

**Meeting:** Planning and Development Committee      **Agenda Item:**

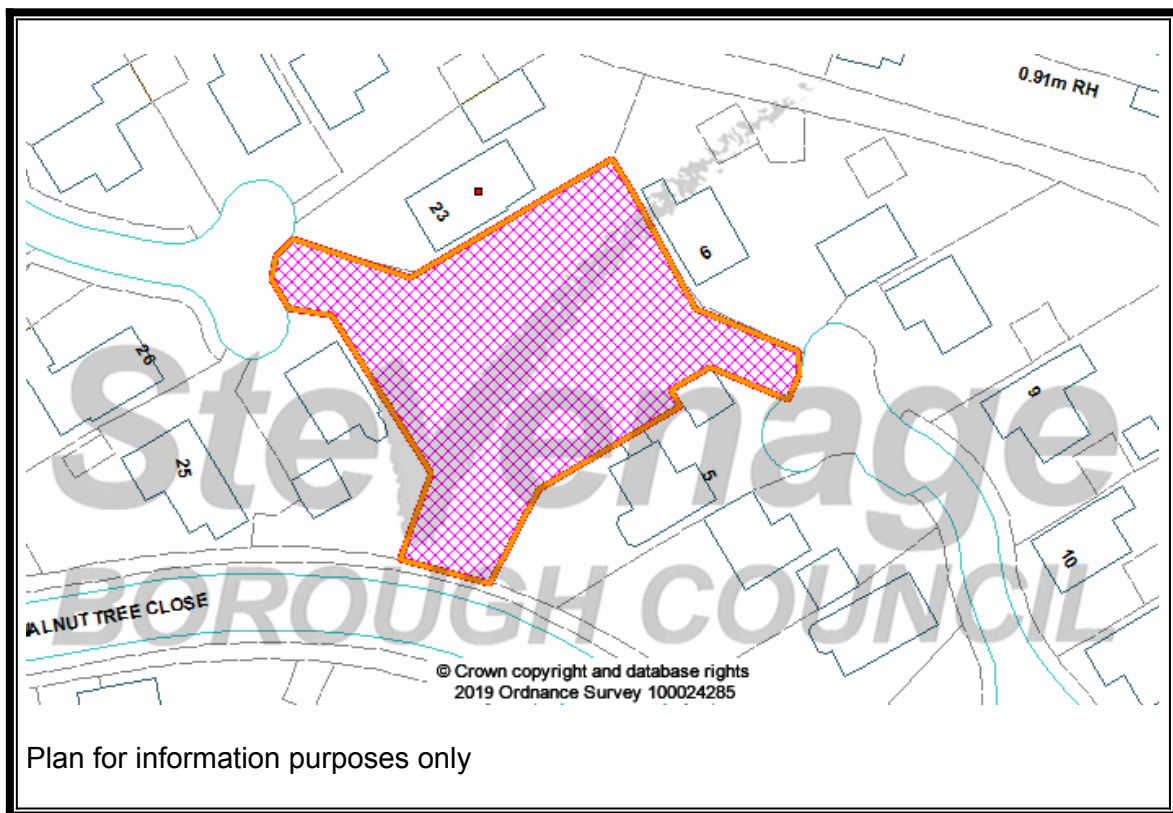
**Date:** 3 March 2020

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Application No:	20/00102/ENF
Location:	Land Between Watercress Close, Coopers Close And Walnut Tree Close, Stevenage
Proposal:	Authorisation to serve an enforcement notice.
Drawing Nos.:	N/A
Applicant:	N/A
Date Valid:	N/A
Recommendation:	SERVE AN ENFORCEMENT NOTICE



## **1. BACKGROUND**

- 1.1 The site in question is a diamond shaped area of open space located between and at the end of the cul-de-sacs of residential roads Coopers Close and Watercress Close. To the south the site is bounded by Walnut Tree Close. The open space has small spurs at the western, eastern and southern corners providing pedestrian access from each road and is predominantly laid to grass with landscaping banks located along the boundaries with those residential properties that abut the site.
- 1.2 The site is in private ownership and the current owner applied for planning permission to build three detached houses with associated access and car parking in 2019 (Planning Reference:- 19/00002/FP). Officers were recommending refusal and the application was subsequently withdrawn at the request of the applicant before a decision was issued.
- 1.3 On Saturday 25 January contractors arrived on site and erected 2m high hoarding panels across the entrance of each pedestrian access to the land. The agent has been contacted seeking removal of the hoarding and the owner of the land believes the works legal for planning purposes and is not willing to remove the enclosures.

## **2. DISCUSSION**

- 2.1 The approval of the residential estate off Walnut Tree Close and beyond that off Edmonds Drive was approved in 1986. As part of the approved plans the area of land was annotated as a 'play area'. However, no S106 Agreement was signed to specify the land be used as such or for agreement of the land to be adopted by the Council. Furthermore, there are no stipulations placed on the decision notice by way of condition that protects the area of land in question.
- 2.2 Notwithstanding this, the area of land has been open for public use since the estate was built and it is officer's opinion that the open space has acquired a public right of way and access over the land. This is because of the length of time in which it has been in use by the general public.
- 2.3 In terms of the hoarding erected on site, each of the three entrances has been blocked up and enclosed by approximately 2m high hoarding painted white with orange trim across the top and bottom. Each area of hoarding has been set back from the highway edge by approximately 1.5 to 2m maximum. Most visible at the cul-de-sac of Watercress Close, this hoarding and the hoarding at the end of Coopers Close are very prominent as viewed from the public realm and are considered harmful to overall the character and appearance of the street scene. Furthermore, these two areas of hoarding are considered to be adjacent to a vehicular highway for the purposes of Class A, Part 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and thus would not benefit from permitted development rights as they are over 1m in height.
- 2.4 Whilst the Order does not specify a given distance by which something is considered adjacent to a highway, planning case law and appeal decisions have generally taken a view point that if the boundary treatment or enclosure in question is the first line of boundary on a site it would be classed as being adjacent to a highway. At only between 1.5 and 2m in distance from the highway verge the hoardings at Watercress and Coopers Close are deemed to be adjacent to the highway.

- 2.5 When looking at the hoarding erected at the Walnut Tree Close entrance, this is set behind an existing area of 1.8m high close boarded fencing similar in appearance to the rear garden fencing along this stretch of the road. Similarly, there is a 1m high area of close boarded fencing actually closing off the opening into the open space. The hoarding is then set back approximately 3 to 4m from the initial fencing and highway edge. In this case the hoarding is not considered to lie adjacent to a highway. Notwithstanding this, the placement of the fencing precludes the public from accessing a public right of way over the land and this is not deemed acceptable in this instance.

### **3. RECOMMENDATION**

- 3.1 That an Enforcement Notice be issued and served by the Assistant Director of Planning and Regulation and subject to an appointed solicitor by the Council being satisfied as to the evidence requiring the removal of the three areas of hoarding and to reinstate the land to its original open state. The precise terms of the Enforcement Notice, including all time periods, to be delegated to the Assistant Director of Planning and Regulation.
- 3.2 That, subject to an appointed solicitor by the Council being satisfied as to the evidence, the Assistant Director of Planning and Regulation be authorised to take all steps necessary, including prosecution or any other litigation/works in default to secure compliance with the Enforcement Notice.
- 3.3 That in the event of any appeal against the Enforcement Notice, the Assistant Director of Planning and Regulation be authorised to take any action required to defend the Enforcement Notice and any appeal against the refusal of planning permission.

### **4. REMEDY REQUIRED**

- 4.1 Within two weeks of the date of any Enforcement Notice served, the entirety of the three areas of hoarding be removed and the land reinstated to its original open state with access being made available to the public.

### **5. BACKGROUND DOCUMENTS**

1. Stevenage Borough Local Plan 2011-2031 (2019).
2. Central Government advice contained in the National Planning Policy Framework 2019 and Planning Policy Guidance 2014.