would result in an intensified use of a substandard private driveway, lacking adequate visibility at the junction with Radley Road, to the detriment of public safety and highway safety, contrary to Policy D3 of the adopted Vale of White Horse Local Plan and Policy DC5 of the Second Deposit Draft Local Plan (2011). There does not appear to be any very special circumstances that would outweigh this harm. Therefore this interference is considered to be proportionate to the harm that would be caused if this breach of control, and Policies D3 and DC5 were to go unchallenged.

5.0 Mr C Pugh - 10 Hids Copse Road, Cumnor Road, Cumnor Hill, Oxford, CUM/18082/1

- 5.1 Committee may recall that at its meeting on the 30th August 2005, following consideration of report.....(copy attached as **APPENDIX 2**), it was resolved to refuse the 'Part retrospective application for alterations, extension and new vehicular access (amendment to approval CUM/18082/1)' with reasons to be agreed at a subsequent meeting. The proposed amendments which caused the most concern being the additional two first floor windows, to the bathroom and the central bedroom in the northwest elevation, and the increase in size of the attached garage with playroom above.
- 5.2 It is recommended that for the reasons suggested earlier to this committee, if approved by it, or any subsequently amended conditions that may have been approved, be used in justification for the taking of enforcement action, and that authority to take appropriate enforcement action be delegated to the Chief Executive in consultation with; the Solicitor & Monitoring Officer, the Committee Chair and/or Vice Chair if in their judgment it is considered expedient to do so.

6.0 Mr Crossley-Cooke & Tapeacrown Ltd. – Land south of 'Red House', Coxwell Road, Faringdon, GCO/18275-E.

- 6.1 Committee may recall its meeting of the 14th February this year when the last report concerning this site was presented to it (copy attached as **APPENDIX 3**). Subsequently on the 27th April this year Mr Crossley-Cooke was found guilty, at Didcot Magistrates Court, of non-compliance with the enforcement notice. He was fined £3,000 plus Council's full costs of £2,295.
- 6.2 It was observed on the 15th March that the remains of the walls of the building, which had existed above ground level in defiance of the enforcement notice, had finally been removed however the foundations and block work wall below ground level still remain. On the 21st March it was observed that a galvanised steel, spiked top, palustrade type fence had been erected on the site forming a complete freestanding gated enclosure. This enclosure has a similar footprint to that of the previous unauthorised building and is in almost the exactly the same position. For a time there was a certain belief and acceptance that the enclosure as erected was permitted development if required, and used, for agricultural purposes. However the majority of the building materials mentioned in paragraph 4.6 of the previous report (Appendix 3) plus additional materials have been moved into the new enclosure, and it is now Officers belief that, as no other agricultural use has been made of the enclosure, this was the original intended primary use and purpose for the enclosure and there fore it is unauthorised and not now considered to be permitted development.
- 6.3 It is therefore recommended that authority to [a] take enforcement action to secure the removal of the remaining unauthorised foundations covered by enforcement notice GCO/18275-E and the new unauthorised fenced enclosure and [b] take enforcement action against the unauthorized use of this agricultural land be delegated to the Chief Executive in consultation with the Solicitor & Monitoring Officer and the Committee Chair and/or Vice Chair if in their opinion it is considered expedient to do so.

7.0 Mr & Mrs Ward & Green King – The Maybush PH, Newbridge, Abingdon, Oxon.
KBA/3289/9 & 10LB

- 7.1 In May 2003 it was brought to Officers attention that part of the 'Beer Garden' at 'The Maybush' had been altered to form a raised patio seating area. The work involved the raising of ground levels within the functional flood plain of the River Thames. Retrospective applications for both planning permission and listed building consent were received on the 8th December 2003.
- 7.2 The L.B. application is not supported by the Conservation Officer who has commented; 'This does nothing to preserve the setting of the listed building, it is semi-urban clutter that detracts from the pubs rural setting'.
- 7.3 Determination of the planning application weighs heavily on the opinion and support, or lack of it, of the Environment Agency. They have been in negotiation with the applicants agent and river engineering consultants, to try and agree further works to the surrounding area which would mitigate the loss of functional flood plain to a level that would allow them to support the application.

These negotiations had become protracted, however an officer of the E.A has reported that on a recent site visit, it was observed that the river bank, adjacent to the patio, is now collapsing into the river and it is believed that the weight of the patio may be directly responsible. Consequently it is understood that the E.A. are no longer looking at mitigation measures but the actual removal of the raised patio.

- 7.4 It is recommended that authority to take appropriate enforcement action be delegated to the Chief Executive in consultation with; the Solicitor & Monitoring Officer, the Committee Chair and/or Vice Chair, if in their judgement it is considered expedient to do so.

RODGER HOOD
ASSISTANT DIRECTOR (PLANNING)

TIM SADLER
STRATEGIC DIRECTOR