

## MEMO

**FROM:** Mark Fletcher  
**OUR REF:** 21/00381/WKS  
**TO:** Legal Services Manager (FAO Fiona Sutherland)  
**DATE:** 2022  
**RE:** Proposed enforcement action at Field To The North Of, Dradfield Lane ,  
Soberton, Hampshire: Unauthorised erection of gates and Polytunnel

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Please find attached two draft Enforcement Notice in respect of the above breach of planning control.

**Would you please arrange to serve two notice urgently as set out in the draft or in terms you consider appropriate ASAP**

### Introduction

This memo relates to the service of Enforcement Notices regarding the erection of new gates at the entrance of the field alongside the erection of a polytunnel within the site. The site is known locally as Field to North of Dradfield Lane and is historically an agricultural field which is being use as a pig farm and also has a current residential use that is subject to a further Enforcement notice and is at appeal with the Planning Inspectorate.

The two matters the subject of this memo were reported to Winchester City Council at different times, in view of the development of the site occurring over a long period of time with the gates being erected earlier. The gates are shown in photographs taken by Winchester City Council on 20<sup>th</sup> May 2020 and has an extensive planning history that will be outlined below.

The 2<sup>nd</sup> issue relates to a polytunnel that was erected later in the early summer of 2021 and an application was submitted in July 2021 however this application was refused.

We have received complaints regarding both matters alongside other concerns regarding the site such as the development of hardstanding, hedge removal, and the residential use and associated paraphernalia. These matters have been tackled in other investigations that has resulted in formal enforcement action or the conclusion that works undertaken constituted permitted development.

The site is made up of a 1.8ha parcel of agricultural land that is predominantly set to grazing. The immediate area is rural in character, consisting of mixed farmland and

woodland, although there are sporadically located residential and commercial properties in close proximity.

## **Background**

### Planning History

**20/00104/WKS** Opened 28.05.2020 Alleged unauthorised works is underway to place hardcore over site, parking, storage, trailer, container, drainage.

**Temporary Stop Notice Issued** 27.05.2020 for engineering operations, buildings, hardstanding, mobile homes, residential purposes. **Enforcement Notice Issued** unauthorised works hardcore over site, parking, storage, trailer, container, drainage 19.06.2020. **Appeal A allowed** 08.03.2021. **Case closed** 17.11.2021

**20/01508/FUL** Planning application for Retrospective planning permission for an improved site access with new 2.05m high timber entrance gates, 1.8m high close boarded support and associated hardstanding and works. **Refused** 11.09.2020 **Appeal B dismissed** 08.03.2021

**21/00333/WKS** Opened 30.08.2021 Alleged unauthorised residential trailer, earth works and burning. **Enforcement Notice Issued** 08.10.2021 residential change of use (mobile home). **Appeal decision awaited.**

**21/00381/WKS** Opened 08.10.2021 Alleged widened access and new gates, polytunnel, loss of hedgerow. **Enforcement Notice pending**

**21/00435/WKS** Opened 10.11.2021 Alleged unauthorised external lighting. **Case Closed** 14.07.2022

**21/01858/FUL** Planning Application for Improved farm access (retrospective), with the erection of 1.75m high oak access gates and polytunnel. **Refused** 21.03.2022 **Appeal decision pending**

**22/00095/CARAVN** Opened 08.04.2022 No further action, pending appeal decision 21/00333/WKS

**22/00257/HEDGE Hedgerow Replacement Notice issued** 24.11.2021 Direct Action pending

The field in Dradfield Lane has an extensive history and has become a prominent issue of concern to local residents within the Soberton area who are concerned about the increasing intensity of use of the site and non agricultural usage.

The owner of the site a Mr Butler is using the site as a pig farm and as a result has undertaken works that are reasonably necessary to allow this use in accordance with Part 6 of the GPDO but also live on the site, which has resulted in a previous Enforcement investigation that is currently the subject of an enforcement appeal, which we are currently awaiting a decision for.

Enforcement case 20/00104/WKS was opened for multiple planning breaches including the gates after an initial site visit conducted 26.05.2020 following report of on site activity and installations on 22.05.2020. A Temporary Stop Notice was served on 27.05.2020 to prevent further engineering operations and residential use which expired 24.6.2020. Following this an Enforcement notice was served on 19.06.2020 which sought to cease the use of the land and remove the storage/parking of non agricultural containers, mobile units and vehicles, remove the hardstanding, waste and drainage runs/ pipes restoring the land to its former condition.

The gates were not included in the notice and instead a planning application was submitted for them (reference 20/01508/FUL). The enforcement appeal 20/00104/WKS was allowed and the enforcement case finally closed 17.11.2021 after all outstanding matters (notwithstanding the gates) following the appeal were dealt with. The planning application for the gates was refused and the appeal was dismissed for the reasons outlined below. A new enforcement case for the gates was opened on 08.10.2021 (reference 21/00381/WKS) to continue to investigate and remedy the outstanding issue of the gates in situ, the ongoing Hedge Replacement 22/00257/HEDGE, and to include the new issue of the polytunnel which was first reported in Summer 2021. This was considered to be largely in accordance with the drawings as submitted for the retrospective permission of it, submitted 09.07.2021, and refused as below 21.03.2022 after a considerable period taken trying to proactively resolve the drainage issues.

To clarify the Proposed notices, outlined in this memo relate to the erection of new gates at the entrance of a field following an appeal dismissal, alongside the erection of a polytunnel following refusal of the planning application.

### **Gates**

It is apparent that the gates were erected in 2020 and also involved the removal of hedging and the widening of the access which is reflected in the description of the investigation.

A large amount of discussion was undertaken with the owner to find an acceptable solution for gates at the site following the appeal decision for 20/01508/FUL and prior to the resubmitted planning application 21/01858/FUL. This application proposed an alternative to the currently insitu gates following the appeal dismissal but unfortunately matters regarding the polytunnel could not be resolved which was part of the same planning application that was refused.

The site was previously served by a traditional single metal gate with a narrower access and hedging.

Image showing gate prior to development

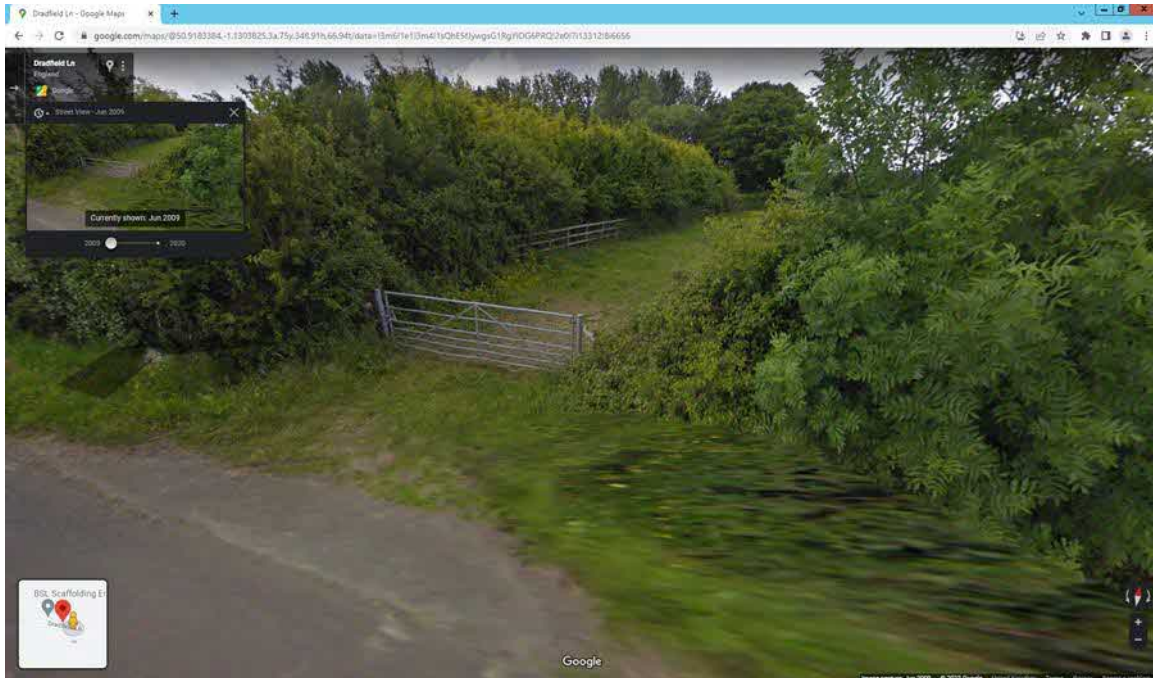


Image from google August 2020 showing currently installed gates.



Photo showing the rear of the gates taken at a recent site visit.



It is apparent that the current timber gate structure is erected on top of the traditional 5 bar gate. The width of the access and 5 bar gate is considered

acceptable as set out below in the assessment therefore the Enforcement Notice does not include this element only the wooded structure attached to it, and to be removed.

Specifically, the access was widened and metal gates were replaced with 2.05m high timber entrance gates, 1.8m high close boarded without the benefit of planning permission. A retrospective planning application reference 20/01508/FUL was submitted and was refused and dismissed at appeal, the reasons for refusal are listed below.

*WCC reasons for refusal:*

*The inappropriate design, scale and extent of the gates and boundary treatment along the frontage of the site introduce an urban/suburban appearance, enclosing the site which is alien to the landscape character of this rural area and contrary to policy CP20 of the Winchester District Local Plan Part 1 and policies DM15, DM16, DM17 and DM23 of the Winchester District Local Plan Part 2 and contrary to the objectives of the Soberton and Newtown Village Design Statement.*

*The removal of a section of hedgerow has led to the loss of habitat that is legally protected. The application does not seek to adequately mitigate this loss or as a last resort compensate for the loss of this habitat. Furthermore the benefits of the scheme are limited and do not outweigh the unmitigated harm caused to ecology. The development is therefore contrary to policy CP16 of the Winchester District Local Plan Part 1 and paragraph 175 of the National Planning Policy Framework.*

An appeal was submitted against this decision and the appeal was upheld by the planning inspectorate. This decision states that it is the nature of the gates that is harmful with the Inspector describing them as:

*The gates are of timber construction but are of a solid impermeable design. They are painted grey and have the appearance from the lane as being heavy metal industrial gates, as opposed modern looking.*

*They are therefore not a good low-key design or appropriate to the rural setting of the area. They detract from the rural location and appear dominant and unacceptable in moderate views, even though I accept they are not seen in wider views.*

*The gates in particular form an enclosure which is alien to the natural landscape character of the area, and now provide a distinctive and harmful presence along Dradfield Lane. This neither responds positively nor has a satisfactory impact. The distinctive rural character and identity of local minor roads, such as this, are therefore important to protect.*

This decision is a material consideration of significant weight and notably concerned the gates. The decision did not find that the widening of the access, additional hardstanding or the additional fencing harmful in itself and it was notable that there were also various other examples of boundary treatments along Dradfield Lane, there were no rights of way immediately adjacent to the site, and greater access was required for increased security, larger vehicles and highway safety. These, as material considerations were balanced in concluding the decision but owing to the *design, height, extent and industrial appearance* of the gates, this harm, was not outweighed by the other matters including the security or highway benefits, and could not be adequately ameliorated by planning conditions.

As noted above a subsequent planning application was submitted under reference 21/01858/FUL and the description was Improved farm access (retrospective), with the erection of 1.75m high oak access gates and polytunnel.

This application was refused as follows:

*The development (polytunnel) fails to accord with policy CP17 of the Local Plan Part 1 and policy DM17 (iii) of the Local Plan Part 2 and Paragraph 167 of the NPPF in that it has resulted in additional surface water exacerbating the cumulative impact of flooding in the local area.*

An appeal has been submitted but a start letter has not yet been issued by the Inspectorate or received at the time of this memo. The application was only refused as a result of the polytunnel and in the officer report it states that *“the plans submitted are of a design more in keeping with the area having considered multiple options at a pre app stage. The height has been reduced and the proposed materials would silver overtime and recede into the landscape. The proposal would therefore not result in adverse harm to the character of the area to a sufficient degree to warrant a reason for refusal and therefore accord with Local Plan policy”* (although had the application been recommended for approval it would have needed to be determined at Planning Committee). The hedge removal and additional planting mitigation was intended to be dealt with through the hedge replacement notice which has been served, outside this application.

It is therefore expedient to take formal enforcement action in relation to the gates and require them to be removed, due to the material and demonstrable planning harm caused whilst they remain in situ, and in the absence of any agreed strategy to remedy.

The gates are harmful to the character and appearance of the area in contravention of Policy CP20 of the Winchester District Local Plan Part 1 – Joint Core Strategy, adopted March 2013 (the LP), and Policies DM15, DM16, DM17 and DM23 of the Winchester District Local Plan Part 2, adopted April 2017. These policies, amongst other things, require development to conserve natural landscapes, respect the

characteristics that contribute to distinctiveness, provide boundary treatments that respond positively to local context, are satisfactory in terms of impact, and, do not have an unacceptable effect on the rural character of the area. For the same reasons, the development contravenes the objectives of the Soberton and Newtown Village Design Statement.

To clarify The South Downs National Park boundary is not close enough for it to have a material impact on the interests of it. The listed building of South End Farm is also too far away so that development will have no material impact on its setting.

Locally, areas of concern remain in respect of the width of the access, the hardstanding and the fencing to the sides however in view of the material considerations of the appeal and refused planning application it would not be reasonable or expedient to pursue the remedy of this with significant new planting to gap the narrower access and removal of these components. Therefore it is only the removal of the timber gates, as attached to the metal gates, that is sought through the service of an Enforcement Notice. This can be achieved by the removal of the large timber structure with retention of the metal gates and width of access to ensure the service and security of the agriculture use of the field.

## **Polytunnel**

In relation to the polytunnel on site, this was first reported to Winchester City Council in the summer of 2021, this is believed to be 11 metre by 25 metres and was applied for under the aforementioned planning application 21/01858/FUL. It was stated that this was needed for the use of the site in relation to the pig business, however it is not apparent that this structure has ever been used in relation this use. Site visits and photographs from the site have shown that it is being used incidentally to the unauthorised residential use and not for agriculture, with various domestic items having been seen inside (hot tub / pool; domestic pot plants; car parking).

The following reason was given for refusal of this application.

*The development (polytunnel) fails to accord with policy CP17 of the Local Plan Part 1 and policy DM17 (iii) of the Local Plan Part 2 and Paragraph 167 of the NPPF in that it has resulted in additional surface water exacerbating the cumulative impact of flooding in the local area.*



Photograph taken 11<sup>th</sup> April 2022.



The reason for the refusal relates to the drainage at the site and the cumulative impact of this. Extensive consultation has been undertaken with the drainage engineer as part of the application process and subsequently to consider expediency to take formal action. It was concluded that the harm is of a significant nature to justify taking formal enforcement action to protect the local area from flooding.

The site is located in flood zone 1 and is not considered to be at risk of flooding from rivers or sea. However, the area is at high risk of surface water flooding. It is noted that the ditches around the site have been cleared and improved to accommodate the surface water run off for the site, however it is considered that the ditches accommodate the surface water effectively prior to the erection of the poly tunnel and the works to the access, including raising the ground level and need to be cleared once again as we moved into winter months. The polytunnel is made of impermeable materials that would result in an increased volume and discharge rate of surface water. It is noted that improved ditches have benefitted

the general drainage in the area however Dradfield Lane was liable to flooding prior to the development being constructed. The hardstanding on the site laid for agricultural purposes will have already contributed to additional surface water flowing into the ditches, this combined with the additional run off from the polytunnel has contributed to, and is expected to exacerbate the flooding of the highway at the end of the site and neighbouring properties which is unacceptable. Paragraph 167 of the NPPF states that developments should not result in flooding elsewhere and that applications should be supported by site specific flood risk assessments. This information has been requested. No information has been submitted to assess the additional surface water flooding created by the development nor have any surface water solutions been explored. As the planning application was retrospective, it was not considered that a time restrictive condition was appropriate to secure appropriate drainage solutions. Therefore it is considered that the cumulative impact of the proposal is not acceptable and will result in additional surface water flooding to an extent that the planning application was refused and formal enforcement action is required in this instance.

No information or resolution has been received or proposed to enable these issues to be resolved during the application process or through the enforcement investigation. The opportunity was additionally given to the agent to omit the polytunnel from the planning application to enable a recommendation to approve the proposed gates, however no response was received therefore the application was refused and enforcement action is recommended to remedy the harm.

## **Requirements**

- 1) Remove the wooden gates that have been erected at the frontage of the site leaving the existing metal gates in situ within 6 months.
- 2) Remove the polytunnel from the site within 6 months.
- 3) Remove all incidental items associated with these works within 6 months.

## **Expediency**

The reasons for taking enforcement action are set out in section 4 of the attached draft enforcement notices.

The erection of the gates is not considered immune under the 4 year rule as this development was reported to Winchester City Council within the last 4 years. The council has no evidence to suggest that it existed prior to this date.

Due to the design, height, extent and industrial appearance the gates are harmful to the character and appearance of the area in contravention of Policy CP20 of the Winchester District Local Plan Part 1 – Joint Core Strategy, adopted March 2013 (the LP), and Policies DM15, DM16, DM17 and DM23 of the Winchester District Local Plan Part 2, adopted April 2017.

This is being weighed against the need to allow greater access to the site, which is supported by the NPPF, the decision outlined by the Planning Inspectorate decision and also the view outlined in the officer report of the most recent application.

In relation to the Polytunnel, this is not considered immune under the 4 year rule. This development was reported to Winchester City Council within the last 4 years and during that time the site has been closely monitored with multiple site visits having been conducted by officers since the original enforcement case was opened in May 2020. The cumulative impact of drainage from the site justifies formal enforcement action as described in the most recent Planning application.

The development (polytunnel) fails to accord with policy CP17 of the Local Plan Part 1 and policy DM17 (iii) of the Local Plan Part 2 and Paragraph 167 of the NPPF in that it has resulted in additional surface water exacerbating the cumulative impact of flooding in the local area.

This reasons above justify formal enforcement action regarding both the gates and polytunnel

### **Human Rights**

The Human Rights Act 1998 makes it unlawful for the Council to act in a way incompatible with any of the Convention rights protected by the Act unless it could not have acted otherwise. In arriving at the recommendation to take enforcement action, careful consideration has been given to the rights set out in the European Convention of Human Rights including Article 6 (right to a fair trial), Article 8 (right to respect for private family life), Article 14 (prohibition of discrimination in enjoyment of convention rights) and Article 1 of the first protocol (the right to peaceful enjoyment of possessions). It is considered that where there is an interference with the rights of the recipient of an enforcement notice, such interference is considered necessary for the following reasons:

It is apparent that the unit is used as part of a business, the use should be able to continue whilst these works are undertaken. The timelines given regarding the works required will allow for the matters to be resolved whilst farming continue within the site..

### **Service**

Service will need to be undertaken on the site and also hand served to the owner Nicolas Butler. The land registry as shows the owner at the following address and the notice should be sent to this address.

33 Highland Road

Emsworth  
PO17 7JL

Mark Fletcher  
Planning Enforcement Officer

01962 848 016

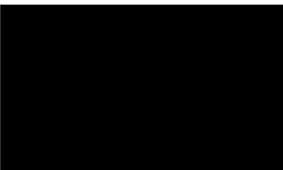
If you require any further information or wish to discuss the matter in more detail, please let me know.

**Enclosed:**

- *Draft enforcement notices;*

DELEGATED AUTHORITY

I, Lorna Hutchings, being duly authorised to act for and on behalf of Winchester City Council with the powers delegated to me as Planning Delivery and Implementation Manager, do hereby authorise the proposed enforcement action in accordance with the above report and attached draft enforcement notice.



Lorna Hutchings  
Planning Delivery and Implementation Manager  
Built Environment  
Winchester City Council  
Date : 14.10.2022