

**BATH AND NORTH EAST SOMERSET COUNCIL**

**Development Control Committee**

**5 January 2012**

**OBSERVATIONS RECEIVED SINCE THE PREPARATION OF THE MAIN  
AGENDA**

**ITEM 8**

**Address**

Land at Former Fullers Earth Works  
Fosseway, Combe Hay

**Page No**

9-180

**Further Representation**

A further letter has been received from the Legal representative of Protect Bath. A copy of this letter is attached to this update. The main points are as follows:-

- The report accepts that substantial unauthorised changes of use have occurred at the site extending inappropriate and substantially harmful development over a significant area of Bath's nationally important Green Belt.
- The Council should not tolerate such deliberate and extensive breaches in the green belt
- The only basis upon which enforcement is not considered expedient at this stage is because there is a hope that negotiations will secure development in accordance with the allocation
- There is no inconsistency between pursuing negotiations to encourage development pursuant to and in accordance with the allocation and enforcing.
- Enforcing will force the landowner to pursue (allocation complaint) alternative development
- It is not accepted that government guidance on negotiation prior to enforcement covers the current situation.
- The report provides no detail of how the negotiations are progressing.
- Responses to Freedom of Information requests indicates that the owner has only recently entered into "early stage" negotiations with the Council.
- There is no aerial photograph from 2003
- The report indicates that if negotiations are not successful then enforcement action can be undertaken later. This is factually and legally wrong. The Council can have no confidence that the changes of use did not occur until 2003 and that the Council can have no confidence that delay will not be fatal to any later enforcement.
- The report carries no assessment as to the timescale it is envisaging.
- Do not accept much of the remainder of the analysis

## **Officer Comments**

No new legal issues are raised in terms of suggesting that the analysis of the breaches of planning control is incorrect.

The evidence available to officers indicates that the initial breaches of control took place in early to mid 2003 with a change to a mixed general industrial and storage and distribution use within Area A, part of Area E, Area D as well as by an extension of the car parking in front of the dwellings further encroaching into land previously used for agriculture.

Sometime after 2005 individual compounds were formed within part of area E. Two of these are currently used for the storage, distribution and repair of scaffolding and as well as a stonemasons yard and are considered to be separate planning units.

It is true that there is no aerial photograph from 2003 but the Council has relied upon other evidence, including previous site visits and evidence submitted with the CLEU application, and the June 2002 aerial photograph. Officers consider that on the basis of the evidence it is a reliable point in time

Taking into account the available evidence, on the balance of probabilities, the assessment contained within the report is considered to be correct.

The Development Control Committee at its Meeting on 18 May 2012 resolved that Officers work positively with the Owner of the site to achieve delivery of a residual waste facility on the land as allocated in the West of England Joint Waste Core Strategy. Central Government, Planning Policy Guidance 18 advises that Local Planning Authority's should work with owners and occupiers of sites in order to remedy harmful impacts from unauthorised developments. The discussions with regard to this site are positive and on-going and are therefore clearly a material consideration. There would be substantial public benefit in delivering the aims of the development plan and Officers are of the view that the substantial weight should therefore be given to the positive discussions, notwithstanding the fact that they are at an early stage.

Officers are mindful of the potential for the breaches of control on the site to become immune from action and will ensure that Members are updated accordingly in order that the Council's position is safeguarded.

## **Additional comments made since the report was published**

2 additional emails received

Main points are:-

- Concern about moving earth on the site and the potential for the site owner to bury large amounts of waste.
- Concern about the nature of the material being spread on the field.

- Disturbance resulting from the movement of topsoil.
- Potential risk from burying unknown waste.
- Request that the Council rigorously monitor the work.
- Height of stockpiles on the edge of the site, visual impact upon the sky line and countryside on the south side of Bath.

### **Officer comments**

Planning permission (ref 10/01774/FUL) was granted for the agricultural improvement of the land to the south west of the established industrial area on 13 December 2010. Officers have recently visited the site and can confirm that the work that is taking place appears to be part of the implementation of that scheme.

Any relevance that that permission has is explained in the main agenda report.

The enforcement of conditions is a separate matter.

### **Clarification of main agenda report**

Paragraph 3.065 refers to Annex C including previous committee report. However, these reports were not reproduced in full and were instead listed as background papers. Annex C contains the EIA Screening Opinion as stated on the front of the agenda.

Annex D refers to a 2006 photograph. This has not been relied on for the report and so has not been reproduced in the papers.

Annex F refers to plan 1 and plan 2. Only plan 1 is produced in the papers. Plan 2 will be presented at the Committee meeting to describe the different parts of the site.

### **Clarification of list of aerial photographs**

Annex D1 1946 and 1968  
 Annex D2 1975  
 Annex D3 1975 (duplicate)  
 Annex D4 2002  
 Annex D5 2002 (duplicate)  
 Annex D6 1999  
 Annex D7 2005  
 Annex D8 2009

These photographs are attached to this update with relevant dates added. They will also be presented at the Committee meeting.

### **Recommendation**

As per main agenda report.

1946

## Fullers Earthworks, Combe Hay

Aerial Photograph 1946

Compiled by on 1 November 2005

Scale 1:2500



Bath & North East Somerset Council  
Beveridge  
Temple Street  
Bathampton  
Bristol BS51 1JA  
Tel: 01225 477000



1968

1968



1968

1975



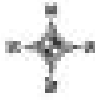
10-25

# Fullers Earth Works 1999

Compiled by MFL/Laver on 24 November 2011

Scale: 1:1474

Bath & North East Somerset Council  
Planning  
Temple Street  
Keynsham  
Bristol BS51 1JA  
Tel: 01252 470360



2002



7000Z

2002



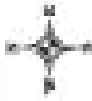


# Fullers Earth Works 2009

Compiled by MFL/Lular on 20 November 2011

Scale 1:1474

North & North East Queensland Council  
Rivervale  
Tyrone Drive  
Mudgeeraba  
Brisbane QLD 4001  
Tel: 8188 47308



HARRISON  
SOLICITORS GRANT

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LONDON WC1X 8JE

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**Private and Confidential**

Members of Development Control Committee  
And Legal Adviser  
Bath & North East Somerset Council  
Northgate House  
Upper Borough Walls  
Bath  
BA1 1RG

Our Ref: VOF0012  
30<sup>th</sup> December 2011

By post and email to: [David.Taylor@bathnes.gov.uk](mailto:David.Taylor@bathnes.gov.uk)

**For Addressees only**

Dear Mr Taylor,

**Re: Development Control Committee Agenda – Fuller's Earth site- 5 January 2012  
at 2pm**

**Representations on behalf of Protectbath.org and Victims of Fuller's Earth Ltd**

We note that the report to committee accepts that substantial unauthorised changes of use have occurred at the site extending inappropriate and substantially harmful development over a significant area of Bath's nationally important green belt. It is inconceivable that this Council can tolerate such deliberate and extensive breaches of planning control in the green belt when the whole thrust of the Council's planning strategy is about protecting the green belt. It is plain from the report to committee that the only basis upon which enforcement is not considered expedient at this stage is because there is a hope that negotiations will secure development in accordance with the allocation. This is seriously flawed logic for the following reasons:

- (1) There is no inconsistency between: (a) pursuing negotiations to encourage development pursuant to and in accordance with the allocation; and (b) enforcing against unauthorised, harmful and inappropriate development. Indeed, enforcement will force the landholder to pursue alternative (allocation compliant) development of the land. The report to committee is plain that the current form of development is unacceptable and that any negotiations will be about delivering development in line

with the allocation - see e.g. para 4.08 - and not simply about making minor adjustments to the existing unlawful development. It is patently irrational to allow unlawful and harmful "X" to continue in order to help negotiations to achieving a completely different "Y";

- (2) It is not accepted that government guidance on negotiation prior to enforcement covers the current situation. That guidance is about a situation where the unauthorised development can be made acceptable by alterations to it. **That is not this case.** The current unregulated, uncontrolled, open air, un-landscaped development is wholly contrary to all policy (and there is no suggestion in the report to committee to the contrary) and the negotiations are not about trying to make the existing development acceptable but about introducing a new form of development in accordance with the allocation;
- (3) In any event, the report provides no details of how the negotiations are progressing. It is now more than a year since Lindblom J's judgment. The Court judgment sets out the detail of the negotiations and attempts to regulate uses back to at least December 2008 (more than three years ago). Yet councillors are told that negotiations are still at "a very early stage". The history tells its own compelling story. There is no indication anywhere in the papers of any concrete progress since then and the history of breach demonstrates that absent enforcement, the Council can have no confidence that progress will be made;
- (4) Indeed, responses to Freedom of Information requests paint a more nuanced picture. On the 22 July 2011 the owner of the site emailed the Council to say: *"For the avoidance of doubt I should make it clear that it is for the Council to deliver whatever facilities it needs within the JWCS. Gazelle Properties simply own the site and Waste Recycling @ Bath currently operate, wholly lawfully I would add from the site."* This indicates someone who has very recently indeed entered into 'early stage' negotiations with the Council. For a long time it is clear that the owner has been intransigent to the views of the Council (copy email attached).
- (5) Further, the report appears to proceed on the basis that if negotiations are not successful then enforcement action can be undertaken later. This is factually and legally wrong. On the report's own assessment the "mixed use of the wider site appears to have commenced by mid to late 2003" (para 3.067). It does not define when that change of use commenced only that it had commenced by (at the latest) mid to late 2003. Para 3.055 shows that in respect of area E the change of use was a gradual process. The Council can have no confidence that the changes of use complained about did not occur until 2003. We do not have an aerial photograph showing the site at the beginning of 2003. The consequence is that the Council can have no confidence that delay will not be fatal to any later enforcement. Given the conclusions on harm in the report the Council cannot lawfully tolerate that position;
- (6) The report carries out no assessment as to the timescales it is envisaging. What is the deadline for negotiations? Even if they are successful, what then? The Council cannot lawfully let time expire in the hope of the landowner applying for planning

permission and then implementing an agreed development because, absent an enforcement notice, there would be no compulsion on the landowner to pursue the agreed solution. Officers do not attempt to, and cannot, give any confidence as to a timetable which will ensure that any agreement is given effect to before time for enforcement runs out.

For the avoidance of doubt, we do not accept much of the remainder of the analysis in the report to committee but have kept our comments in this letter to what we consider to be the heart of the matter to identify the flaws in the approach in the report.

This is in truth a simple case of unauthorised, harmful, inappropriate development in Bath's hugely valuable and correctly strongly protected green belt. There is no rational basis for not enforcing and any failure to enforce at this stage will, we are afraid, have to be the subject of an urgent application for judicial review.

Yours faithfully



**Harrison Grant**

Bath & North East Somerset Council  
Request for Information

Please provide the following information:

*Details of meetings and correspondence with Andy Ridings of Waste Recycling @ Bath*  
*Subject areas - Joint Waste Core Strategy, hiding the site with a 'bund(s)', enforcement issues relating to the Old Fuller's Earth Works, Odd Down*  
*Timescale - Six months preceding 1st October 2011*  
*Council Staff - Glen Chipp, David Trigwell, Lisa Bartlett, members of the Planning Department*

The Council has reviewed its records and holds the following recorded information which matches your request. The Council also attached a copy of a letter that matches your request. You will note that some information has been redacted from this letter. This information relates to a residential address and is therefore exempt under Regulation 12(3) of the EIR. This Regulation provides an exemption to the general right of access to information, where the disclosure of personal information would breach any of the Data Protection principles. The Council considers that disclosure of this information would constitute a breach of the fairness requirement of the first principle. This is because the individuals in question have not consented to the disclosure of their details. In addition they have a reasonable expectation that the Council will keep their information confidential.

Email from Andy Ridings of Waste Recycling @ Bath to Cllr Paul Crossley, copying in Glen Chipp, David Trigwell & Lisa Bartlett sent on 27 June 2011

... [information not relevant to request] ...

In the meantime in a more general sense, Waste Recycling @ Bath Ltd will continue to offer invaluable recycling services to BANES communities under the lawful use it has always enjoyed at the site.

A number of your councillor colleagues have been to visit the site, and I do hope that you will be able to take up the offer of a visit in the near future. I am sure it would be useful in further developing your understanding of the invaluable service that we provide to BANES taxpayers. Having said this, equally I understand the many and varied calls upon your time.

... [information not relevant to request] ...

Bath & North East Somerset Council  
Request for Information

Email from Andy Ridings of Waste Recycling @ Bath to Cllr Paul Crossley,  
copying in Glen Chipp, David Trigwell & Lisa Bartlett sent on 22 July 2011

You have obviously received the latest email from Sue Ridings for Gazelle  
Properties.

For the avoidance of doubt I should make it clear that it is for the Council to  
deliver whatever facilities it needs within the JWCS. Gazelle Properties simply  
own the site and Waste Recycling @ Bath currently operate, wholly lawfully I  
would add, from the site.

Please note in respect of Mr Ridings claim that the use of the site at the Old  
Fuller's Earth Works is lawful, a report is being prepared for the Development  
Control Committee in line with its resolution of May this year.