

MEMO

FROM: Madelaine Clavey
OUR REF: 21/00168/COU
TO: Head of Legal Services
DATE: September 2023
RE: Proposed enforcement action at Shedfield Equestrian Centre, Botley Road, Shedfield, Hampshire: Unauthorised material change of use to B8 (2 Brothers Concrete Pumping).

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

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

1.0 INTRODUCTION

1.1 A full site review has been undertaken following a number of reports of alleged breaches of planning control made to the Council concerning development/activities at Shedfield Equestrian Centre. The full review can be viewed at Appendix A.

1.2 This report concerns the business 2 Brothers Concrete Pumping. The site is used mainly for storage of materials, equipment, and vehicles, with incidental offices, containers, parking, fencing, and hardstandings.. Photos of the site are attached at Appendix B.

1.3 A Planning Contravention Notice (PCN) was served on the owner on 07/07/2021 and was returned completed on 11/09/2021 (included with Appendix A). In response to question 4.45 of the PCN the owner states that this land "is a civil engineering, concrete and construction yard".

1.4 An enforcement notice was served on this site on 01/08/2023 with the breach described as a material change of use of land to B2. The notice was appealed, with the appellant asserting that the use was actually B8 with incidental B2 uses. A further site visit was undertaken on 14/09/2023 and it was determined that the appellant was correct. Therefore, the current enforcement notice (EN08) should be withdrawn and a corrected notice re-served. This procedure is covered by the "second bite" provision in section 171B(4)(b) of the Town and Country Planning Act 1990. The facts of the case remain the same; the only difference will be the description of the breach, from B2 to B8.

2.0 BACKGROUND

HISTORY

12/00714/HCS - Importation, processing, storage and distribution and use of materials, including soil screening, concrete crushing and cement production (CERTIFICATE OF LAWFULNESS) (THIS APPLICATION WILL BE DETERMINED BY HAMPSHIRE COUNTY COUNCIL). REFUSED 28.02.2012

13/02238/HCS - Lawful Development Certificate: processing of inert materials and builders waste for recycling and shared access. REFUSED 04.10.2013
ENFORCEMENT NOTICE ISSUED 16.04.2014 APPEAL ALLOWED & NOTICE QUASHED 24.02.2015

2.1 Appeal decision attached at Appendix C and relates to the Lockhams site adjacent the 2 Brother site. This details the extent of surrounding uses (woodland/equestrian/agricultural) and the owners statements made during the public inquiry that seem to contradict his statements made as part of the PCN related to this case. This case also highlights the exact extent of Lockhams Recycling and confirms that areas outside the red line of the Certificate of Lawfulness were not in use in 2014/15 for industrial type purposes as provided by the owner.

2.2 Extract of appeal decision below for ease:

37. On this ground of appeal, the appellant submits that the 'red line', delineating the extent of the land to which the enforcement notice applies, has been too widely drawn. Although the equestrian centre and shop area are excluded, the remainder of the land, including paddocks and woodland are not and the appellant considers that the alleged unauthorised uses have not taken place outside the fenced compound and the vehicular access to it.

38. He submits that the fenced compound is, in effect, a separate planning unit from the remainder of the land and is physically and functionally separate from it. The County Council, at the Inquiry, conceded that the 2 paddocks to the east of the equestrian centre could be omitted from the notice and that, possibly, the area of woodland and pasture to the west could similarly be excluded. It was agreed that there would be no injustice to the appellant if the area of the EN plan was smaller than originally drawn.

39. The reason the County Council considers that the notice should include the remainder of land outside the compound is that it has previously recorded land improvement works taking place there, using materials produced by the screening process. It has also noted spoil heaps and the screener located outside the compound.

40. The appellant claims that the process of importing waste materials, screening them and then exporting the products of the screening is a separate operation from that of using screened soils to improve the quality of the remainder of the land. I agree that the fact that the soil for spreading is produced on adjacent land does not necessarily mean that the 2 operations are functionally linked, such that the areas form a single planning unit. The other land is still being used for agriculture and purposes connected with the equestrian centre and there is no indication that it is sharing any mixed use with the activities in the compound. The fact that some soil from the compound has been used on it is not determinative.

42. All that was evident from the site visit was that, where land levels have been altered, this has been done using soil which can then be seeded and used for

pasture. If the operation in the compound had not been present, this soil could have been imported from elsewhere, screened on the site and legitimately used for improving the land. The fact that it came from the business operating within the compound does not indicate that the unauthorised activities enforced against were taking place outside that area. Similarly, the fact that a screener and soil stockpiles were on land outside the compound and were being used to produce soil suitable for landscaping that land does not link this activity to the others enforced against, i.e. waste importation, concrete crushing etc.

43. I have accepted the appellants other evidence in respect of the site and I see no reason to disbelieve his assurance that the waste screening operations have only been taking place in the compound. Although the enforcement notice will be quashed because of the acceptance of the evidence for the ground (d) appeal, it is nonetheless important to clearly define the area on which the activities took place so that the remaining areas are not, by default, authorised for the waste use established for the compound through the passage of time.

2.3 The red line for the CLEUD is included with the appeal decision and is outside of the red line for this enforcement notice.

2.4 In addition to the above, Hampshire County Councils refusal report dated 04.10.2013 (Appendix D) states that:

The application site (shown edged in red on plan LAY-01) occupies approximately 0.34 hectares of land south-west of Botley Road. Access to the site is off Botley Road and through the existing nursery buildings which lie to the north-east of the site. The site is bounded by land currently used for the grazing of horses and pony's to the north-east, countryside to the north, a disturbed area of land to the north-west and west, and an area of land recently subject to an Enforcement Notice and land-raised using inert construction and demolition waste to the south-west. Land to the south and south-east forms part of Dagwells Farm and is currently in agricultural use

2.5 The owner's statutory declaration (Appendix E) submitted as part of the application includes Google Earth images dated 01.01.2005 and 21.04.2007 showing the land grassed with trees present. This again disputes the owners PCN response detailed below in paragraph 2.9.

AERIAL IMAGERY



(WCC 2013)



(WCC 2017)

2.6 The latest aerial imagery (WCC GIS Map) shows the building/containers/fencing not in situ. Therefore the building/containers/fencing, regardless of their use, are not considered to be immune under the 4 year rule. There is evidence of some hardstanding, vehicle storage and what appears to be material piles at this time. As the owner has stated that 2 Brothers occupied the land from 2020, it is likely that this is when the material change of use started, and thus when operational development

intrinsically linked to the businesses operations was commenced/completed.



(WCC Latest)

2.7 The enforcement officer has witnessed the 2 Brothers site expanding. The site initially occupied a smaller area of land (shown below in blue), and more recently expanded north east to create a much larger depot (shown below in orange).



2.8 There has been a material change of use from agricultural to a B8 use. This change of use also includes the installation of hardstanding, concrete slabs laid, fencing, and construction of buildings (including containers). The Murfitt principle is engaged in

this case and all operational development and equipment is included under the material change of use.

2.9 In response to question 4.45 and 4.46 the owner states that they “hold records dating back to 2004 evidencing the use of the land as storage and parking of plant, machinery, materials and vehicles. This has only been used by 2 Brothers since 2020, but the land has always been used for the storage of plant and machinery, heavy goods vehicles, containers and materials”.

2.10 No other evidence has been provided to substantiate the above statement made by the owner and aerial imagery disproves the assertions.

APPEAL DECISIONS

2.11 Recent appeal decisions APP/L1765/C/22/3300720, APP/L1765/C/22/3300722, APP/L1765/C/22/3309990, and APP//L1765/C/22/3300697, all relating to Shedfield Equestrian Centre and the most recent enforcement notices served there, were upheld by the Inspectorate. The appeal decisions (amalgamated into one document) are attached at Appendix F.

2.12 The Inspector, whilst considering an appeal under Ground A, from appeal reference APP//L1765/C/22/3300697 (MCOU to B2 general industrial from countryside), stated that:

“...the development results in unacceptable harm to the character and appearance of the area and with potential environmental risks. As such, it is not in a sustainable location. It conflicts with the requirements of CS Policies MTRA3 and MTRA4 and with the Development Plan as a whole.”

2.13 This appeal decision is particularly relevant as it relates to the main site, which includes this smaller parcel of land, for a similar use. The appellant provided no justification for the change of use, and the enforcement notices, which are near identical to this one, were upheld.

2.14 It was established in these appeals that the requirements were not excessive. However, the use of the words “miscellaneous items” was imprecise and should therefore not be used in further notices.

2.15 An amendment to the time for compliance was made by the Inspector. 8 months was considered to be more suitable and some of the notices were amended in this regard. A period of 8 months will therefore be provided for this notice.

3.0 EXPEDIENCY

3.1 The use of the land in question for B8 is not considered to be immune under the 10 year rule and the operational development is not considered immune under the 4 year rule regardless of the use.

3.2 The reasons for taking enforcement action are set out in section 4 of the attached draft enforcement notice and noted below for information:

The development is contrary to policies MTRA3 and MTRA4 of the Winchester District Local Plan Part 1 - Joint Core Strategy, in that it results in inappropriate development within the countryside with no justification.

3.3 The Council does not consider that planning permission should be granted. Planning conditions would not overcome these objections to the development.

4.0 HUMAN RIGHTS

4.1 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: the protection of the environment and the rights and freedoms of others. It is also considered that such action is proportional to the legitimate aim and in the public interest.

4.2 One set of tenants would be required to vacate the premises as a result of this enforcement notice should it be complied with. An extended period for compliance will be offered to ensure enough time is given to find alternative premises. In addition, the tenants will be referred to the Economies team at Winchester City Council for advice.

5.0 SERVICE

5.1 I have attached a draft enforcement notice and plan and a copy of the Land Registry documents. Land Registry checked again online on 23.05.2023. The owner information remains the same as included.

5.2 Notices to be served on:

Owner

- CHRISTOPHER IAN COLLINS of Ivy Cottage, Wickham Road, Curdridge, Southampton SO32 2HG.

Occupiers

- 2 BROTHERS CONCRETE PUMPING LIMITED (Company number 12985159) and 2 BROTHERS CONCRETE LIMITED (Company number 14335776) both of 97 Leigh Road, Eastleigh, Hampshire, England, SO50 9DR.

*Please note that this company has changed their trading name many times and currently has two nearly identical trading names. The registered office address of both are the same and the Directors are the same people.

Charge

- BARCLAYS SECURITY TRUSTEE LIMITED (Co. Regn. No. 10825314) of P.O. Box 16276, One Snowhill, Snowhill Queensway, Birmingham B2 2XE.

5.3 A copy of the notice needs to be displayed on site.

5.4 Notice to be served by hand.

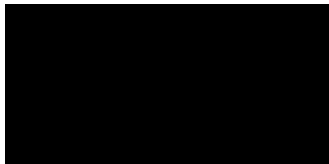
5.5 The deemed application fee is £924 (£462 x 2 (double the application fee)) (Change of use of land).

6.0 ENCLOSED:

- *Draft enforcement notice*
- *Draft enforcement notice plan*
- *Land Registry documents*

7.0 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.



DATE 19.09.2023.....

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