

**ITEM NUMBER: 5g**

<b>20/01582/FUL</b>	<b>Retention of Entrance Gates</b>	
<b>Site Address:</b>	<b>Land adjacent to Two Bays, Long Lane, Bovingdon</b>	
<b>Applicant/Agent:</b>	<b>Mr H Peters/Mr E Williams</b>	
<b>Case Officer:</b>	<b>Robert Freeman</b>	
<b>Parish/Ward:</b>	<b>Bovingdon Parish Council</b>	<b>Bovingdon/ Flaunden/ Chipperfield</b>
<b>Referral to Committee:</b>	<b>The application has been referred to the Development Management Committee given the contrary recommendation of Bovingdon Parish Council. Bovingdon Parish Council considers the proposals to constitute inappropriate development in the Green Belt.</b>	

**1. RECOMMENDATION – That planning permission be GRANTED.**

**2. SUMMARY**

- 2.1 The proposed gate is considered to result in inappropriate development within the Green Belt in accordance with the National Planning Policy Framework (NPPF) and CS5 of the Core Strategy.
- 2.2 However there are very special circumstances that would justify the approval of this scheme. Gates, fences and enclosures are capable of being erected without the need for planning permission. The current gate, being less than 2m high, would be permitted development if it were set slightly further into the site (so as not to be 'adjacent to the highway'). Such a permitted development gate would actually increase the harm to the openness of the area due to the need to have return fencing meeting a setback position. Therefore, in the context of permitted development, the gate is not considered to have any significant adverse impact on the open character or visual amenity of the area in accordance with Policies CS12 and CS13 of the Core Strategy.

**3. SITE DESCRIPTION**

- 3.1 The site comprises an area of land on the north western side of Long Lane and located between the residential unit, Two Bays and a commercial property known as "The Nursery" The site extends to the rear of these sites and to the boundaries of "Shepherds Field", "Beggars Roost" and a builders yard at the rear of "Le Chalet"
- 3.2 There are a number of mature trees on the boundary of the site with Long Lane behind which there is a green metal fence to the application site. There is a preserved Oak tree (TPO 481) along this front boundary.
- 3.3 The building at the Nursery and a number of trees mark the boundary of the site with "Shepherds Field" to the south west of the site.

**4. PROPOSAL**

- 4.1 The proposals seek to retain a green metal gates located on the north western side of Long Lane and providing access onto a field between “Two Bays” and “The Nursery”
- 4.2 The gates are located some 6.5m from the edge of the carriageway and comprises a mesh steel fence finished in dark green and extending to some 6m wide. These are attached to galvanised steel posts providing a total enclosure of some 6.4m. The gates are approximately 2m in height.

## **5. PLANNING HISTORY**

- 5.1 Planning permission was granted under planning application 4/00578/12/FUL for the construction of gates at the application property and at a width of 4.6m.
- 5.2 The approved gates would be 2m in height and comprise steel railings clad with timber boarding. These would be 4.6m in width with a central opening and would be fixed to galvanized steel post 0.5m in width on each side.
- 5.3 Condition 2 of this planning permission required the galvanised steel railings to be painted in a dark holly green and have timber boarding finished in a dark brown stain to be fitted to the outside edge facing the highway.
- 5.4 Condition 4 of this planning permission required the gates to be set back a minimum of 5.5m from the edge of the carriageway and open inwards.
- 5.5 Condition 6 of this permission lists the approved drawings to be complied with including TBLL/01 and TBLL/02. Plan TBLL/02 clearly indicates that the gates would be 4.5m from the carriageway.
- 5.6 It is understood that the gates, subject to this application, were installed around 4 years ago without the benefit of planning permission and are wider than those permitted under the above reference. Early enforcement records however indicate that an access and gate were provided from as early as 2011 (E/11/0098) to serve the site.
- 5.7 The current fence was reported to the planning enforcement section on the 22<sup>nd</sup> April 2020 and is currently the subject of enforcement case (E/20/00137/NAP)
- 5.8 The site has been subject to successful enforcement action requiring the use of the wider parcel of land to cease being used for the storage of plant and machinery and the importation of bricks/rubble/spoil, concrete crushing etc. The Enforcement Notice also required and achieved the removal of a shipping container and portacabin from the site.

## **6. REPRESENTATIONS**

### Consultation responses

- 6.1 These are reproduced in full at Appendix A.

### Neighbour notification/site notice responses

- 6.2 These are reproduced in full in Appendix B

## **7. PLANNING POLICIES**

Main Documents:

National Planning Policy Framework (February 2019)  
Dacorum Borough Core Strategy 2006-2031 (adopted September 2013)  
Dacorum Borough Local Plan 1999-2011 (adopted April 2004)

Relevant Policies:

Core Strategy

NP1 - Supporting Development  
CS1 - Distribution of Development  
CS5 – Green Belt  
CS8 – Sustainable Transport  
CS12 - Quality of Site Design  
CS13 – Quality of Public Realm

Local Plan

Policy 13 – Planning Conditions and Planning Obligations  
Policy 51 – Development and Transport Impacts  
Policy 54 – Highway Design  
Policy 99 – Preservation of Trees, Hedgerows and Woodlands

## **8. CONSIDERATIONS**

### Policy and Principle

- 8.1. The site is located within the Green Belt where in accordance with the National Planning Policy Framework (NPPF) and Policy CS5 of the Core Strategy, the enclosure would not be described as constituting appropriate development within the Green Belt.
- 8.2 It is prudent however to consider whether there are any “very special circumstances” which might justify the approval of planning permission in this case, and which outweigh the harm to the Green Belt and any other harms. These circumstances need not be unique but must clearly have relevance to the planning merits in the case.

### Very Special Circumstances

- 8.3 In accordance with Part 2 (Minor Operations) Class A (Gates, Fences, Walls etc) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (As amended) (GPDO) the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure would normally comprise permitted development and as such would not require the grant of planning permission from the local planning authority.
- 8.4 This would be subject to the condition that any gate adjacent to the highway would not exceed 1m in height or 2m in other locations. The gates at the application site are 2m in height and would be set back some 6.5m from the edge of the carriageway. Due to the absence of any intervening features, such as hedging or trees, the current gates are considered to be ‘adjacent to the highway’ and therefore require planning permission. However, should the gates be pushed slightly further into the site, it becomes increasingly harder to argue that they are ‘adjacent to the highway’ and they would then become permitted development. Such gates, i.e. pushed back further into the site, would require additional fencing running from the front boundary to the side of these gates. Consequently, permitted development gates would result in more development on the site

with a greater impact on the openness of the area than the current development. This is a material consideration that weighs very heavily in favour of the development.

- 8.5 Furthermore, it is important to note the general acceptance of enclosures under the GPDO. It is possible to erect gates and other means of enclosure (1-2m high) in the Green Belt without requiring a planning application. Finally, it is worth noting that the Council in 2012 (ref: 4/00578/12/FUL) approved a gate 4.6m wide. There have been no material changes to planning policy since then that would lead to a different decision now for a 4.6m wide gate.

### Main Planning Considerations

- 8.6 For the above three reasons it is considered that “very special circumstances” exist in this case. The main planning issues in this case therefore appear to be those relating to the visual impact of the proposed gates and the associated impact on the open character and appearance of the Green Belt and the impact of the proposed works in relation to matters of highways safety, and whether the very special circumstances outweigh any harm considered to the Green Belt and any other harms.
- 8.7 It is important that such considerations are based upon a judgement of the gates to be retained and are not prejudiced by the use of the application site, be it lawful or otherwise.

### Impact on Openness of Green Belt / Visual Amenity

- 8.8 The principle of constructing gates at the application site has been accepted through the previous grant of planning permission. The gates approved in 2012 were to be 4.6m in width. The proposed gates would be some 6m in width with the total width to the enclosure approximately 1m wider than the previous permission. There have been no material changes in planning policy since the decision was made in 2012 and as such we should be considering whether the increased width and set back of the enclosure is harmful to the visual amenity of the area.
- 8.9 The gates to be erected at this site are very similar in design and appearance to the fencing that is located immediately behind the existing tree belt at the boundary of the application site and as such would be a complimentary extension of this enclosure to the site. Given the set back from the edge of the highway the gates would not be visible in the context of the Long Lane street scene until one would be immediately adjacent to the entrance.
- 8.10 For these reasons, the gates are not considered to be particularly intrusive or harmful to the openness of the Green Belt, the appearance of Long Lane, nor the wider character and appearance of this semi-rural location in accordance with Policies CS5, CS12 and CS13 of the Core Strategy. It is noted that there are numerous examples of similar suburban enclosures securing sites within the locality including that to the adjacent lawful scrap yard at The Nursery site, and those to premises in Middle Lane and Shantock Hall Lane. The properties in Long Lane vary considerably in terms of the enclosures to the street, from the rural hedgerows to austere brick walls, pillars and metal gates.
- 8.11 In addition, it is considered that the appearance of the gates could arguably be considered less urbanising than the solid wooden gate approved under 4/00578/12/FUL

### Impact on Highway Safety

- 8.12 The gates are set back into the application site in order to reduce their visual impact in the street and to provide sufficient space for larger vehicles to park outside the application site

without overhanging the highway. The gates open inwards into the application site. It is also worth repeating that gates set back 6.5m into the site have already been given planning permission in 2012.

As such the proposals would not be prejudicial to matters of highways safety in accordance with Policies CS8 and CS12 of the Core Strategy.

### Representations

- 8.13 The concerns of local residents have been addressed above with the exception of those issues associated with noise, disturbance, traffic generation and impact on ecology arising from the use of the site. These matters themselves do not appear to be directly relevant to the provision of the gates at the site, rather they concern potential uses of the land. Therefore, they are not grounds for the consideration, let alone refusal, of this proposal.
- 8.14 Any change in the use of the land would clearly need to be subject to a separate planning application and the proposals must be treated accordingly.

## **9 CONCLUSION**

- 9.1 The proposals are not considered to result in significant harm to the openness of the Green Belt, the character and appearance of the surrounding area, or highway safety. The proposals would be in broad accordance with Policies CS5, CS8, CS12 and CS13 of the Core Strategy. As such it is concluded that the very special circumstances described above justify approval of the proposed development.

## **10 RECOMMENDATION**

- 10.1 That planning permission be **GRANTED**.

### **APPENDIX A: CONSULTEE RESPONSES**

<b>Consultee</b>	<b>Comments</b>
Bovingdon Parish Council	Based on the comments of residents living in close proximity to the site, the supporting information is factually incorrect. HGV's were unable to access the site until the wider gates were installed in April 2017. The rear site has not been used for nine years by HGV's and vehicles should not be accessing the rear of the site over land which has planning enforcement notices upon it.  The proposals would constitute inappropriate development.

### **APPENDIX B: NEIGHBOUR RESPONSES**

<b>Address</b>	<b>Comments</b>
Humphreys & Co Solicitors, 145 King Street, Bristol (on behalf of eight properties, Long Lane)	The site is within the Green Belt and is currently the subject of a number of enforcement investigations with regard to its commercial use.  This is important, because in planning terms there is no lawful use of

the site that requires HGV access by means of the proposed gates. The adjacent nursery site already has a perfectly serviceable HGV access. It follows that there is no justification whatsoever to support this proposal.

You will also be aware that planning permission has previously been granted for gates to be installed at the entrance to the site under 4/00578/12/FUL. The approved gates are narrower and not set back from the road. It is argued that that the new gates will improve access for HGV's which have been accessing the site over the last 9 yrs. This is incorrect.

Local residents have confirmed that the gates were installed in the last few years and have resulted in an intensification in the use of the site by larger vehicles. The gates themselves are significantly larger at 6.4m in width and have a greater visual impact.

Policy CS5 of the Council's adopted Core Strategy states that the Council will apply national Green Belt policy to protect the openness and character of the Green Belt, local distinctiveness and the physical separation of settlements. Appropriate small scale development will only be permitted where this has no significant impact on the character and appearance of the countryside and supports the rural economy and maintenance of the wider countryside.

The proposal manifestly fails to satisfy these requirements. At 6.4m in width and having an overly industrial appearance, the gates significantly reduce the open character and appearance of the Green Belt and have a severe urbanising and industrialising impact on the rural character and appearance of the local environment. The proposal conflicts with Policy CS5 but also CS7, CS12 and CS13 which stresses the importance of protecting the local character and quality of the public realm and wider countryside.

This proposal further contravenes national planning policy as set out in the National Planning Policy Framework whereby development should function well, be sympathetic to local character and add to the overall quality of the area.

Furthermore, the installation of wider gates facilities the inappropriate and unauthorised intensification of the commercial use of the site. Prior to the Council taking enforcement action, this had manifested in an increased use of the site and its access by larger HGVs, leading to increased traffic and associated noise and disturbance to local residents. This had caused substantial harm to the residential amenities of nearby residential occupiers whilst also harming the rural character and quality of the locality, contrary to Policies CS7, CS12 and CS13 of the Core Strategy.

Neither are local roads suitable for this type of traffic. The use of site by large HGVs is causing vehicles to overrun the highway verge and is leading to mud and debris from the site being deposited on the highway, to the detriment of highway safety and contrary to the requirements of Policies CS8 and CS9 of the Core Strategy.

	<p>The proposal also conflicts with the wider planning policy objectives set out above for the protection of the open character and visual amenity of the Green Belt and the character and quality of the wider countryside. We would refer you, in particular, to Policy CS9 of the Core Strategy, which specifically states that in villages and the countryside special regard will be paid to the effect of new development and traffic on the safety and environmental character of country lanes.</p> <p>For all these reasons, we are of the opinion that this proposal would cause substantial harm to the open character and visual amenity of the Green Belt. Such development is inappropriate in the Green Belt and, according to the approach set out in the National Planning Policy Framework, should not be approved except in very special circumstances.</p> <p>Very special circumstances to justify inappropriate development in the Green Belt will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.</p> <p>In this case, we have demonstrated that the gates are causing substantial harm not only to the Green Belt but also to the rural character and appearance of the wider countryside, the residential amenities at nearby properties and in relation to highway safety.</p> <p>There are no special or exceptional circumstances in this case that would justify making an exception to the strict policies of restraint that apply within the Green Belt.</p> <p>On the contrary, this is a proposal that, if permitted, would sanction the inappropriate intensification of unauthorised commercial uses in a sensitive rural location and in direct contravention of Green Belt policy.</p> <p>We urge the Council to act decisively to prevent this and to protect the Green Belt and the amenities and environmental quality of the local area by upholding the provisions of the development plan and national planning policy, as set out above.</p> <p>Planning permission should be refused for the reasons stated and enforcement action authorised to secure the immediate removal of the unauthorised gates and the reinstatement of the land to its former condition</p>
Cherry Tree Cottage	<p>In addition to the letter from our solicitors, Humphreys &amp; Co I would like to supplement the information from my own residence at the above address since June 1984</p> <p>It should be noted that a number of these comments will question the accuracy/validity of the statements made by Mr Peter's or his Agent</p>

	<p>The land behind the gates, between “The Nursery” (owned by John Green) and to the left looking from my property and “Two Bays” from the right is within the Green Belt and was always a natural habitat for wildlife with grass, shrubs and trees in a fenced area to both sides.</p> <p>There was no access nor any gate to Long Lane as the land lay behind a free-flowing ditch that was maintained by the Council to allow sufficient water to drain into it from this rural lane. The land is owned by a Mrs Peters.</p> <p>Mrs Peters advised me in late 2008 that her son wanted to move from Watford and build a house on her land. A TPO was placed on an Oak tree on the land in 2009.</p> <p>I understand that Mrs Peters sold the land to Henry Peters in 2015. Mr Peter started to clear the land from 2016. This calls into question the Agents claim that the access to land by HGV’s has been going on “almost daily” for “around nine years”</p> <p>I have witnessed the use of the land by HGVs and because of the distress and disturbance of this unlicensed operation, kept a record of vehicle movements. These are not daily with lorry loads of “hardcore” delivered in September 2018, diesel delivered in 2019 and a number of HGV movements since 2019 on a less frequent basis than is claimed in the application. Whilst these are less frequent than claimed they still have a considerable and disruptive effect on the safety and environmental character and nature of this country lane.</p> <p>In practice, the Watford Plant and Grab Hire low-loader HGV normally parks on the road thereby causing obstruction to other vehicles, cyclists and pedestrians not to mention the mud on this narrow land, to load machinery brought from the rear of the site.</p> <p>There is no justification for the larger gates to be ratified especially as Mr Peter choses to ignore the Council’s planning permission and the operation of the land is subject to an Enforcement Notice. The Council has instructed him to “ensure a satisfactory appearance to the development” and “safeguard the visual character of the immediate area”</p> <p>The proposals remain inappropriate development and conflicts with and is harmful to the openness of the Green Belt. The grant of planning would intensify the potential industrial impact on this almost entirely rural country lane.</p>
Little Gables	<p>I strongly object to the application to retain these gates as the retention of the gates will maintain access and permit future development to the site known as Adj. Two Bays and the land beyond.</p> <p>I would also note that the application is inaccurate as the gates have not been in constant use for the period stated and the use of the access point was only widened to allow access to the unlawful activities operating on the land beyond.</p>

The activities on this site are not in accordance with the policies protecting the green belt from inappropriate development and retention of the gates provide an access point to maintain inappropriate use of this green belt land.

The gates as they are presently should be remove and the hedge/verge reinstated to the condition prior the initial application.

We would object for the following reasons:

- The effect on local ecology,
- The proposals are too close to residential properties
- The increase in traffic,
- The increase in pollution
- The noise nuisance
- The proposals are out of keeping with the character of the area
- The proposals are over development
- The proposals would adversely affect traffic or highways safety.