

STATEMENT OF CASE

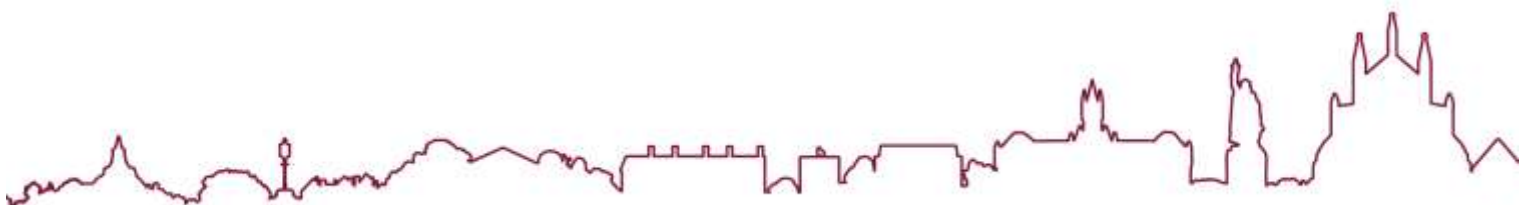
SITE: LAND AT SHEDFIELD EQUESTRIAN CENTRE, BOTLEY ROAD,
SHEDFIELD, SO32 2HN

APPEALS BY: MR CHRISTOPHER COLLINS

AGAINST ENFORCEMENT NOTICE 07

DATE: December 2022

APPEAL REF: APP/L1765/C/22/3309990

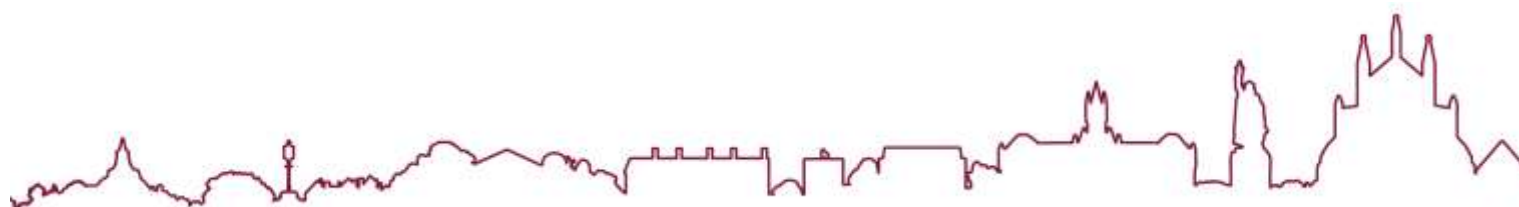


1.0 INTRODUCTION

- 1.1 Enforcement Notice 07 was served on 29 September 2022; a copy of the notice is attached at Appendix A.
- 1.2 The Enforcement Officers report is attached at Appendix B and contains the history of the site and expediency considerations. Please note that the full site review mentioned in the Enforcement Officers report is not included with this statement. If required, this can be provided on request.
- 1.3 An appeal was lodged by the owner of the site on 29 October 2022 on Grounds (d), (f), and (g). This statement will respond to each ground separately below.
- 1.4 Separate to the above, please note that the land on which this planning unit sits is subject to formal enforcement action and all surrounding uses are unauthorised. The Appellant has requested that the Inspector visit the site to “[review the location of the site in context to neighbouring activities and the layout of the site](#)”. This site is not an extension of a lawful industrial/storage site. Enforcement action is underway on the entire site and the Council seeks to return the land to its former, agricultural use.

2.0 RESPONSE TO GROUND (D) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.

- 2.1 The Appellant has stated that “[the then owner obtained planning permission for landfill activities to take place on the site and the adjoining land to the west](#)”, that these activities “[began in 1992](#)”, and that this “[project was completed some years later](#)”.
- 2.2 The Council are unsure which planning permission the Appellant is referring to as no details have been submitted. However, the following were temporary permissions approved and included part of the site in question:
 - 91/01174/OLD - Restoration of agricultural land. PERMIT 11.12.1991 (Condition to cease development within 4 years of commencement). (Appendix C)
 - 91/01758/OLD - Vary Condition 2 attached to Planning Permission 91/01174/OLD (11763/01) County Matter. (Development not to begin before 31.03.1993) REFUSED. APPEAL ALLOWED 27.07.1992. (Appendix D – full decision not included as this is not available)
 - 03/01226/HCS - Variation of condition 1 of T/APP/Q1770/A/99/1023184/P5 to extend the period of restoration at Raglington Farm Landfill (restoration of the site shall be completed no later than 31 May 2004). PERMIT 12/05/2003 EXPIRY 31.05.2004. (Appendix E)
- 2.3 The above permissions cover the land shown in the approximate position outlined in blue on the map below. Also included on this map is the extent of the enforcement notice outlined in red, and the overlap shown hatched in orange.



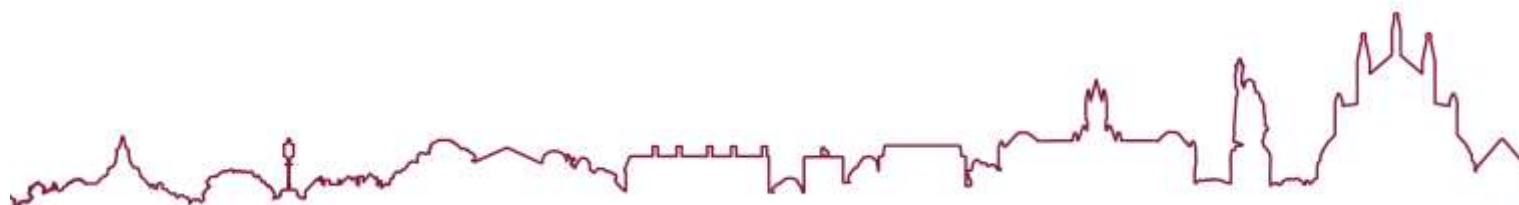


(WCC Map, 2022)

2.4 Condition 2 of planning permission 91/01174/OLD stated that (Decision notice attached at Appendix C):

“The development hereby permitted shall not begin before 31st March 1993 or before tipping of waste materials has ceased at the Wickham Vineyards site approved under planning permission No. W6257/12, whichever is the sooner. Reason: To minimise disturbance from tipping traffic in the local area and in the interests of highway safety”.

2.5 Condition 2 was removed as part of appeal reference: T/APP/Z1700/A/92/203726/P8, decision dated 27 July 1992 (Appendix D). Application reference 91/01758/OLD noted above.



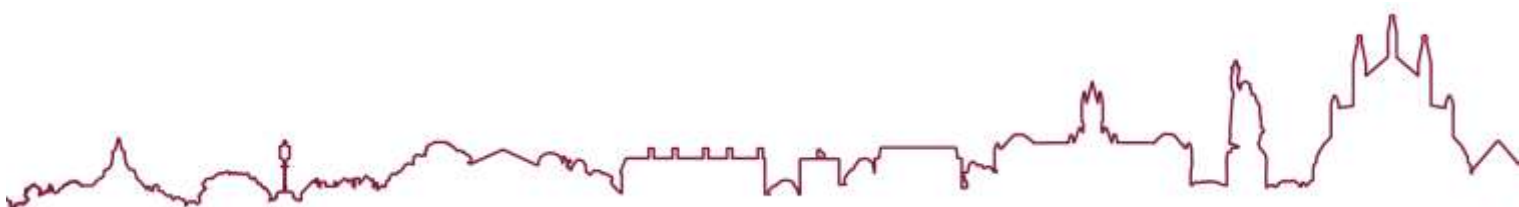
2.6 Condition 3 of planning permission 91/01174/OLD stated that (Decision notice attached at Appendix C):

“The tipping operations hereby permitted shall cease not later than four years commencing with the date that operations begin on site and the site shall be restored to agriculture in accordance with the scheme approved under Condition (8) below within a further period of six months or such longer period as the Local Planning Authority may approve. Reason: To minimise the duration of disturbance of the tipping operation”.

2.7 This permission required the cessation of activities no later than 4 years from when the operation began. This permission and condition was superseded as part of appeal reference: T/APP/Z1700/A/92/203726/P8 and the time to complete restoration was extended until 31st May 2004. This timeline is consistent with aerial imagery as shown below.

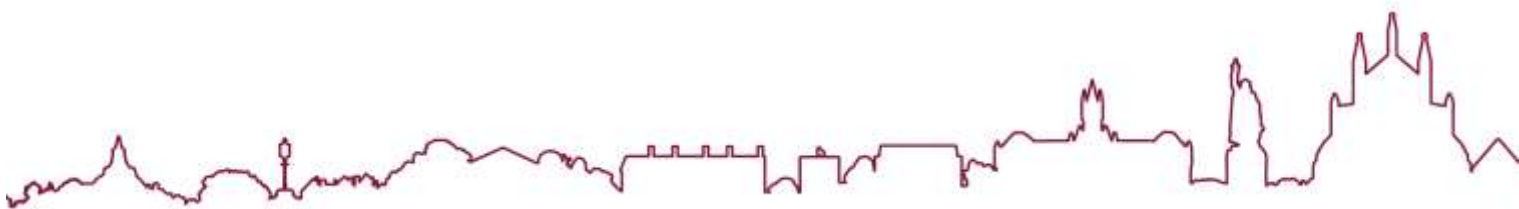


(WCC Map 2000)





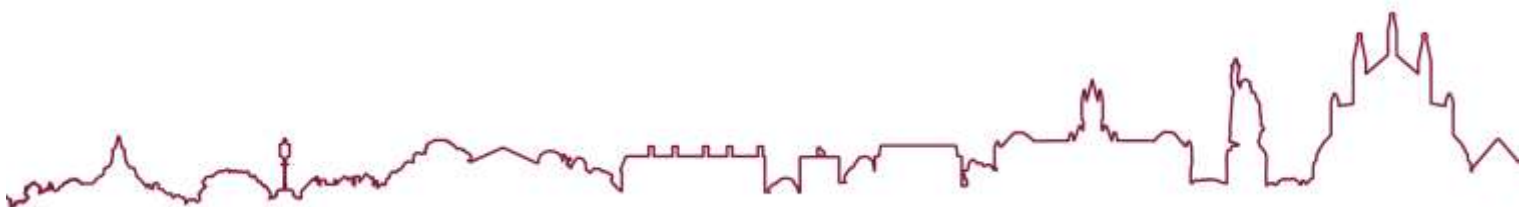
(WCC Map 2007)





(WCC Map 2017)

- 2.8 The strip of land hatched in orange reverted back to agriculture following completion of development in 2004.
- 2.9 The following permissions relate to the solar farm development immediately adjacent the land covered by the enforcement notice:
- 12/00913/FUL - Construction of solar park; installation of solar panels to generate up to 5mw of electricity with transformer housings, security fencing and cameras, landscaping and other associated works. APPROVED 10.07.2012
- 12/01975/NMA - Addition of approved plans condition to Planning Permission 12/00913/FUL. APPROVED 15.11.2012
- 12/02445/FUL - Variation of condition no. 10 of planning permission 12/00913/FUL to reduce the area covered by solar arrays, alter the frame details for the solar panel arrays, change equipment, substation and fence details and install CCTV security. APPROVED 11.01. 2013.



13/02205/NMA - (MINOR AMENDMENT to Planning Permission 12/02445/FUL)
Variation of condition no. 10 of planning permission 12/00913/FUL to reduce the area covered by solar arrays, alter the frame details for the solar panel arrays, change equipment, substation and fence details and install CCTV security; Minor change to approved layout to incorporate longer rows of panels; minor change in fence detail; relocation of the private switchgear. APPROVED 30.10.2013

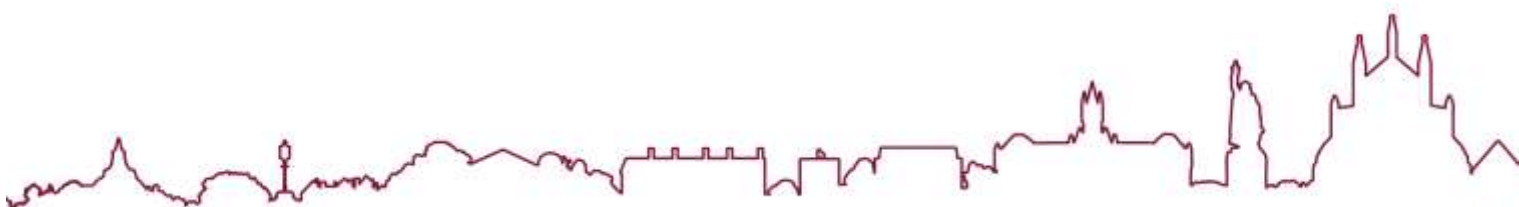
15/01311/NMA- (MINOR AMENDMENT to Planning Permission 12/02445/FUL)
Introduction of a satellite dish in the as built layout. APPROVED 08.07.2015

2.10 The location plan submitted as part of application 12/02445/FUL is the appropriate plan showing the extent of the red line. The location plan is attached at Appendix F. The above permissions cover the land shown in the approximate position outlined in blue on the map below. Also included on this map is the extent of the enforcement notice outlined in red, and the overlap shown hatched in orange.

2.11 The strip of land in question (orange) may have been used for activities related to the construction of the solar farm. However, this area sits outside of the land needed for solar panels. In addition, a discharge of conditions application was submitted to discharge conditions 3, 7, 9, and 11 on 22 January 2014, and included with this was a proposed construction site plan which showed the "Site Storage Area" and "Compound and Parking" as being in a completely different location to that asserted by the Appellant. This plan is attached at Appendix G. The map below shows the area used by the solar panel development (purple) in relation to where the Appellant claims they used for such a purpose (orange).



(WCC Map Latest)



2.12 The Appellant appears to have bought the land in July 2017 (Land Registry attached at Appendix H). As is seen in aerial imagery throughout the years, there is no evidence of the land covered by the enforcement notice being used for anything other than agriculture. The land is free from development and sits outside of the land used by the solar farm for solar panels and storage/construction during development.

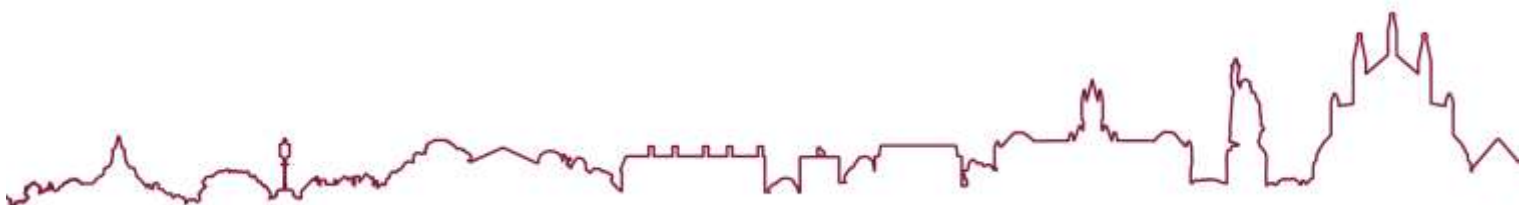
2.13 In addition, the owner has provided no evidence to substantiate the claims that the “[site formed part of the construction site which extended beyond the location of the solar panels](#)”, and was used up until the Appellant bought it for “[locating and storing plant, equipment and materials](#)”. The Appellant claimed that he “[continue\[d\] to use the site for the same uses](#)”, and “[before buying the site \[he\] rented the site from the landowner for commercial uses including the storage of plant and machinery](#)”. These statements appear to be false, as demonstrated by aerial imagery and a distinct lack of evidence to support these assertions.

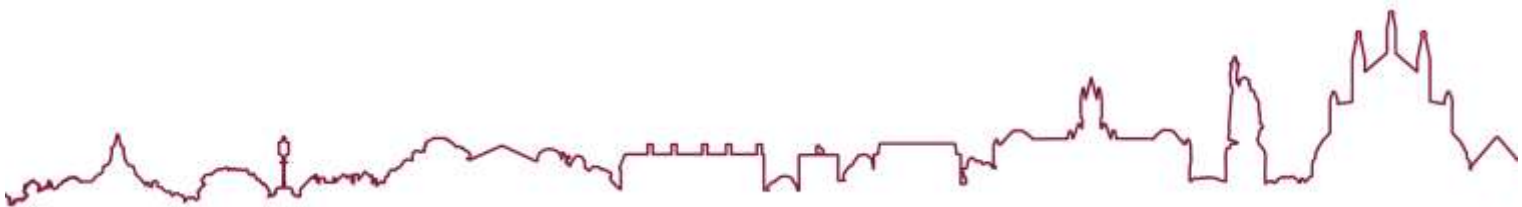
2.14 It is also noted that in response to question 4.109 of a Planning Contravention Notice served on the owner, he declared that the use of the land for “[open storage and containers, plant and machinery](#)” started in 2017, and “[since acquisition by the Owner in 2017, the land has been let for the uses set out above](#)”. A copy of the PCN and the Appellants response is attached at Appendix I. This is a direct contradiction to what is being claimed in this appeal.

2.15 Separate to the above, the use of part of the site as a solar farm (including any ancillary or incidental uses such as storage of items directly related to the construction of the solar farm) would have been a sui generis use. A change of use to storage would be material and thus require express planning permission. Planning permission for this use has not been sought, nor has it been granted. The Appellants claim that the current use is a continuation of the solar farm use is therefore misguided.

2.16 It is apparent that the solar farm development was completed sometime in 2013 based on the planning history and aerial imagery; this leaves a 4 year gap before the land was bought by the Appellant. This time gap, in conjunction with aerial imagery, and the lack of evidence provided by the Appellant demonstrating any form of use other than agriculture, proves on the balance of probabilities that the development in question cannot be immune under the 10 year rule. It is obvious that development started after the site was purchased by the owner in 2017. Aerial imagery proves this to be the case, with even the latest imagery showing a distinct lack of development, bar the building immediately to the south of the site.

2.17 Furthermore, the Enforcement Officer has visited the site on numerous occasions over the past year and a half. Photos taken by the Enforcement Officer dated 12 May 2021 (below) show the majority of the land in question to be free from development, apart from an area surrounding the buildings at the southern end.







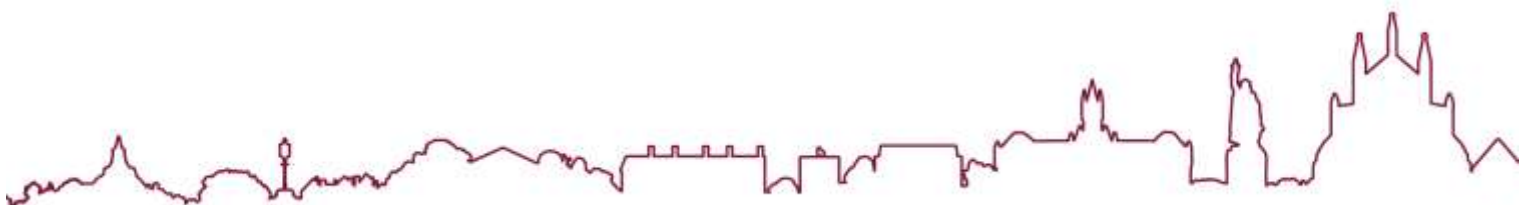
2.18 It is evident that the material change of use of the land is not immune. It is likely that the development was started sometime after 2017, then continued to encroach into countryside land in the subsequent years, as witnessed by the Enforcement Officer first hand during 2021. The earliest date that part of the development could possibly be immune is 2027.

3.0 RESPONSE TO GROUND (F) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome objections.

3.1 The Appellant has stated that “the site has been part of a construction site, a solar panel farm development and storage yards for many years” and that “there has been no grass on the site during that time”. As demonstrated above, this is false.

3.2 The Appellant has also stated that removing hardstanding and laying topsoil and seed with grass is excessive because the “ground levels were created by the landfill and solar farm construction activities”. No supporting information has been submitted to substantiate this claim.

3.3 It is evident from the surrounding land what the original levels were. The land has been raised approximately 1 metre at its highest point, across approximately 5300 square metres of land. The natural ground level is easy to see on all sides. The land slopes up from the track to the east, and slopes back down towards the solar farm to the west. Some areas have had hardstanding laid. The land appears to also slope towards to north to meet the natural ground level.



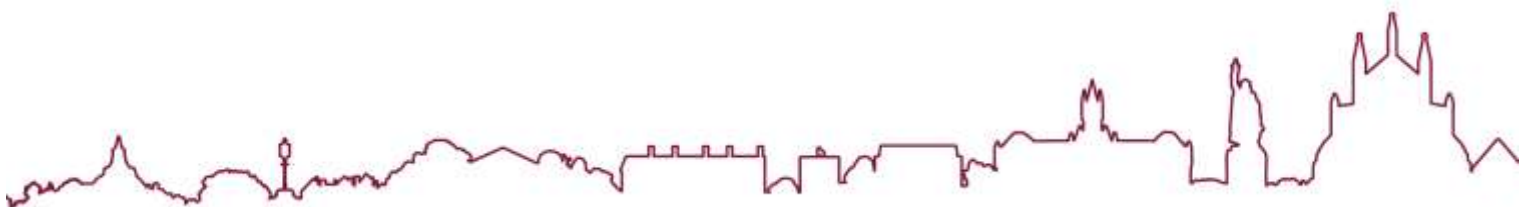
3.4 In addition, the land raising has been witnessed by the Enforcement Officer over the course of 2021 and 2022. The photos below show the land without the retaining wall and then a more recent photo showing it with the new retaining wall.



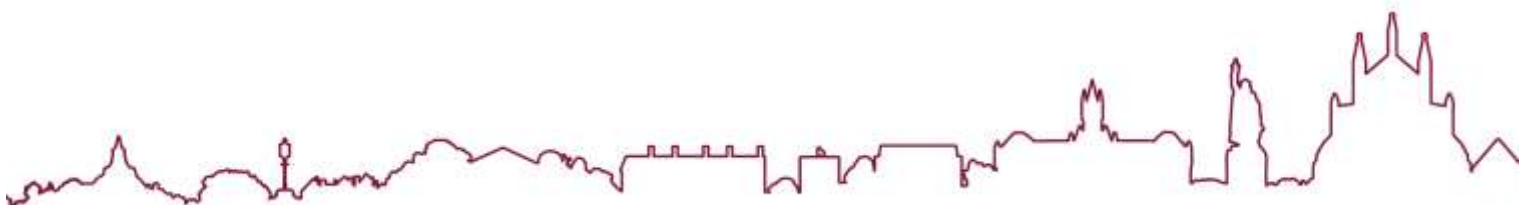
(WCC Officer Photo 2021)



(WCC Officer Photo 2022)



- 3.5 Steps i to vii are essential in returning the land to its previous condition and is in line with the requirements of all other surrounding enforcement notices and enforcement action proposed.
- 3.6 The previous condition of the land was open countryside. Aerial imagery of the land, included in this report, shows open green fields.
- 3.7 The Appellant states that the “retaining wall cannot be removed since it’s part of the ground levels”. This statement in itself proves that the raising of the land was undertaken with the retaining wall. As the Enforcement Officer has witnessed the implementation of the retaining wall (photos above and by declaration), it must follow that the Appellant concedes that the land raising was undertaken at the same time; that being, in the year 2021/2022.
- 3.8 The Appellant has queried the term “miscellaneous items” included in step ii of the enforcement notice. This term is used directly in conjunction with the words “related to the unauthorised use”. The Council contends that this requirement is not ambiguous and simply directs the recipient to remove any items not explicitly mentioned within any other steps. This is to ensure all items related to the unauthorised use are captured and removed. It is not possible to mention every single item that is required to be removed from the land. If the Inspector agrees with the Appellant that this part of step ii is “too vague”, they may amend the notice accordingly.
- 3.9 The Appellant has disagreed with the term ‘retaining wall’ in relation to the concrete filled tyres with metal posts positioned in the centre. The Appellant has not provided an adequate explanation for what else this could be. The tyres are stacked up two tyres high, filled with concrete and posts inserted. They are very obviously retaining some of the raised land behind them. This has been addressed as it may be a hidden ground of appeal ((b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact). Another photo of the retaining tyre wall is shown below.





(WCC Officer Photo 2022)

4.0 RESPONSE TO GROUND (G) the time given to comply with the notice is too short.

4.1 The appellant states that the time to comply with the enforcement notices is too short.

The time to comply with the notices was considered by the Council prior to service, having taken into account the circumstances of this case.

4.2 The reasons given by the Appellant is that it is “[difficult for the current occupying businesses to find suitable alternative open storage in the locality](#)”. No evidence has been provided to support this claim and all of the companies present on the land are registered in different parts of the country as confirmed by a search on the Companies House website. It is not understood why their registered addresses, or nearby those, are not appropriate for such a use. There has also been no evidence provided to conclude a lack of available, alternative sites.

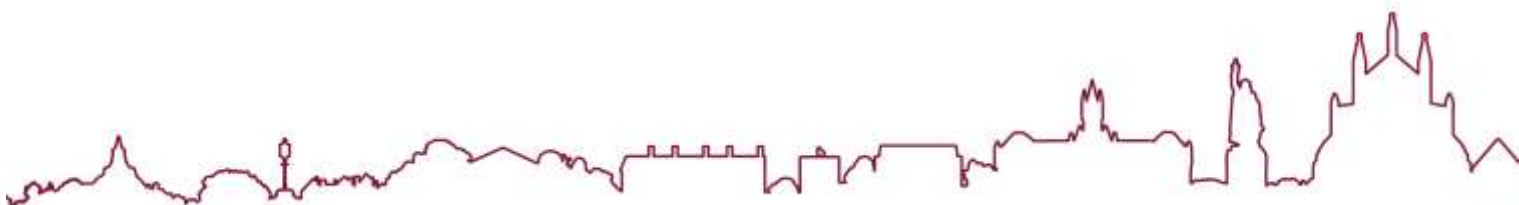
Test Valley Environmental Ltd –Newmans Cottage, 126 Jacobs Gutter Lane, Totton, Southampton, Hampshire, SO40 9FX.

RGSC Limited - Office 211, Imex Centre, 575-59,9 Maxted Road, Hemel Hempstead Industrial Estate, Hemel Hempstead, England, HP2 7DX.

MJN Construction Ltd – Glebe Business Park, Lunts Heath Road, Widnes, Cheshire, United Kingdom, WA8 5SQ.

Yeoman’s Citroen - Wickham Road, Fareham, PO16 7HY

Prime Access Scaffolding South Ltd - Unit F1 Cumberland Business Centre,



Northumberland Road, Southsea, England, PO5 1DS.

4.3 It is necessary to remove the development as quickly as possible to ensure the surrounding land is not further damaged. The site has grown in size and encroached into countryside land despite continued warnings made by the Enforcement Officer and formal enforcement action having been taken. It is likely that a prolonged compliance period will result in further unauthorised development.

4.4 Little information or evidence has been provided by the appellant as to why 6 months is not sufficient. However, if the Inspector upholds the enforcement notice and deems the time to comply as too short, they have the power to extend this timeline.

5.0 CONCLUSION

5.1 For the reasons given above and in the attached appendices, the Inspector is respectfully requested to dismiss this appeal and uphold the enforcement notice in its entirety.

