Rachael Shimmin

Chief Executive Officer

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11 May 2023

Dear Ms Shimmin,

**Orchard Herbs Lake End Road Dorney Buckinghamshire SL4 6QS**

1. We write to you in respect of the Orchard Herbs Site (the “Site”) on behalf of Dorney Parish Council, with the support of Taplow Parish Council and Burnham Parish Council. This letter has been copied to Joy Morrissey, the Member of Parliament for Beaconsfield and to relevant officers and Councillors.
2. The Site sits directly adjacent and to the south of the M4 motorway, it is a prominent Site that all those driving, cycling, or walking into Dorney will see as they enter the village. The village is in a conservation area. For more than 30 years, the Site has been the subject of persistent breaches of planning control including use of the land for storage of machinery, parking of commercial vehicles, the deposit of waste, use as a landscaping contract yard and more recently as an airport car parking facility.

Outstanding planning appeals

1. There are two outstanding planning appeals in connection with the Site. The first relates to the Council’s refusal of an outline planning application to use the Site as a 416 bedroom hotel with two office units and other facilities (PL/20/2020/OA) and the other is an appeal in respect of the Council’s refusal of a Certificate of Lawfulness for the existing use of part of the Site as a builder’s yard and for the storage of commercial vehicles, equipment and building materials (PL/20/3452/EU).
2. The Site was also the subject of a Temporary Stop Notice served on 11 August 2022 which required the cessation of the airport car parking use, however the Notice ceased to have effect on 8 September 2022.
3. For a couple of years, Mitchel Pugh, the principal planning enforcement officer monitored the Site. However, Mr Pugh has recently left the Council’s employment and we understand that Mrs Stephanie Penney is the new planning enforcement officer. We would like to stress that the contents of this letter are not directed at Mrs Penney who has only recently been appointed to monitor the Site and has been courteous and responsive when dealing with our queries. We do consider however that the Council needs to amend its enforcement strategy and make use of “direct action” statutory powers, which we discuss in more detail below.

Extant enforcement notices

1. We understand from appeal documentation issued by the Council in connection with the ongoing appeal relating to the Certificate of Lawfulness, that there are currently only two enforcement notices that remain in force at the Site.
2. The first is dated 6 June 2007 and was issued in respect of storage bays (07/20923/ENBREN). The second is a notice that was issued on 30 May 2008 in respect of the importation, deposit and processing of waste at the Site (SB/ENF/06/18).
3. We would be grateful if the Council could confirm the position. If there are any other enforcement notices that remain in force at the Site, we would be grateful to know and to be provided with a copy of all extant enforcement notices.

A site neglected from effective enforcement

1. The main purpose of this letter is to express our frustration and ongoing concerns as Parish Councils and on behalf of the residents that we represent. The owners of the Site are notorious for their persistent and continually changing breaches of planning control. In our view, Buckinghamshire Council has not been able to monitor and effectively deal with the various breaches of planning control. The Site has for far too long been neglected; we consider that part of the reason is that because it is located on the forgotten edges of the Council’s administrative area. A sentiment echoed by the residents we are in contact with.
2. Firstly, we have no confidence that all the current breaches of planning control are the subject of an enforcement notice. The danger is that in failing to monitor the Site effectively, the Council is running the risk of further applications for Certificates of Lawfulness in due course.
3. Secondly, even where enforcement notices are served and take effect, that should not be the end of the matter. We have no confidence that the Council will follow up with further action where the Site owner fails to comply with planning enforcement notices. We discuss this in more detail below.

Legal powers available to the Council that have not been utilised

1. We note that the Council has the option of pursuing a criminal prosecution pursuant to section 179 of the Town and Country Planning Act 1990 (the “1990 Act”) or alternatively section 171G where a Temporary Stop Notice has been contravened. However, the penalties for failing to comply with an enforcement notice, is the payment of a fine which fails to remedy the breach of planning control.
2. We have lost confidence in the Council which has failed to utilise the full range of statutory provisions available to them under the said 1990 Act. We are aware that the Council can secure an injunction pursuant to section 187B where it is considered necessary or expedient for any actual or apprehended breach of planning control, whether or not the Council has exercised or is proposing to exercise any other enforcement powers pursuant to this part of the 1990 Act.
3. The Council also has, in respect of enforcement notices that have already been served and not complied with, powers under section 178 to enter the land and take the steps required by the enforcement notice and subsequently recover expenses incurred from the owner of the land.
4. The Council also has separate powers under section 215 of the 1990 Act to serve a notice on the landowner requiring the condition of the land to be remedied where it appears to the Council that the amenity is adversely affected by the condition of the Site. Section 219 provides the Council with the powers to enter the land and take the steps required by a section 215 notice that has either not been appealed or survived an appeal.
5. It is clear therefore that planning legislation provides Buckinghamshire Council with all the necessary powers to investigate, pursue and remedy breaches of planning control, as far as we are aware the Council has never considered use of direct action powers. The Site has and continues to be an eyesore. If the Council has considered use of powers under sections 178, 187B and 215 but decided not to use them, we would like to understand your reasons.
6. Having considered the Council’s Planning Enforcement and Monitoring Plan we are not persuaded that the breaches of planning control at the Site are sufficiently minor to justify no direct remedial action. The Council’s service of a temporary stop notice indicates (in line with paragraph 7.17 of the Planning Enforcement and Monitoring Plan) that the airport car parking and vehicle storage “…*is so serious that it warrants immediate cessation.”* If that is the case, what approach is to be taken in respect of any remaining breaches?

Buckinghamshire Council Planning Enforcement and Monitoring Plan

1. We have read and considered the Council’s Planning Enforcement and Monitoring Plan (PEMP) and separately the Council’s Corporate Enforcement Policy, referred to in section 7 of the former plan. We do not consider that the Council has complied with section 7 of the PEMP. The breaches of planning control at the Orchard Herb Site are causing planning harm. Had the Council taken a contrary view, the owner would have been invited to submit retrospective planning applications or alternatively the Council could have decided not to take any action at all.
2. There is a persistent history here of retrospective planning applications that are refused and sometimes followed up with enforcement action. The PEMP states at paragraph 7.1.7 and 7.1.8:-

*7.1.7 How will we deal with the most serious types of breach of planning control? We will use all resources available to investigate alleged breaches of planning control. Serious breaches of control will be strictly enforced, but particularly where those breaches have a significant detrimental impact on living conditions, the local area, or where the breach has the potential to cause irreversible harm. In such cases, the council will use all the tools available to remedy the harm being caused. In some instances, the council may decide that the breach of planning control* *is so serious that it warrants immediate cessation. The council may therefore issue a temporary stop notice, or an enforcement notice accompanied by a stop notice. Most formal notices have a right of appeal either to the Planning Inspectorate or through the courts.*

*7.1.8 Further Legal action. The failure to comply with the requirements of a formal notice is a criminal offence. Where such an offence is committed, the council will gather information about the offence, assess that information and decide the best course of action. This may be by seeking prosecution proceedings, applying for a high court injunction, undertaking works in default (aka direct action) or continue to work with the offender to seek a suitable resolution. Where a crime has been committed and a successful prosecution has been secured, the council will consider whether to make an application under the Proceeds of Crime Act. When deciding on the best course of action, the council will assess whether there is sufficient evidence to pursue the matter, whether such action is in the public interest and the expediency of pursuing the action.*

1. Paragraph 59 of the National Planning Policy Framework is also a relevant consideration and confirms that effective planning enforcement action *“…is important to maintain public confidence in the planning system…”*

Meeting with the Council

1. While we appreciate the Council must be seen to be proportionate in their enforcement response, in the matter of the Orchard Herbs Site, the owner operates on a strategy of delaying voluntary remediation, appealing applications and enforcement notices to delay any notice taking effect and operating in the full knowledge that the Council is unlikely to follow up with a prosecution and/or injunctions or the Council carrying out the remedial works themselves.
2. The owner’s strategy has worked to his advantage for at least 30 years and we require a meeting with the relevant officers at the Council (including key decision makers) to discuss this. [and the following matters:-
3. Which enforcement notices remain extant and of those notices which have been complied with in full and which have not.
4. An understanding of the Council’s appraisal of the current status of the Site, in particular are there any breaches of planning control that are not subject of an enforcement notice and if so, is the Council still within the relevant time limit to serve enforcement notice(s) to remedy those breaches.
5. In respect of those breaches of planning control where the Council is confident that there can be no allegation that the breach is now immune from planning enforcement action, or it remains the subject of an extant enforcement notice, what steps the Council will take to ensure that (i) the remedial work is carried out without delay or (ii) an enforcement notice will be served to prevent immunity from planning control.
6. Understanding the Council’s strategic approach in monitoring the Site at consistent intervals, taking into account the matters mentioned above.]
7. We do not consider that it is necessary to await the outcome of the appeal in respect of the Certificate of Lawfulness before the meeting can take place. We have seen the Council’s letter of 10 March 2023 to the appellant’s agent inviting him to withdraw the appeal. It is clear from this correspondence that the appeal is highly likely to be dismissed as it has no prospect of success.
8. We request that the meeting take place within the parish of Dorney, a suitable venue will be provided once the date, time and attendees have been confirmed. We look forward to hearing from you.

Yours sincerely

Ruth Senior

Clerk to Dorney Parish Council

On behalf of Jill Dax – Dorney Parish Council Chairman

cc: Joy Morrisey MP

Ian Thompson – Corporate Director, Planning, Growth and Sustainability

Sarah Ashmead – Deputy Chief Executive

Stephanie Penney – Enforcement Officer

Councillor Trevor Egleton – Chair, South Buckinghamshire Area Planning Committee

Eton Town Council

Taplow Parish Council

Burnham Parish Council

County Councillors George Sandy, Paul Kelly and Kirsten Ashman