

## DEVELOPMENT CONTROL COMMITTEE 9 MAY 2012

### Committee update report for item 14 Land at Former Fullers Earthworks, Fosseyway, Combe Hay, Bath

1.0 It is necessary to report late representations to the Committee as well as additional information related to some of the detail of a representation from Ashfords, Solicitors acting on behalf of Gazelle Properties Limited, which is referred to within the main Report and further advice on the consideration of the period for compliance in the event that the Committee resolve to authorise the issue of enforcement notices in relation to the activities on this site.

2.0 Additional representations:

A representation has been made by Cllr Nigel Roberts, Ward Member for Odd Down. He is unable to attend the Development Control Committee Meeting but makes the following points:

- The development is not in Odd Down ward but does affect a lot of residents in particular those living in Sulis Meadows;
- Burning material has caused black smoke to go over the estate;
- Endless noise from beeping lorries reversing and to other noise associated with the site;
- Issues with scrambler motorcycles;
- Increased traffic from this and other developments causing problems along Wellsway and other roads;
- Most of the Sulis Meadows estate were built before this site started;
- The development has gone on too long doesn't fit with the green belt and should be enforced against.

It is not considered that the above representations raise issues that have not already been covered in previous Reports or the Report before you today..

3.0 The main Report at paragraphs 3.3 - 3.7 refers to the letter from Ashfords. This was received very close to the deadline for the writing of the report and contained a statement from Mr. Upshall upon which it was not possible to set out a considered view in the main Report. Mr. Upshall is a former employee who has had knowledge of the site for many years. The sworn statement is dated 2008, is not something that has been put to the Council previously, and is therefore additional to a previous statement by Mr. Upshall that had been submitted to the Council in 2006 as part of the Certificate of Lawful Existing Use (CLEU) application and referred to throughout the reports on this case.

In paragraph 1 of the 2006 Statement Mr Upshall records that he was given a plan showing the whole of the Fullers Earth site edged in red to assist him in making the statutory declaration. Mr Upshall commented that he was familiar with the site having been employed there in 1943 aged 17, and until the site closed in 1981. The Council have now been provided with a second statutory declaration dated 2008. Mr Upshall at that time, in addition to the red line plan, was shown a bundle of plans and photographs - the plan labeled A-E with which members will be familiar, and 2 aerial photographs of the site that he was told were taken in 1968 and in 1975.

Mr Upshall was employed as foreman and responsible for the day to day operation of the works

4.0 Mr Upshall's Evidence

It is clear that the Fullers Earth site was in use in 1943, but the extent of that use is unclear. The evidence of Mr. Upshall is that during his time;

“ the works buildings were occupied solely for industrial processes comprising the processing and refinement of Fullers Earth and the manufacture of finished products.”

He also comments in the 2008 declaration that there was no need for fencing around the site and consequently;

“As there was no fence or any other form of boundary separating the industrial building their associated hard-standings and the surrounding land, the land to the south west, the south and the

northeast could be, and was, used freely for purposes connected with the industrial uses. Laportes did not allow any other uses to take place upon the surrounding land to the north east to the land surrounding the old addit to the South .”

Mr. Upshall goes on to say that the land to the north east was used from time to time for storage of various items connected with the industrial use including;

- Unprocessed earth;
- Finished palletized bagged products (kept under tarpaulins);
- Pit props; and
- Miscellaneous materials and machinery.

This supports what was said in Mr. Upshall’ s 2006 declaration that;

If miners were particularly productive at Under Sow Hill there was not enough room within the site to store all of the material waiting to be processed. At such times the “green clay” would be stored outside on the area between the site and what is now know as the Odd Down Park and Ride. These storage piles could be extensive depending on how quickly the clay was processed. These stockpiles could be particularly large when ships from Avonmouth required emptying.

At the height of production the site was often full of material for use. Occasionally pressure on covered space meant that finished products were also stored on pallets outside and covered with tarpaulins until dispatch.”

A few matters arise. First, Mr. Upshall seems to address the buildings as ‘the site.’ Mr. Upshall describes stockpiles on land between ‘the site’ and ‘the Odd Down Park and Ride’ which correlates to part of Area E. It can be inferred from this description that the site at that time was viewed even by those who worked there to comprise those buildings and hardstandings at A, and not the whole of the area outlined in red. Storing material outside of area A it would seem was not the usual modus operandi, i.e. When miners were working normally, or when ships from Avonmouth did not require emptying. There is no other evidence about the extent or duration of this use, and so it is difficult to say on balance that there was any change of use at area E - even if those activities were undertaken.

The nature of those storage activities in area E as described by Mr. Upshall, and the photograph taken in 1968 led to the following conclusions in the January report;-

Clearly there was some overspill from the buildings at the height of production, but Mr Upshall is not specific about the length of time ‘the height of production’ continued, or how frequently products would have to be stored outside of the buildings. It would appear that this was only ‘occasionally.’ Furthermore, he doesn’t comment on the extent to which, if any, the products were stored other than in the immediate vicinity of the buildings and doesn’t specifically mention moving them onto the grassed area at E. Accordingly, it cannot be concluded that any area other than A was at that time in use for industrial purposes and storage on the basis of that evidence. The aerial photograph from 1968 does appear to show some encroachment on the neighbouring grassland, but it is not extensive, and there is nothing to suggest this use was anything other than temporary or that there was a change of the use of the neighbouring land which is now immune from enforcement action.

The later declaration however goes further that that made in 2006;

“10. We also used the land from time to time on which to deposit excess and waste fullers earth. The uses on the adjacent land varied in extent and intensity throughout my time at the site from 1943 right though to the 1970’s. The 1971 photo shows clearly our extensive use of the land to the north east all the way to the ancient hedgerow.”

Again, a distinction is drawn between the hardstanding and buildings and the ‘adjacent land,’ although it should be noted that in paragraph 9, Mr. Upshall states that he regarded the buildings and land as one site.

Dealing then with the assertion that the 1971 photo shows an extensive use of the land to the north east, interestingly, Mr. Upshall states the land to the north east of the buildings (predominately area E) was:-

“never used for any agricultural purpose at all from the end of the war until the plant closed in 1981. Indeed this land was not treated at all until the early 70’s when waste fullers earth was used to partially level the ground.”

Mr. Upshall then points to the 1975 photograph (although elsewhere he describes the photo as being from 1971) to demonstrate that the land was used extensively:-

“all the way to the ancient hedgerow”.

It seems however from Mr. Upshall’s comments, and because the photograph which is over exposed does not demonstrate stockpiling, that if anything, the image probably shows the leveling of the ground with waste Fullers Earth as explained in the Statutory Declaration. That would not be, or be ancillary to a B2 industrial use.

Certainly the 1968 photograph doesn’t show any stockpiling, or any signs that there had been recent use of the land for industrial purposes other than on area A. Any use of E for extensive stockpiling, if it had happened previously could be expected to have left a mark on the ground - particularly as the land at area E was untreated for decades.

Mr. Upshall also comments that excess clinker and fullers earth was tipped on land labelled B and C on the plan until 1981 when operations ceased. This however, is not supported by the photographic evidence that is available. If Mr. Upshall is right and that was the case, then the tipping must have been in small quantities, that would not have amounted to a change of use . Again, the land would be expected to bear the mark of recent industrial activity - the photographs show it does not.

Accordingly, the photographic evidence, and even the evidence of Mr. Upshall does not suggest activity sufficient to amount to a change of use, or indeed, continuous use of the whole of the area for industrial purposes, either before July 1948, December 31 1963, or for a period of 10 years at any point until the works closed in 1981. On balance, the new evidence does not suggest a different approach should be taken to the questions of immunity and expediency than have been recommended in the most recent report to Committee.

#### HUMAN RIGHTS ACT 1998

In order to be compatible with the European Convention of Human Rights (the Convention) regard must be had to Convention rights in the decision making process. Therefore the Council must strike a fair balance between the competing interests of individuals and the community as a whole.

## 5.0. CONCLUSIONS

In reaching a decision Members of the Committee need to take into account all the information set out in the previous reports, the main Report and this Update, all relevant representations made to the Committee and in light of these consider the following three questions:-

- Is what is there now lawful?
- Is it expedient to issue enforcement Notices at this time? And
- If it is considered to be expedient to take enforcement action, what is considered a reasonable time for compliance with any notices issued?

## 6.0 Period for compliance

If it is resolved by the Committee to authorise the issue of enforcement notices the period for compliance the Owner and occupiers will need to be given a sufficient period in which to comply, whilst enabling the negotiations to continue towards the delivery of an acceptable Residual Waste Facility on the site..

The Committee therefore needs to consider the time required for:-

- The continuation of negotiations towards the submission of a planning application ;
- The processing of an application as well as submission of reserved matters, the discharging conditions relating to other details;

Bearing this in mind, it is considered by Officers that it would be reasonable to allow an 18 month period to complete this process..

However if negotiations do not continue and a planning application is not submitted, there will be a need to relocate the businesses on the site that cannot be accommodated within 'Area A' and/or are not within the same use class as historic lawful use of that part of the site (B2). This would require the finding of alternative sites, the removal of all materials and other works required by the enforcement notice or notices as well as the carrying out of all other measures required by the notice or notices. It is considered that a reasonable period to comply with these requirements would also be 18 months.

## 7.0 Revised recommendation

Having taken into account all of the above delegate authority to the Divisional Director for Planning and Transport Development in consultation with the Planning and Environmental Law Manager to take any necessary enforcement action on behalf of the Local Planning Authority in respect of the alleged planning contraventions outlined above, by exercising the powers and duties of the Authority (as applicable) under Parts VII and VIII of the Town and Country Planning Act 1990 (including any amendments to or re-enactments of the Act or Regulations or Orders made under the Act) in respect of the above land.

The period for compliance if enforcement action is taken in accordance with the first recommendation is – 18 months.

### *General Note*

*This specific delegated authority will, in addition to being the subject of subsequent report back to Members in the event of Enforcement Action either being taken, not being taken or subsequently proving unnecessary as appropriate, be subject to:*

- (a) all action being taken on behalf of the Council and in the Council's name;*
- (b) all action being subject to statutory requirements and any aspects of the Council's strategy and programme;*
- (c) consultation with the appropriate professional or technical officer of the Council in respect of matters not within the competence of the Head of Planning Services, and*
- (d) maintenance of a proper record of action taken.*