

## **Enforcement and possible unauthorised development**

### **1. Introduction**

This report considers current matters of enforcement and possible unauthorised development. The taking of planning enforcement action is delegated to the Head of Planning in consultation with the Chairman. Therefore, only a few matters that require Committee decision to take formal action are reported to Committee.

It is not an offence to carry out works without planning permission and the National Planning Policy Framework (NPPF) states that enforcement action is discretionary and that local planning authorities should act proportionately in responding to suspected breaches of planning control. Local authorities are also advised to take action only where it is appropriate to do so. The purpose of this report is normally, therefore, is to report to Committee matters that are breaches of planning control but where it is recommended that it is not expedient to take enforcement action.

### **2. Policy**

The Council's Policy on Planning Enforcement is set out in the adopted Planning Enforcement Charter. The essential thrust of the Policy is that We will not condone wilful breaches of planning law but we will exercise our discretion about taking enforcement action if it is considered expedient to do so. The principal enforcement policies are:

#### **Policy PE2**

Immediate planning enforcement action will be taken against any unauthorised development that unacceptably affects public amenity or causes harm to land or buildings.

#### **Policy PE3**

Formal enforcement action will not normally be taken where a trivial or technical breach of planning control has occurred that causes no material harm

#### **Policy PE24**

Where development is being carried out which is considered to be significantly different from the approved plans and the changes cause serious harm to public amenity, immediate enforcement action may be taken, including the issue of a Stop Notice or Enforcement Injunction to stop the unauthorised development. However, where no material harm is being caused or where the works are "de-minimus", no further action will be taken.

### **3. Items**

Each item contains a full description, details of any investigation, and an assessment of the situation and concludes with a recommendation.

This report relates to:

#### **Item 1 Former Lafarge Site and adjoining land at Hollybush Lane North, south of North Camp Railway Station.**

All information, recommendations and advice contained in this report are understood to be correct at the time of writing this report. Any change in circumstances will be updated verbally at the Committee meeting. Where a recommendation is either altered or substantially amended between preparing the report and the Committee meeting, a separate sheet will be circulated at the meeting to assist Members in following the modifications proposed.

### **4. Human rights**

The Human Rights Act 1998 (the Act) has incorporated part of the European Convention on Human Rights into English law. Any recommendation either to take or not to take enforcement action has been assessed to make sure that the decision is compatible with the Act. If there is a potential conflict this will be highlighted in the individual report on the relevant item.

### **5. Financial implications**

There are no direct financial implications arising from this report. However, in the event of an appeal, further resources will be put towards defending the Council's decision. Rarely, and in certain circumstances, decisions on planning enforcement cases result in the Council facing an application for costs arising from a planning appeal. Officers will aim to alert Members where this may be likely and provide appropriate advice in such circumstances.

Keith Holland  
Head of Planning

#### **BACKGROUND PAPERS**

*Rushmoor Local Plan Review (1996-2011)*

*Rushmoor Core Strategy (October 2011)*

*Planning Enforcement - Policies And Procedures*

*National Planning Policy Framework (NPPF)*

## Item 1

SITE LOCATION	<b>Former Lafarge Site and adjoining land at Hollybush Lane North, south of North Camp Railway Station.</b>
ALLEGED BREACH	<b>Unauthorised material change of use of land to: (a) commercial car spares/car sales use; and (b) storage of scrapped cars; both with associated development comprising construction of bunds, hard-surfaces, roads, fences and siting of structures on the land.</b>
RECOMMENDATION	<b>Prosecution be Authorised.</b>

### 1. INTRODUCTION

- 1.1 This report has been prepared to update Members with progress towards compliance with the Enforcement Notice, upheld at appeal, which relates specifically to the former Lafarge concrete batching plant. This is land surrounded by the fishing lakes to the north, east and south and bounded by Hollybush Lane to the west. This case was previously reported to Members at the 25 April 2018 Development Management Committee meeting.
- 1.2 The land lies within the Blackwater Valley green corridor (formerly a strategic gap) identified as 'countryside' by the Rushmoor Core Strategy. It is also land within Flood Zones 2 and 3, land at intermediate and high risk of fluvial flooding. The land is adjacent to the Ramillies Park Site of Importance for Nature Conservation (SINC), which is to the south.

### 2. RELEVANT HISTORY

- 2.1 Members will recall the Council's Enforcement Notice served in September 2015 was subject to appeal heard at a Public Inquiry held in October 2016. The appeal was dismissed by two subsequent Inspector's decisions dated 30 November 2016 and 23 August 2017 and the Enforcement Notice upheld with some variations and an amended Notice Plan. The amended Enforcement Notice took effect from 23 August 2017 and imposes the following staged requirements:-

***“(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 hardstanding 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.”**

2.2 The timescales for the staged compliance with the requirements of the Enforcement Notice are set from the date when the Notice took effect and are, as a result:-

- 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**) to undertake the taking down of the earth bunds, the spreading and levelling of the resultant material on the appeal site returning the site to its former levels, and the planting of the cleared area Y-Y on the Notice Plan.

2.3 The amended Enforcement Notice Plan identifies the area of land to which the Notice relates and is attached at the end of this report.

### **3. THE CURRENT SITUATION**

3.1 A number of inspections of the site have been undertaken this year, on 6 April and 4 & 5 June, as a check on the landowner’s progress towards compliance with the requirements of the Enforcement Notice. The latest site inspection was undertaken shortly before this report was finalised for publication on 7 August 2018. This is timely since the principal Enforcement Notice compliance date is 23 August 2018.

- 3.2 Substantial progress has already been made in meeting Requirements A, B and C of the Notice. Indeed, the site is now largely empty. All the uses of the site which were required to cease have ceased; the land has been cleared of cars, car parts, portable buildings, and assorted plant and materials; the sections of earth bund annotated Y-Y on the Enforcement Notice Plan have been taken down and the material re-distributed on site returning the site to its former levels; the concrete hardstanding annotated "H" on the Notice Plan has been broken up; and the camera gantry and 'watchtower' kiosk removed.

The 25 April 2018 Committee Report noted the following items in particular still needed to be removed from the site to complete compliance with the Enforcement Notice:-

- (a) A quantity of assorted building materials, plant, equipment, motor vehicles, skips and storage containers that belong to a Building Company that the landowner has allowed to store such items on the land.
  - (b) Portable toilet/canteen blocks and a small number of waste skips/containers, pallets and containers;
  - (c) The tarmac car parking area stippled black and annotated "C" on the Notice Plan;
  - (d) A residual number of lamp columns;
  - (e) A pile of waste/scrap wood;
  - (f) A stack of metal sheet piles;
  - (g) A small garden-type shed;
  - (h) The support structure for the camera 'watchtower'; and
  - (i) The scaffolding surrounding the former concrete plant hopper tower.
- 3.3 On 21 July 2018 the landowner contacted the Council to advise that further works had been undertaken since the last inspections in early June 2018, namely:-
- (a) The building company using some land at the site for open storage had removed further materials and equipment from the site and were on course to have removed everything before 23 August 2018;
  - (b) The Portable toilet/canteen blocks had been removed from the site;
  - (c) The remaining lamp columns had been removed;
  - (d) The waste/scrap wood, metal sheet piles and shed had also been removed from the land.
- 3.4 The site inspection on 7 August 2018 has confirmed that the building company was, at the time of the visit, filling skips and lorries with their building materials in preparation for removal from the site. A number of vehicles belonging to the building company also remained on the land at the time of the visit. Whilst this work is clearly underway it has not been completed and a further site inspection will therefore be needed when it is; although the current rate of progress suggests that the works should be completed before 23 August 2018. The 7 August 2018 site visit has confirmed that the portable toilet/canteen blocks, lamp columns, sheet piles, garden shed and the large quantity of scrap wood previously seen on the site have been removed. Nevertheless, a smaller pile of scrap wood was present, which appeared to be waste material being piled-up by the building company for separate disposal.

At the time of the site visit, there was also a scrap van belonging to the landowner, together with a skip and a metal cage containing some welding/cutting gas cylinders. The landowner advises that these items are to be removed once their compliance works at the site are completed.

3.5 On the basis that most of the requirements of the Enforcement Notice have now largely been complied with, the landowner has asked the Council to consider not pursuing compliance with the terms of the Enforcement Notice in respect of the following residual matters:-

(1) Retention of the tarmac parking area stippled black and annotated "C" on the Notice Plan. The landowner argues that this requirement of the Notice is punitive since the Council has not required the removal of the much large area of tarmac surfacing of a length of Hollybush Lane to the north of the site that was also surfaced at the same time;

(2) Retention of the remaining steel supporting structure that was below the watchtower kiosk. The landowner argues that (a) the Notice did not specifically require the removal of this supporting structure; and that, in any event, (b) the structure has a secondary role in adding extra support to the adjoining site fencing; and

(3) Retention of the scaffolding erected around the remnants of the old hopper tower. The landowner advises that the scaffolding is required in order to allow on-going access to the remnants of the tower for the purposes of inspection and maintenance. Furthermore, the scaffolding would be required if and when works were undertaken to modify the tower for any use that may be found for it.

#### 4 **COMMENTARY**

4.1 Unauthorised development took place on a scale that could not be ignored by the Council despite the land involved being isolated from the remainder of the Borough and with limited visibility from publicly-accessible places. The Enforcement Notice appeal decisions established that clear-cut planning harm arose from the unauthorised development on the land and that that planning permission would be needed for any use of the land. Furthermore, any future use of the land would have to be compatible with the 'countryside' policy designation of the land and its flood risk status.

4.2 Once an Enforcement Notice has taken effect it remains effective in perpetuity providing a permanent prohibition of the breach(es) of planning control that are identified. Accordingly, any resumption of the breach(es) of planning control identified by an Enforcement Notice could be dealt with if necessary. Failure to comply with the requirements of an Enforcement Notice that has taken effect within the timescales that are specified by the Notice, or the resumption of breach(es) identified by a Notice, results in an immediate offence being committed, on which it would be open to the Council to prosecute. However, in considering whether or not to prosecute, it is necessary for the Council to consider whether it is expedient in the wider public interest to pursue the matter further.

- 4.3 The requirements of the Enforcement Notice have been substantially complied with and the breaches of planning control are substantively rectified. To this extent, despite the scale of the task, the landowner has cooperated with the Council and has, indeed, largely done so ahead of the timescale set by the Notice. What remains is the presence of some residual elements of the unauthorised development that, although required to be removed by the Enforcement Notice, the landowner asks to retain on the land. The inclusion of all of these items for removal within the requirements of the Enforcement Notice was not contested by the landowner with his appeal against the Enforcement Notice, which would have been the appropriate time to have done so. Nevertheless, the landowner has, in effect, now asked the Council to consider not prosecuting them should these items remain at the site after 23 August 2018. These matters, together with the landowners stated reasons for their retention, are considered in the following paragraphs.
- 4.4 Tarmac Car Park Area: This is located within the fenced portion of the Enforcement Notice area and is, as noted by the landowner, effectively an extension of the section tarmac roadway of Hollybush Lane constructed on an unauthorised basis in 2012, only located enclosed within the former unauthorised scrap car storage yard. The roadway outside the fenced area is not identified by the Enforcement Notice and is not required to be removed. The area of tarmac surfacing that is the subject of the Notice measures approximately 18 X 33 metres, which is approximately 590 square metres or 2% of the overall ground area within the fenced area. It is not readily visible. The landowner does not provide any specific reason why they wish to retain this tarmac area other than, it would appear, they believe that the requirement to remove it exceeds what is necessary to rectify the planning harm caused by their unauthorised development. The fenced area contains a substantial area of concrete hardstanding that has existed at the site for many years and, as such, could not have been removed as a requirement of the Notice. In the context of this much larger area of hardstanding, the tarmac area is physically insignificant.
- 4.5 Support Structure of former 'watchtower' kiosk: This adjoins Hollybush Lane to the west side of the entrance gates into the fenced area. Having already removed the kiosk and camera gantry, the landowner has not removed the steel supporting structure that was underneath and incorporates a metal staircase climbing the inside of the adjoining earth bank. The support structure is more visible from Hollybush Lane on the other side of the earth bank, where it adjoins and is taller than the adjacent site fence and less obscured by vegetation. Although the Enforcement Notice does not specifically identify the supporting structure, it is considered that it is clearly part of the installation that included the watchtower kiosk and camera gantry and, as such, is required to be removed. Whilst the landowner also suggests that this structure provides some support for the adjoining fence, it was erected with the installation of the kiosk and camera gantry some time later than the fence and, indeed, does not appear to provide any significant or necessary support for the adjoining fence. Furthermore, the support structure is readily visible to people that pass by using Hollybush Lane as part of the alternative footpath route that the

landowner has provided to replace the section of the Blackwater Valley Path that they closed.

- 4.6 Scaffolding erected around defunct hopper tower: This scaffolding is the most visible remnant of the requirements of the Notice that the landowner seeks to retain. Indeed, the scaffolding makes the tower appear more bulky and visible in the landscape than it would otherwise be. The scaffolding has been erected around the tower for in excess of 6 years to date. The landowner has stated that he wishes to retain the scaffolding in order to maintain good access to the old hopper tower for inspection and maintenance purposes; and also to facilitate any works to be undertaken to the tower should they find a use for it. Nevertheless, they advise that the tower is structurally sound, have not provided any information concerning inspections and maintenance undertaken to date or are planned, and have not explained why the tower could not instead be inspected using a mobile platform, crane or cherry-picker if and when any inspection is undertaken. Re-use of the tower would almost certainly necessitate the undertaking of works that would require planning permission, yet no proposals have been forthcoming to date. It is understood that the hopper is filled with concrete and, as such, it remains to be seen whether any use of the structure would be possible.
- 4.7 In considering whether or not to prosecute for failure to comply with the requirements of an Enforcement Notice, it is necessary for the Council to consider whether it is expedient in the wider public interest to pursue the matter further. A point can be reached when the residue of required works are sufficiently small and insignificant in the context of the planning harm originally identified to justify the service of an Enforcement Notice that no useful planning purpose and further improved outcome would be obtained by pursuing prosecution. In this case, it is considered that the retention of the tarmac surfacing of the car park area falls into this category. Taken alone, this residual item is relatively small in scale, has very limited visual impact and, thereby gives rise to minimal planning harm. As such, it is not considered that it would be expedient to pursue a prosecution should this item alone remain at the site after 23 August 2018.
- 4.8 It is not, however, considered that this conclusion should apply to the requested retention of the watchtower kiosk support structure and scaffolding around the old hopper tower. A significant issue for the appeal in this case was, and remains, the visual and physical urbanising effect of the unauthorised development within the narrow countryside gap between the urban areas of Aldershot and Ash Vale. Whereas the retention of the area of tarmac car park surfacing would have no material impact upon the visual appearance of the site, the kiosk support structure and scaffolding is much more readily visible from public vantage points. Indeed, the presence of the scaffolding renders the tower much more visible than it would otherwise be. Furthermore, the landowners reasons for seeking to retain the kiosk support structure and scaffolding are considered unconvincing. As a result, it is considered that it would be expedient in the public interest for the Council to pursue the landowner for the failure to remove the kiosk support structure and scaffolding should they remain at the site after 23 August 2018. In the circumstances, it is considered that the landowner be advised that the Council



expects both the kiosk support structure and scaffolding to be removed by 23 August 2018.

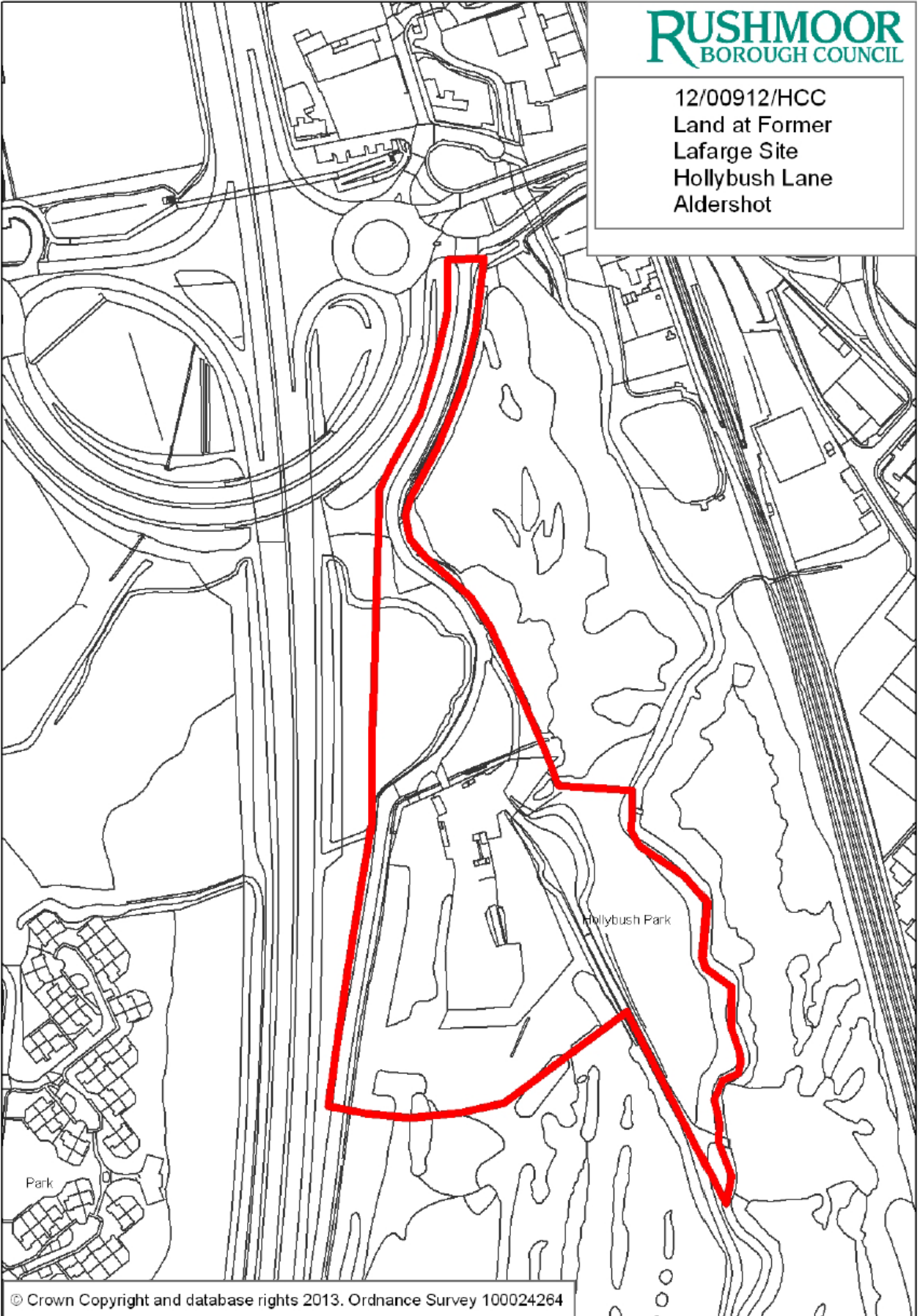
- 4.9 The final requirement of the Notice [at Requirements (C)] is the planting of the cleared area Y-Y on the Notice Plan. The Notice specifies the planting to comprise *“a native mix of trees comprising oak, hawthorn, blackthorn, rowan, hazel and beech planted in a random order as young (‘whip’) saplings about 40 – 60cm in height at 1 metre separations into appropriately prepared soil.”* It is, however, accepted that the timescale for compliance with the Notice in this respect (by 23 August 2018) is unrealistic, especially in the light of the current heatwave conditions. The normal planting season would be the Autumn or Spring months. Expecting the landowner to undertake the required planting by 23 August 2018 would most likely result in the planting failing. It is therefore considered reasonable to allow the landowner more time to undertake the planting when conditions are more favourable. In this respect the landowner has verbally confirmed their intention to undertake the planting this autumn.
- 4.10 It is clear that further inspections of the site will still be necessary to ensure that the remaining site clearance works currently underway are completed.

## **5 RECOMMENDATION**

5.1 It is recommended that:-

- A. the report be NOTED;
- B. The Solicitor to the Council in consultation with the Head of Planning, be authorised to pursue prosecution for failure to comply with the requirements of the Enforcement Notice in the event that, after 23 August 2018, the kiosk support structure and scaffolding surrounding the old hopper tower have not been removed from the site; and
- C. The Solicitor to the Council in consultation with the Head of Planning, be authorised to pursue prosecution in the event that, after 23 August 2018, it is considered expedient to pursue failure to comply with any other requirements of the Enforcement Notice.

12/00912/HCC  
Land at Former  
Lafarge Site  
Hollybush Lane  
Aldershot



## Enforcement Notice Plan as modified by Appeals

