

Appeals Progress Report

1. Appeal Decision

- 1.1 Appeal against an Enforcement Notice dated and served on 28 September 2015 requiring the material change of use of the land from use for agriculture to a mixed use comprising: 1. sale of motor vehicles; 2. the storage of motor vehicles; 3. storage of de-polluted motor vehicles bodies and vehicle parts; 4. general storage; 5. siting of a mobile home; 6. siting of portable buildings; 7. the creation of earth bunds; 8. the creation of a hard-core standing area; 9. the creation of a tarmac car park; and 10. the erection of watchtower/camera gantry cease at:

Land at former Lafarge Site, Hollybush Lane, Aldershot

- 1.2 Members will recall that the substantive decision in respect of this appeal, which was, overall, to dismiss the appeal and uphold the requirements of the Enforcement Notice (with minor amendments reducing the area covered by the Notice; modifying the requirements of the Notice; and the timescale for complying with the requirements) was made on 30 November 2016. This followed a Public Inquiry held at the Council Offices on 18, 19 and 20th October 2016. In this respect the appeal was dismissed on all of the grounds lodged by the appellant, namely:-

Ground (a) : that planning permission should be granted for the unauthorised development the subject of the Notice;

Ground (b) : that the specific breach of planning control alleged by the Notice has not occurred;

Ground (f) : that the requirements of the Notice exceed what is necessary to remedy the breaches of planning control that have occurred; and

Ground (g) : that the time period specified by the Notice for compliance is too short.

- 1.3 However, as was reported to this Committee in February 2017, the appellant was successful in making a High Court legal challenge solely in respect of the Ground (f) appeal decision. This was on the basis that the appeal Inspector had failed to make amendments to the requirements of the Notice to reflect their findings concerning whether or not the material arising from the taking down of the unauthorised bunds could be spread out on the land at the appeal site. Instead, the Notice as amended by the original Inspector continued to require the unauthorised bund material to be removed entirely from the appeal

site. The Secretary of State (on behalf of the Planning Inspectorate) conceded that the Ground (f) appeal should be re-determined by a new (second) Inspector. This had the effect of putting the Enforcement Notice back into abeyance (and thereby not in effect) pending the re-determination of the Ground (f) appeal. The second Inspector considered the re-determined Ground (f) under the Written Representations procedure, thereby allowing the Council and the appellants to make written comments for their consideration. The second Inspector made an accompanied site visit on 5 June 2017 and issued his decision on 23 August 2017.

- 1.4 The second Inspector noted that the appellants had submitted evidence at the Public Inquiry to support their assertion that the entirety of the unauthorised bund material had been taken from the land at the appeal site and not imported onto the site from elsewhere. Although the veracity of this evidence was called into question by the Council at the Inquiry and in submissions with the re-determined Ground (f) appeal, the Council were unable to provide any evidence to directly and substantially contradict the appellants in this respect because the construction of the bunds had taken place unobserved on an unauthorised basis. Furthermore, the Enforcement Notice did not allege the importation of materials onto the appeal site; the original appeal Inspector appeared to have concluded that it was unnecessary for the Appellants to remove the bund material from the land; and that the levelling of the material on the land would suffice. Accordingly, whilst the second Inspector accepted that the Appellant's evidence did not prove their assertions beyond all doubt, he took the view (backed up by case-law) that the appellant's own evidence did not need to be corroborated by independent evidence to be accepted. This was provided that the appellant's evidence alone is sufficiently precise and unambiguous on a 'balance of probability'. The Inspector concluded that the Appellant's evidence was sufficient in these regards.
- 1.5 Given that the provenance of the bund material was unknown to the Council, it was submitted by the Council to the second Inspector that the material should only be allowed to remain on the land if it was found to be un-contaminated. Furthermore, that the bund material to be spread on the land should be placed where it would not have an adverse impact upon the river floodplain. However the Inspector considered that the purpose of the Notice should only be to return the land to its former condition; and that it could not be used to make improvements over and above what was the former situation. The Inspector considered that it should be possible to spread and level the bund material on the appeal site returning the site to its former levels.
- 1.6 The second Inspector therefore upheld the Enforcement Notice with further amendments to delete the requirement for the unauthorised bund material to be removed from the land. The Enforcement Notice therefore took effect again from the date of the Ground (f) re-determined appeal decision on 23 August 2017. The overall requirements of the Notice therefore now read (with deleted/amended portions shown) as follows:-

“(A) Cease using any part of the land for:-

- *motor vehicle sales;*

- storage of motor vehicles;
- storage of de-polluted motor vehicle bodies;
- general storage of motor vehicle parts;
- the siting of the Mobile Home used for residential purposes [already removed];
- the siting of the Portable Buildings marked “B” on the Notice Plan;
- car parking;
- the siting of the watchtower/camera gantry.

(B) Remove from the land:-

- all motor vehicles;
- all motor vehicle parts;
- the Mobile Home [already removed];
- the Portable Buildings marked “B” on the Notice Plan;
- the hard core standing in the area marked “H” and shown hatched black on the Notice Plan;
- the tarmac car park marked “C” and shown in black stippling on the Notice Plan;
- all lighting columns; metal freight containers; skips; storage tanks; fork-lift; truck; fork-lift pallets and boxes; temporary metal mesh fence panels; refuse bins; advertising and other signage; scaffolding; assorted scrap machinery; metal; sanitary ware, furniture, tools, plant equipment and other materials;
- the watchtower/camera gantry marked in the approximate position by a red circle on the Notice Plan.

(C) Take down the earth bunds and spread and level the resultant material on the appeal site returning the site to its former levels. Following this, replant (and replace and replant any species which die or fail within five years of being replaced) the land shown marked “Y-Y” on the Notice Plan with a native mix of trees comprising oak, hawthorn, blackthorn, rowan, hazel and beech planted in a random order as young (‘whip’) saplings about 40 – 60cm in height at 1 metre separations into appropriately prepared soil.”

1.7 Now that the Enforcement Notice has taken effect, the following timescales apply for compliance with the requirements of the Notice:-

- Within 3 Months (i.e. **by 23 November 2017**) to remove from the land all of the portable buildings;
- Within 6 Months (i.e. **by 23 February 2018**) to comply with the remainder of the requirements in (A) and (B) above; and
- Within 12 Months (i.e. **by 23 August 2018**) take down of the earth bunds, spread and level of the resultant material on the appeal site, and plant the cleared area Y-Y on the Notice Plan.

Decision – Re-determined Ground (f) Appeal ALLOWED resulting in further amendments to the requirements of the Enforcement Notice; However the overall appeal decision remains as originally determined : Appeal DISMISSED and Enforcement Notice UPHELD with variations.

2. Recommendation

2.1 It is recommended that the report be **NOTED**.

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