

Description Enforcement update relating to Pink Punters

At The Pink Punter, 2 Watling Street, Bletchley

Ward: Bletchley East

Parish: Bletchley & Fenny Stratford Town Council

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1.0 RECOMMENDATION

- 1.1 1. The contents of the report be noted; and,
- 1.2 2. That no enforcement action can be taken in respect of any development on the site identified to be immune from action through lapse of time; and,
- 1.3 3. That it is not considered expedient to pursue formal enforcement action against the signage on the site.

2.0 INTRODUCTION

- 2.1 The site has a very complex planning history that has involved numerous retrospective planning applications over the last twenty years. Not all of these applications have been complied with and development has, through the passage of time, become immune from enforcement action. Given the expansive and largely historical planning history, and bearing in mind that unauthorised development can become immune from action after 4 years under to section 171B of the Town & Country Planning Act 1990 ('the Act'), this report seeks to outline the history of the site and establish those aspects of the development that are unauthorised and still subject to planning control. This will provide a basis for future development on the site to be monitored and, if necessary, managed through future enforcement action.

The Site

- 2.2 The property is situated on the south-eastern edge of Fenny Stratford and consists of a large building of 1 to 5 stories with a large open car parking area to the south-east (see Annex A). The building is mainly used as a nightclub, but it also includes a 3-bedroom, manager's flat.

- 2.3 It is a prominent feature in the street scene approaching Fenny Stratford from the south on Watling Street. The building is bulky and imposing with large balconies across the front and south-east side elevations. Both balconies feature large, rainbow coloured signage across their whole length.
- 2.4 The building was originally a Victorian public house, but around 2006 its use as a nightclub commenced. A series of extensions have been added to the point where the original building forms less than half of the property. Some of those extensions were added whilst the property was still in use as a public house, but others have been added since the property became a nightclub.
- 2.5 The surrounding area is a mixture of small commercial uses and residential properties. The River Ouzell abuts the site, from where it is crossed by Watling Street at the south-eastern end, before it turns north-east and forms the rear boundary of the site.
- 2.6 The site is designated for leisure and retail use in the Plan:MK Proposals Map and the area where the containers are located is situated within Flood Zone 3.

3.0 RELEVANT PLANNING HISTORY

00/00723/FUL

Change of use from public house to mixed use as restaurant and guest house including the retention of alterations to elevations and the retention of outbuildings, alterations to vehicular access and construction of car park
Permitted 30.03.2001

03/00049/FUL

First floor rear extension (retrospective planning application)
Permitted 07.03.2003

03/01802/FUL

Retention of subterranean building and alterations to approved parking layout
Permitted 19.01.2004

04/01683/FUL

Three storey side extension
Permitted 12.11.2004

06/00235/FUL

Demolition of existing outbuilding and retention of rear extension
Permitted 30.11.2006

07/01941/FUL

Two storey rear extension to provide enclosed storage and covered smoking area and erection of car port (retrospective)
Permitted 29.02.2008

08/01006/FUL

Erection of a canopy above the existing car port to provide covered smoking area
Permitted 29.07.2008

08/01573/FUL

Proposed repositioning of vehicular access, alterations and extensions to parking area and erection of security gatehouse (part retrospective)
Permitted 20.04.2009

09/00330/FUL

Erection of two storey side extension
Permitted 03.07.2009

09/01603/FUL

Erection of two storey side extension
Permitted 18.01.2010

10/00516/FUL

First floor front extension
Permitted 17.05.2010

13/01000/FUL

Erection of side and front extensions (retrospective) and part change of use from dwelling house (use class C3) to nightclub (use class sui generis)
Refused 10.02.2015

15/02596/FUL

Erection of part single storey, part two storey front and side extension to accommodate ancillary facilities for the night club, removal of continuous walkway and external staircase, removal of rainbow signage and improved parking and manoeuvring arrangements (part retrospective)
Permitted 30.01.2019

17/03235/FUL

For the installation of a gantry LED safety sign (retrospective)
Permitted 08.02.2018

19/01142/FULMMA

Variation of condition 1 (Approved Drawings), condition 4 (Parking Spaces) and condition 5 (Bicycle Parking) attached to planning permission 15/02596/FUL
Permitted 25.09.2019

20/02405/FUL

Provision of storage containers (retrospective)
Refused 23.11.2020 (Appeal pending)

4.0 ENFORCEMENT HISTORY

Applications to regularise unauthorised works

- 4.1 The majority of development at the site appears to have been carried out between 2000 and 2012 and has been the subject of various approvals to extend the premises. Consequently, irregularities and unauthorised developments were reported and retrospectively applied for in 2013 under application ref. 13/01000/FUL, which was subsequently refused.
- 4.2 The operators then sought to address the development on the site by submitting application ref. 15/02596/FUL. This was for the erection of a part single storey, part two storey front and side extension to accommodate ancillary facilities for the night club, removal of a continuous walkway and external staircase, removal of rainbow signage and improved parking and manoeuvring arrangements (part retrospective). This was subsequently approved.
- 4.3 The 2015 application was not determined until 2019 and all the significant works to the building had been carried out by 2013. By 2016, the site was fundamentally as it appears now. It is noted that the 2019 approval alludes to the removal of some works; notably the removal of a continuous walkway and external staircase and rainbow signage shown at Annex B. However, these were not conditioned to be removed.
- 4.4 There are, however, matters that remain enforceable. In 2020, six, dark green, steel containers were placed on the site. Four of the containers are 6 metres long and two are 11.8 metres long. All the containers are 2.5 metres wide. The containers are located adjacent to the main building and alongside the river. The four smaller containers are arranged end to end with the two larger containers stacked end to end above them. The containers are sited on a supporting base which results in an overall height of 6.29 metres for the whole structure which is 24 metres long.
- 4.5 In September, a planning application (ref. 20/02405/FUL) was submitted for the retention of the containers and an enforcement notice was served on 15th October 2020 for their removal. Subsequently, planning permission was refused under Officer Delegated powers on 23rd November 2020. The containers therefore remain unauthorised and an appeal for their retention (ref. APP/Y0435/C/20/3263042) is under consideration.

Remaining operational development

- 4.6 In terms of potential enforcement action regarding any matters that had not been addressed within either of these applications, aerial photos and historic images of the development show a development that has substantially been in situ in its current state since 2016. Consequently, the majority of development would, under section 171B of the Act, have become immune from planning control – even those elements which might have been intended for removal at the time. On this basis, the Council would be precluded from taking enforcement action on any unauthorised operational development in excess of four years old.

- 4.7 Enforcement action for development on this site can only be taken in respect of development that has been constructed from early 2017 onwards. Therefore, it is necessary to conclude that the vast majority of development subject to planning control on this site has either:
- Received retrospective planning permission; or
 - Become immune from action through lapse of time.

Unauthorised advertising

- 4.8 Given that advertising is subject to separate regulations and immunity periods, it is necessary to consider first whether the rainbow patterned signage, and additional signs and their supporting structures, qualify as advertisements.
- 4.9 Section 336(1) of the Act gives the definition of “advertisement” a wide interpretation:
- “Advertisement means any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of advertisement, announcement or direction, and (without prejudice to the previous provisions of this definition), includes any hording or similar structure used, or designed, or adapted for use and anything else principally used, or designed or adapted principally for use, for the display of advertisements and references to the display of advertisements shall be construed accordingly.”*
- 4.10 Legal advice indicates that the rainbow patterned signage would be considered an advert. The other signage, consisting of a banner sign at the south eastern vehicular access and small adverts placed on the security kiosk situated on the site frontage, are also considered to be adverts.
- 4.11 In turning to the supporting structures for each of these signs, it is considered that the structure facilitating the display of the rainbow signage could be judged in either light – an incidental part of the building, as it constructed as part of the extensions described above, or a intended adjunct to the extension principally for the display of the advertisement.
- 4.12 On balance, it is considered that the contiguous nature of parts of this ‘adjunct’ to structural elements of the building lean towards a view that it is operational development within its own right. In taking this view, it is therefore recognised that the structure would be subject to the 4-year immunity period under section 171B of the Act, and immune from enforcement action on that basis.
- 4.13 A similar conclusion is made in respect of the security kiosk, with that principally constructed to provide as a building for shelter for security personnel, and not to display advertisements. This has also been presented for over 4 years and would therefore be immune from enforcement action.
- 4.14 The banner sign, however, attracts a different view. Whilst it has been in situ for over 4 years it is displayed upon a purpose-built structure for that sign. The immunity period is therefore different, and this is discussed further below.

Deemed Consent

- 4.15 It is then necessary to consider whether any of the signage would benefit from 'deemed consent' – the equivalent to permitted development for advertisements. Deemed consent is granted by Schedule 3 of the Regulations, which sets out 17 classes of advertisement which do not require express consent (i.e. upon application to the Local Planning Authority).
- 4.16 It is considered that the rainbow signage situated on the main building, the banner sign on the highway access, and the signage on the security box would not benefit from deemed consent, and would therefore require express consent. In respect of the rainbow signage on the building, this exceeds limitations for deemed consent within the Town and Country Planning (Control of Advertisements) Regulations 2007 ('the Regulations').
- 4.17 For the signage on the security kiosk and the banner, it is illegal to display an advertisement without first obtaining permission of the owner of the site. Highways have confirmed that both the banner and the signage on the security kiosk (and the kiosk itself) are on highway land without their permission.

Immunity periods for advertisements

- 4.18 In accordance with Class 13, Part 1, Schedule 3 of the Regulations, advertisements can be displayed on a site which has been used continually for the preceding ten years for the display of advertisements without express consent. However, this only applies to those advertisements where there has not been a material increase in the extent, or a change in the manner of the display, and excludes sequential and moving displays.
- 4.19 The signage displayed at the site is considered to require express consent as they do not appear to have been displayed for at least 10 years.
- 4.20 However, as noted above, the facilitating structure containing the rainbow signage on the main building is considered to be operational development and would be subject to the 4-year immunity period under section 171B of the Act. On this basis, only the rainbow signage itself would still be enforceable.
- 4.21 The banner signage would fall within the 10-year immunity period under the Regulations, along with the accommodating structure. The sign as a whole would fall within the scope of enforcement action. It should also be noted that this sign and structure are situated on the adopted highway and could be removed under separate legislative provisions.
- 4.22 The adverts placed on the security box situated on the site frontage could also be enforced against, but the building itself would not be subject to the same immunity period - it subject to the 4 year immunity period under section 171B of the Act rendering it immune from action. Again, this signage and the security box is situated in the public highways and therefore could be subject to other formal action.

Whether to take enforcement action

- 4.23 The display of unauthorised signage is a criminal offence under section 224 of the Act. Prosecution must be brought about in the Magistrates Court within 3 years of the display of the advertisement(s). That period has lapsed.
- 4.24 Separately, the banner and the signage on the security kiosk are illegally in place because permission was not sought from highways. However, these have been in place in excess of 4 years.
- 4.25 Direct action may be an option, under section 225A of the Act, where the Council has the power to remove and dispose of any display structure which in their opinion is used for the display of an unauthorised advertisement. It should be noted this option is only available in respect of the structure used to display the banner, and removal of that structure would also lead to the removal of the banner itself (although not subject to the direct action taken).
- 4.26 However, it must be first considered whether formal enforcement action in relation to the banner structure (and associated sign) is in the public interest. This reflects clear guidance set out in Planning Practice Guidance and the fact that enforcement action is a discretionary power under the Act. Secondly, it is necessary to consider the effect of the signage on amenity and public safety – the relevant considerations under an application for express consent. These are discussed below.

Policy considerations

4.27 National Planning Policy Framework (2019)

Section 12 - Achieving Well-Designed Places (para 132)
Section 2 - Achieving sustainable development

Planning Practice Guidance (the PPG) is also a material consideration.

4.28 Plan:MK (2019)

Policy D1 - Designing a High Quality Place
Policy D2 - Creating a Positive Character Policy
Policy D3 - Design of Buildings Policy
Policy D5 - Amenity & Street Scene
Policy CT1 - Sustainable Transport Network

4.29 Supplementary Planning Documents

Milton Keynes Council's Outdoor Advertising Policy (2005)

Amenity

- 4.30 Factors relevant to amenity include the general characteristic of the locality, including the presence of any feature of historic, architectural, cultural or similar interests. The PPG explains that 'amenity' is a matter for interpretation by the decision maker as it

applies in any particular case. In practice, 'amenity' in respect of signage is usually understood to be the effect on visual and aural amenity in the immediate neighbourhood of an advertisement or site for the display of advertisements, where residents or passers-by will be aware of the advertisement. In assessing amenity, it is appropriate to consider the local characteristics of the neighbourhood.

- 4.31 It is noted in the current case that the banner is not illuminated. It does not represent a proliferation of banners leading to a cluttered street scene and is not facing into adjacent properties. It also relates to one of several businesses who display advertisements along this built up stretch. It is also modest in size and prominence, and thus has a limited effect on amenity, that has not been the subject of previous concerns. It is therefore considered the signage complies with policies D1, D2, D3 and D5 of Plan:MK.

Public Safety

- 4.32 The Regulations state that factors relevant to public safety include:

- *“The safety of persons using any highway...;*
- *Whether the display of the advert in question is likely to obscure, or hinder the interpretation of any traffic sign ...; and*
- *Whether it is likely to hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle”.*

- 4.33 The PPG goes further and sets out additional guidance on the meaning of public safety. It lists the main types of advertisements which may cause danger to road users, being those which:

- obstruct or impair sightlines at corners, bends or at a junction, or at any point of access to a highway;
- could obstruct or confuse a road user's view, or reduce the clarity or effectiveness of a traffic sign or signal, or would be likely to distract road users;
- leave insufficient clearance above any part of a highway;
- incorporate moving elements in their display, or successive individual advertisements which do not display the whole message;
- require close study; and/or
- resemble traffic signs.

- 4.34 Officers have not been made aware of public safety concerns regarding the signage on the site by members of the public. Advice from the Highways officer confirms it is not considered to pose a safety hazard, although it is noted that it stands on the adopted highway and will need to be removed. With this in mind, the signage is considered to comply with policy CT1 of Plan:MK.

- 4.35 With the above observations in mind, there is not considered to be injury to the amenity of the area, nor a public safety issue upon which direct action under planning legislation can be justified.

5.0 PROPOSED ACTIONS

- 5.1 It has been established that, with the exception of the containers presently subject to an enforcement notice and the pending appeal, the operational development at the site is now likely immune from enforcement action. Notwithstanding that, the security kiosk appears to stand within the adopted highway and could be subject to action under separate legislation. In brief, it is not possible to enforce the removal of operational development under planning provisions.
- 5.2 Application ref. 15/02596/FUL was amended in 2019 (ref. 19/01142/FULMMA). The resulting approval carries two relevant conditions; condition 4 relating to the layout of vehicular parking, and condition 5 relating to cycle parking. Condition 4 only requires the retention of the existing parking layout, which remains as required on site, and condition 5 requires the provision of bicycle parking. Officers will therefore correspond with the proprietors to ensure that the requirements of condition 5 are complied with.
- 5.3 Given the complex history of unauthorised development at the site, enforcement officers will continue to monitor any works that take place and ensure that any extant conditions are complied with. If the planning appeal relating to the shipping containers is dismissed, the site owners will have a compliance period of 2 months to remove them. Officers will, however, periodically monitor the site in the interim to ensure that previous patterns of unauthorised works taking place do not continue.
- 5.4 In respect of the signage, it has been concluded that no action can be taken against the rainbow signage and that upon the security kiosk. Whilst the banner sign is still liable to enforcement action, it is not in the public interest to secure its removal. The above assessment finds that it does not injure the amenity of the area, nor pose a public safety hazard. It is, therefore, likely that an application for express consent could be granted and in turn it is not appropriate to take formal enforcement action against it.
- 5.5 Should it be viewed that the structure supporting the rainbow signage be principally for the display of that advertisement, then in considering the appropriateness of direct action would draw in the same considerations as for the banner signage. Highway officers have conformed there is no public safety concern in respect of this signage, and the same views as to the impacts on the amenity of the area echo in consideration of this advertisement. Hence, even if that structure were not considered to be immune as operational development and instead part of the advertisement, it is again likely that an application for express consent could be granted and in turn it is not appropriate to take formal enforcement action against it.
- 5.6 Any remaining concerns raised by the Highways Officer should be addressed under their legislative provisions.

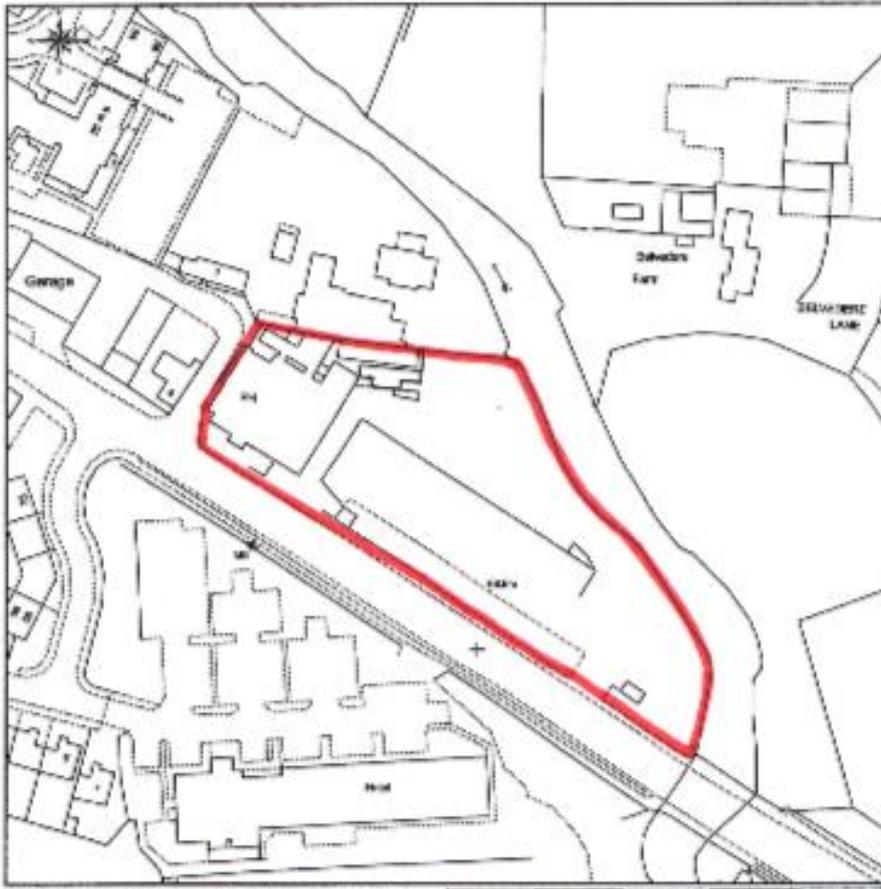
6.0 CONCLUSIONS

- 6.1 The site has undoubtedly been subject to significant and continued piecemeal development over a considerable period. Unauthorised works have been

investigated over the last 20 years and have invariably attracted retrospective planning applications that have, in the main, been approved.

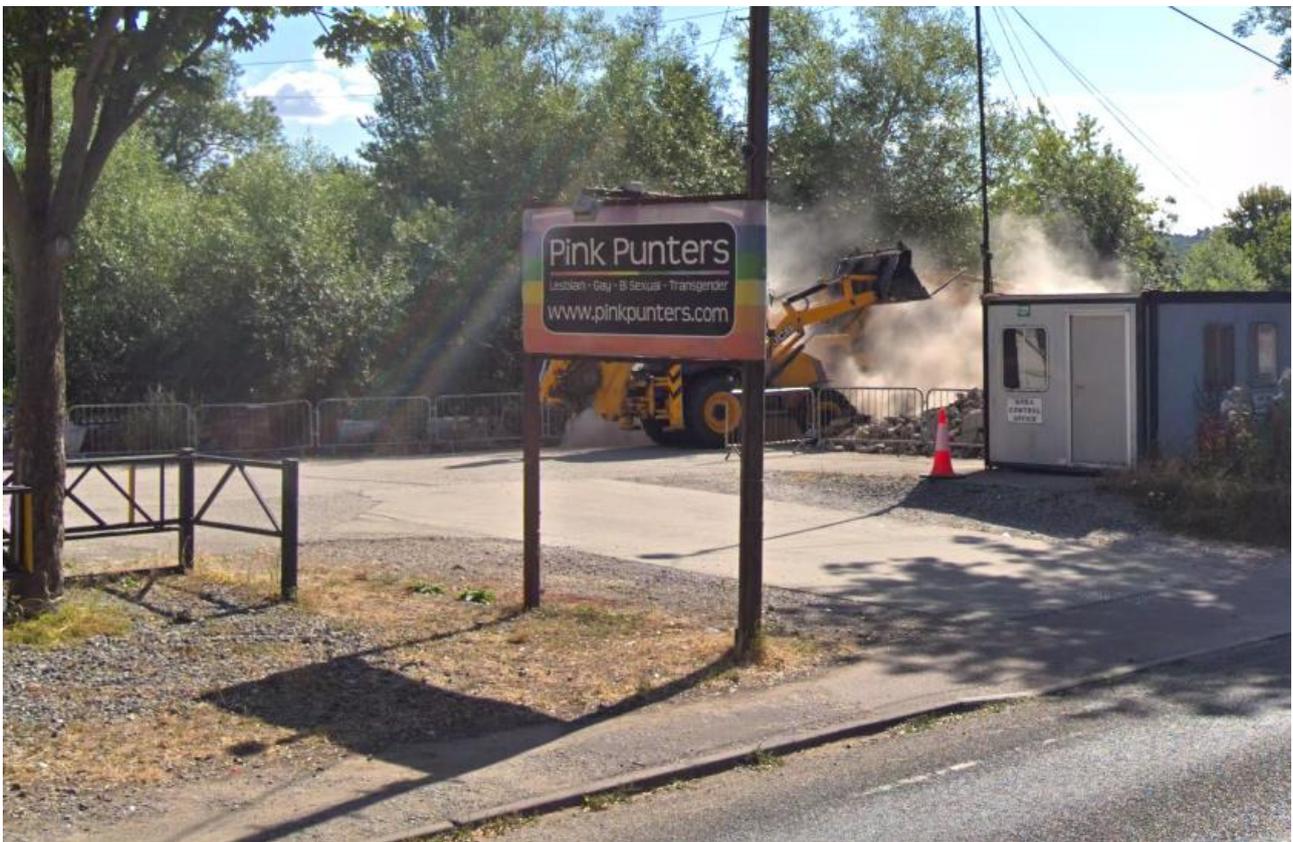
- 6.2 On assessing activity at the site, both historic and recent, officers are of the opinion that any significant development that has taken place has now either received retrospective planning approval or has likely become immune from planning control by virtue of section 171B of the Town & Country Planning Act 1990. The current appeal against an enforcement notice will determine whether the shipping containers remain on site or not, and officers will monitor the progress of this appeal. Officers will also ensure compliance with a previous condition, as identified.
- 6.3 In respect of the majority of the signage, it is not possible to pursue formal action, given the time the signage has been in place. When measuring the amenity and public safety considerations in respect of the banner sign and its associated structure, it is not considered to be in the public interest to pursue further action.

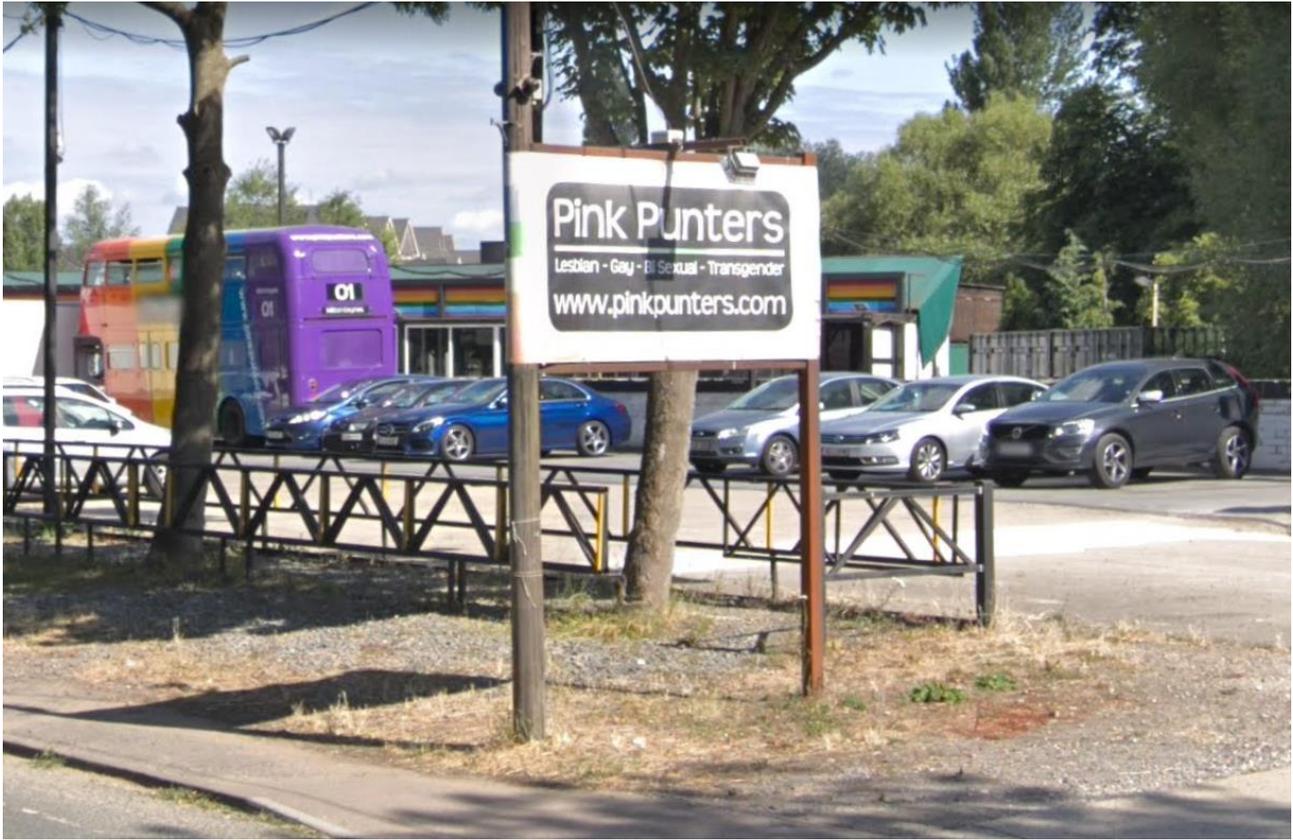
Annex A: Site location



Annex B: Photos







Pink Punters

Lesbian - Gay - Bi Sexual - Transgender

www.pinkpunters.com