



## **TOWN & COUNTRY PLANNING ACT 1990**

**APPEAL BY: MR BUTLER**

**LOCATION: Land North of Dradfield Lane, Dradfield Lane, Soberton, SO32 3QD**

**PROPOSAL: Enforcement Appeal on grounds b, c, f and g.**

**APPEAL REF: APP/L1765/C/20/3256531**

**COUNCIL REF: 20/00104/WKS**

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## **APPELLANTS RESPONSE TO LPA STATEMENT**

1. The LPA's whole enforcement case is based on the alleged change of use of land from agriculture to storage. As a matter of fact this has not occurred with the land always used for agricultural purposes. As such the enforcement notice must be quashed.
2. For the LPA to take meaningful action they must first be confident that a breach of planning has occurred. It is for the LPA to make this assessment to support their case and actions. To date no planning assessment has been provided to demonstrate the LPAs reasoning for taking enforcement action. Further no PCN was issued. W
3. Whilst it is accepted that a PCN is not an essential pre-cursor to enforcement action, in this instance had a PCN been issued then it would have been evident to the LPA that no material change of use had occurred on the site.
4. It would instead appear that the Councils case is based on the appellants alleged intentions and not what has actually occurred. This is a somewhat crass approach given that the site could speculatively be used for any purpose. There is no mechanism within the enforcement legislation to enforce against intended

operations, as if no development has occurred there is no actual breach of planning control. It is the duty of the LPA to present its case and evidence to support its alleged breach of planning control. However, none has been forthcoming and there is no evidence that a proper assessment was undertaken to establish a breach of planning control and the expediency of taking enforcement action. It is clear from the Council's own evidence that their case is based solely on one visit in which the appellant discussed his intentions for the site. This is a huge failing on the part of the authority and does not provide a sound or reasoned basis for the actions they have taken in the pursuit of Enforcement.

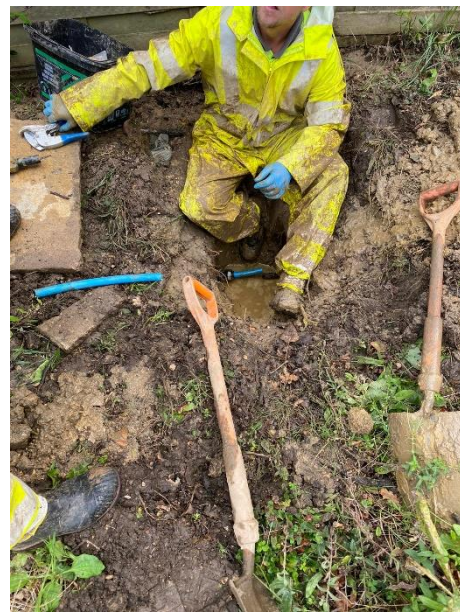
5. Appendix A is attached to this response which provides the written case officer assessment of the site following a recent application for the improved access and gates (subsequently refused and at appeal – ref: APP/L1765/W/20/3263363). Under the site description the site is clearly referred to as agricultural. Therefore having regard to the Council's own planning assessment of the site which confirms the agricultural use the enforcement notice must be quashed as there clearly is no evidence of an actual breach of planning control or unauthorised change of use.
6. Under Ground B the Council confirms that the action was taken on the basis of the appellants intentions for the site. However, having served a temporary stop notice which sought to cease the laying of scalping and non agricultural work (at that point only the hardstanding had been laid and the lorry trailer brought to site) the appellant sought professional planning assistance.
7. Having considered the stop notice it was clear that it had been framed to stop residential occupancy of the site, despite the fact that no occupancy had occurred at that point or since.
8. During the time the stop notice was served the LPA were advised that the land would continue to be used for agriculture and that a container was to be delivered to the site for the storage of agricultural equipment and machinery (27/05/2020). The LPA were therefore advised and informed that the site was to remain in agricultural use prior to the service of the enforcement notice (see Appendix B).

9. Following this professional advice the appellant was advised to retain the agricultural use and ensure that any works were either permitted development for the site or not defined as development. The appellant has followed this advice and as such the LPA has not and cannot provide any evidence to support its allegations that there has ever been an actual material change of use of the land at any point, because there has not.
10. For clarity livestock being on the land or not does not change the use of the land. The character and appearance of the site has not changed. The hardcore laid was done by the appellant and as such was not a building operation and therefore not development. However, as already stipulated such work could be undertaken under agricultural PD for a site of this size. This entitlement is not dependant on livestock being present.
11. The trailer bought on the site has only been used for the storage of hay and for no other purpose. The trailer is therefore incidental to the lawful agricultural use.
12. As mentioned above the storage container was bought on to the site solely for the intention of storing agricultural machinery and equipment and as such is also incidental to the lawful use.
13. The drainage works were required as a natural part of the land management of the site and as such is not development. The water supply was purchased with the land and already existed.
14. Much of this could have been clarified had the LPA issued a PCN, with the Enforcement Notice clearly avoided.
15. In response to Ground c, as stipulated by the Council already the appellant had indicated his intentions for the site. This cannot and should not be construed as having occurred, because it clearly has not. The Council has in fact confirmed that their actions have simply been predicated by intention and not by actual events or occurrences.
16. In response to Ground f, this is a completely false and misleading accusation. At no time did the appellant breach the requirements of the stop notice. The only occurrence was the delivery of the storage container which the LPA was advised of in advance. Confirmation was provided that it was for agricultural purposes and did not contravene the wording or requirements of the stop notice.

17. In reality all the stop notice did was to prevent the lawful works and use of the site.

18. The appellant does not need to provide evidence for replacement drainage works as part of the management of the site. The Inspector will be able to see on site that the blocked drainage ditches were cleared as part of the upkeep of the site and are now free flowing, with the replacement pipework necessary to allow for the free flow of existing surface water. A direct and permitted part of the lawful site.

19. It is pertinent to note that some drainage works were undertaken by the water company following a burst main that flooded the site and was affecting neighbouring properties and not carried out by the appellant (see images below):



22. The scalplings are porous and as such do not affect surface water drainage. The area is proportionate to the size of agricultural vehicles entering and leaving the site, in a forward gear. A clear highway safety benefit.
23. In response to Ground g – it has not been established that the site has been used for any other purpose except for agriculture.
24. Having regard to the above information and evidence in defence of this appeal the Inspector is respectfully requested to quash the enforcement notice and grant a full award for costs.