

Bath & North East Somerset Council

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| MEETING: | Development Control Committee |
| MEETING DATE: | 8 April 2015 |
| TITLE: | ENFORCEMENT UPDATE REPORT: LAND AT FORMER FULLERS EARTH WORKS, FOSSEWAY, COMBE HAY, BATH |
| WARD: | Bathavon West |

AN OPEN PUBLIC ITEM

List of attachments to this report:

- Annex A - 2013 Second Bite Enforcement Notice dated 21/02/13
- Annex B – 2012 Enforcement Notice 02 dated 30/5/12 (scaffolding yard).
- Annex C – 2012 Enforcement Notice 03 dated 30/5/12 (stonemasons)
- Annex D – Copy of email dated 23/12/2014 from the Council's Consultant to the Landowner's Agent requesting information, together with a copy of a letter dated 19/01/2015 from the Landowner's Agent's in response.
- Annex E – plan showing where the stonemasons now operate, where the skips are stored, where the bays for the concrete batching are located (also showing area A)
- Annex F - plan showing hardstanding and fence as proposed in RWF/reserved matters application and relating to the scaffolding and unauthorised stonemason's yard (also showing areas A and E)
- ANNEX G – Summary of the Mr. Justice Hickinbottom judgement in the High Court of 3 March 2015 in respect of the Judicial Review proceedings.
- ANNEX H - Copy letter to the Planning Inspectorate from the Landowner's Agent dated 11 March 2015

1. UPDATE

- 1.1 As the committee will be aware, outline planning permission (14/00839/EMINW) for the Residual Waste Facility (RWF) was granted on 04/08/2014.
- 1.2 The Judicial Review of the above permission by Protect Bath.org and Victims of Fullers Earth Ltd was dismissed on the 3 March. Summary attached at Annex G.
- 1.3 The Landowner's Agent informed the Inspector at the pre-inquiry meeting last September (when the enforcement notice appeal inquiry was put in abeyance pending the outcome of the High Court case) that, if Protect Bath/Victims' High Court claim was dismissed, the Landowner's appeal against the "second bite" enforcement notice would thereupon be withdrawn. Officers have written to the Landowner's agent, copied to the Planning Inspectorate, seeking confirmation that the appeal has been/is imminently to be withdrawn.
- 1.4 Officers have also been in discussions with the Landowner's Agent to discuss compliance with the Enforcement Notices 2 and 3 and changes on the Land which effect the second bite Enforcement Notice. The Landowner's Agent wrote to the Planning Inspectorate on 11 March 2015 advising that they are awaiting the outcome of this Meeting before they decide whether or not to withdraw their appeal in respect of the Second Bite Notice. (Please see Annex HI)
- 1.5 The Committee is being asked to consider the content of this report, the expediency of the current enforcement action in respect of Enforcement Notices 2 and 3 (see Annexes B and C) and the effect the changes on the Land may have on the second bite Enforcement Notice dated 21 February 2013 (see Annex A).

2 ENFORCEMENT NOTICES

2.1 There are currently three Enforcement Notices in place on the Land, as follows:

- Enforcement Notice No 2 dated 30 May 2012;
- Enforcement Notice No 3 dated 30 May 2012; and
- The second bite Enforcement Notice dated 21 February 2013. This Notice is subject to an Enforcement Notice appeal which has been held in abeyance by the Planning Inspectorate pending the outcome of Judicial Review proceedings.

Enforcement Notice 2

2.2 This relates to change of use of the Land from agriculture to use for the storage, distribution and repair of scaffolding.

2.3 The steps required to comply with Enforcement Notice 2 are as follows:

- i) *Permanently cease using the Land outlined in red on the plan "2012 Enforcement Notice02 detail plan" for the storage, distribution and repair of scaffolding – Complied;*
- ii) *Permanently remove from the Land referred to in i) above all scaffolding, steel containers, storage cases, machinery and vehicles – Complied;*

- iii) *Demolish all fencing and remove all resultant materials from the Land – some boundary fencing has been retained to maintain security at the site;*
- iv) *Dismantle all concrete, hardstandings, underlying sub bases and remove the resultant material from the Land – not Complied;*
- v) *Restore the Land to its condition before the breach took place and level with topsoil – not Complied.*

2.4 In respect of Enforcement Notice 2 the scaffolding use has now ceased. The remaining steps are required to be taken for the Notice to be complied with:

- the removal of the concrete hardstandings
- sub bases
- boundary fencing and
- the area to be topsoiled.

Enforcement Notice 3

2.5 This relates to the change of use from agriculture to use for stonemasonry including the preparation, cutting, forming and storage of stone.

2.6 The steps required to comply with Enforcement Notice 3 are as follows:

- i) *Permanently cease using the Land outlined in red on the plan “2012 Enforcement Notice03 detail plan” for stonemasonry including the preparation, cutting, forming and storage of stone – Complied;*
- ii) *Permanently remove from the Land referred to in i) above all stone, steel containers, pallets, machinery and vehicles – partially Complied;*
- iii) *Demolish all fencing and remove all resultant materials from the Land – some boundary fencing has been retained to maintain security at the site;*
- iv) *Dismantle all concrete, hardstandings, underlying sub bases and remove the resultant material from the Land – not Complied;*
- v) *Restore the Land to its condition before the breach took place and level with topsoil – not Complied.*

2.7 In respect of Enforcement Notice 3 the stonemason use has now ceased, however, a small scale stonemason operation cutting and forming stone is now located within Area A (see Annex E). Area A has an historic B2 fallback use and the nature of the current stonemasonry operation is considered to fall within use class B2 and therefore officers consider that no enforcement action should be taken at this time in its current location.

2.8 The remaining steps required for compliance with Notice 3 are:

- the removal of the concrete hardstandings;
- sub bases;
- boundary fencing; and
- the area to be topsoiled.

Second Bite Enforcement Notice

2.9 This relates to the change of use from agriculture, residential use (of the dwellings and Land at 1 and 2 The Firs) and general industrial use (B2) to the mixed use of the Land for:

- *Agriculture;*

- Residential use of dwellings and Land at 1 and 2 The Firs;
- Waste processing (within use class use class B2) and waste storage;
- Concrete production and batching (within use class B2) including aggregate storage;
- Green-waste storage (plant material and wood);
- Skip hire and storage (sui generis);
- Scaffolding storage and repair (sui generis);
- As a building/engineering/stonemason contractors yard (sui generis);
- Siting and use of a hot food take-away trailer; and
- Storage of an advert trailer, metal cages and other scrap items.

2.10 The steps required to comply are as follows:

- i) Permanently cease using the Land (save for that area referred to as Area A, see Plan at Annex B) for waste processing (within Use Class B2) and/or any other B2 uses;
- ii) Permanently cease using the Land for storage;
- iii) Permanently cease using the Land for storage, distribution and repair of scaffolding (sui-generis use);
- iv) Permanently cease the using the Land as a contractors' yard for the storage of stone and equipment as well as the preparation, cutting and forming of stone (sui generis use);
- v) Permanently cease using the Land for the storage of green waste;
- vi) Permanently cease using the Land for concrete production, batching and storage (within use class B2);
- vii) Permanently cease using the Land for skip hire and storage (sui generis);
- viii) Permanently remove from the areas (situated on the Land) marked Area D, Area E and Car Park (see Plan at Annex B) all stored and processed sands, aggregates, stone, top-soils, sub-soils, green waste and waste awaiting processing such as hardcore rubble, road scalping, timber, pallets, plastics, skips, storage containers, scaffolding, racking, metal sheeting, gas bottles, fencing, road cones, tyres, windows and door frames from the Land;
- ix) Demolish and permanently remove from the Land all material comprising the bund along the north east boundary of the Land in the approximate position indicated by the black dashed line shown on the Plan (see Annex B) and reduce the ground level to that of the adjoining Land;
- x) Excavate and permanently remove from the Land all compacted hard surfacing and underlying sub bases, fences and storage bays situated on the Land from the Land (other than those compacted hard surfaces and underlying sub bases, fences and storage bays situated within Area A of the Plan (see Annex B));
- xi) Restore the Land to its condition before the breaches set out in paragraphs (i) to (vi) above took place by levelling with top soil to match the level of the adjoin Land.
- xii) Permanently remove the hot food takeaway trailer from the Land in the approximate position marked "HF" on the Plan (see Annex B); and
- xiii) Permanently remove the advert trailer, metal cages and other scrap items from the Land.

3 DELIVERY OF RESIDUAL WASTE FACILITY

- 3.1 The Reserved Matters application for the RWF permission was received by the Council on 18 February 2015 and validated on 9 March 2015. The submitted layout for the Land confirms that the areas of hardstanding proposed in the RWF development coincide with the majority of the areas of existing hardstandings on the Land, see Annex F, whose removal is required by the Enforcement Notices on the Land.

Effect of RWF on Enforcement Notice 2 (scaffolding)

- 3.2 As referred to above the use of the Land for scaffolding has now ceased. However, the Reserved Matters application submitted for the RWF development confirms that the majority of the hardstanding and the remaining boundary fencing is proposed to be situated in the same location as that contained within Enforcement Notice 2 which relates to the unauthorised change of use of the Land from agriculture to use for the storage, distribution and repair of scaffolding.
- 3.3 Officers are of the view that no purpose would be served by requiring the removal of existing hardstandings only for them to be replaced with new hardstandings on implementation of the RWF. Further, officers have been advised by the Landowner's agent that the boundary fencing needs to be retained in order to maintain security on the Land pending the development of the RWF. In respect of the small area of existing hardstanding that does not coincide with the area of proposed hardstanding it is proposed that this is removed as part of the implementation of the landscaping scheme for the RWF. Officers have concluded therefore that it would not be expedient to enforce the removal of the existing hardstanding and remaining boundary fencing provided that the RWF development and landscaping is implemented within a reasonable timescale.
- 3.4 18 months is considered to be a reasonable timescale for the delivery of the RWF having regard to the steps required for the implementation of the RWF. This includes time for a decision to be reached on the recently submitted reserved matters application, the construction of buildings and the implementation of the landscaping scheme.

Effect of RWF on Enforcement Notice 3 (Stonemasonry)

- 3.5 As referred to above the use of the Land for stonemasonry in this location has now ceased. However, the Reserved Matters application submitted for the RWF development confirms that hardstanding and boundary fencing is proposed to be situated in the same location as that contained within Enforcement Notice 3. This relates to the change of use from agriculture to use for stonemasonry including the preparation, cutting, forming and storage of stone.
- 3.6 Officers are of the view that no purpose would be served by requiring the removal of existing hardstandings only for them to be replaced with new hardstandings on implementation of the RWF. Further, officers have been advised by the Landowner's agent that the remaining boundary fencing should be retained in order to maintain security at the Land pending the development of the RWF. Officers have concluded that it is not expedient to enforce the removal of the existing hardstanding and remaining boundary fencing provided that the RWF development is implemented within a reasonable timescale.

- 3.7 18 months is considered to be a reasonable timescale for the delivery of the RWF having regard to the steps required for the implementation of the RWF. This includes time for a decision to be reached on the recently submitted reserved matters application, the construction of buildings and the implementation of the landscaping scheme.

4 SECOND BITE ENFORCEMENT NOTICE

- 4.1 The requirements of the second bite Notice are set out at paragraph 2.10 above. This Notice has been held in abeyance by the Planning Inspectorate pending the outcome of the Judicial Review proceedings relating to the grant of outline planning permission for the RWF (14/00839). The Landowner's agent has been in contact with officers on a without prejudice basis as to what steps would be necessary to comply with the Notice. In particular with regard to the future of the concrete batching plant and the skip hire business.
- 4.2 In considering the expediency of Enforcement action in respect of the concrete batching operations under the second bite Notice it is important to be aware of the circumstances on the Land that now exist..
- 4.3 The current concrete batching operation (which is operating as a B2 use) on the Land is located primarily within Area A. However some material storage bays associated with the operation are located on Area E.
- 4.4 Therefore, subject to the Landowner removing the material storage bays from Area E, officers do not consider that it is expedient to enforce this element of the second bite Notice as it would involve enforcing against a B2 use on part of the Land (Area A) which the Council accepts has an historic B2 fall back use and which would, on any view, have a lawful use if the notice were to be complied with fully.
- 4.5 In respect of the skip hire business circumstances have also changed and it is therefore necessary to consider the expediency of enforcement action having regard to the circumstances that exist on the Land now. Previously in 2009 officers had reported to committee as follows:

"The use of land for a skip hire business would normally be considered as a sui generis use, not falling within any particular use class. It is possible that an element of the skip use at the site could be ancillary to the waste processing use. If skips are brought on to site, emptied and then taken away by the individual operators that would be part of the waste recycling use. This is what would normally be expected with skip operators who would have their own bases elsewhere. The skips would be transported from the site where they have been filled, brought for emptying and then taken away. If skips remain on site temporarily, perhaps if the skip hire operator for some reason has not collected the skip for emptying, it is possible that some would remain on site which would not in itself constitute a materially different use. Similarly, if the recycling company had its own skip-hire business if run at a low-level relative to the recycling use this may also be considered as ancillary. However, at this site, there are clearly a number of companies which do not just bring skips for emptying and then take them away again. They appear to be being stored at the site. The degree to which this takes place is considered substantial and the site appears to be an operational base for the skips, a primary "sui generis" use in its own right."

- 4.6 At that time it was clear that because of the number of different companies that appeared to be using the Land as a base for hiring and collecting skips and the number of skips being stored there that this use was not ancillary to the B2 waste processing use which was being carried out on area A by a separate company.
- 4.7 However, the situation has now changed and officers have been advised by the Landowner's agent that the company now on the Land offering skips for hire is a sister company of the company running the B2 waste processing operation. Accordingly officers understand that the skip hire business is only used in conjunction with the B2 waste processing business. The information submitted shows skip deliveries and collections, which demonstrates that skips are returning to the Land for their contents to be processed and are not taking waste elsewhere for processing or disposal. The Schedule showing three months data of skip deliveries, collections and exchanges is a background paper to this Report. Annex D of this Report contains a copy of the email from the Council's Consultant, together with a copy of the Landowner's Agent's response which includes a summary of the number of deliveries, collections and exchanges during a three month period. Moreover, there is no available evidence suggesting that standalone skip hire businesses are now operating from the Land. Officers have therefore concluded that the current skip hire business as it presently operates could be described as ancillary to the B2 waste processing operation.
- 4.8 Therefore based on the nature of the skip hire business as it currently operates from the Land, officers are of the view that the skip hire business is ancillary to the B2 waste processing operation and that it is not therefore considered expedient to continue to enforce in this regard.
- 4.9 Finally, as with Enforcement Notices 2 and 3, there are areas of hardstanding covered by the second bite notice within Area E where hardstandings and buildings are proposed as part of the RWF permission. Officers are of the view that the same approach should be adopted in that it would not be expedient to require the removal of any hardstandings covered by the second bite Enforcement Notice where they coincide with areas to be developed as part of the RWF permission, see Annex F, provided that the RWF is implemented within 18 months from the date of this report.

5 OFFICER COMMENTS AND RECOMMENDATION

- 5.1 Officers visited the site on the 18th February 2015 and were able to confirm the following:
- That the area of skip storage is within Area A;
 - That the material storage bays used in respect of the concrete batching plant are on Area E, but the landowner's agent has confirmed that these will be removed.;
 - That the stonemason and scaffolding uses have ceased within Area E;
 - That the green waste had been removed from Area E;
 - That the hot food trailer had been removed from the Land; and
 - That a small area as shown on a plan Annex E is being used by a stonemason and is located within Area A.

- 5.2 Officers are of the view that it is not expedient to require the removal of the hardstandings and remaining boundary fencing from the areas covered by Enforcement Notices 2 and 3 where they coincide with areas to be developed as part of the RWF permission provided the RWF is implemented within 18 months of this report and that the hardstanding under the proposed landscaping scheme is removed as part of the implementation of the RWF.
- 5.3 Officers are of the view that it is not expedient to require the removal of any hardstandings covered by the second bite Enforcement Notice where they coincide with areas to be developed as part of the RWF permission, see Annex F, provided that the RWF is implemented within 18 months from the date of this report.
- 5.4 Officers are of the view that it is not expedient to enforce against the skip hire business as it currently operates within Area A and is ancillary to the B2 waste processing operation within that Area.
- 5.5 Officers are of the view that it is not expedient to enforce against the existing concrete batching plant operation provided it operates within Area A and the material storage bays are removed from Area E.
- 5.6 The Committee need to be aware that in all other respects Enforcement Notice 2, 3 and the second bite Enforcement Notice remain enforceable (in respect of second bite Enforcement Notice this is subject to appeal).

6 RESOLUTION

- 6.1 The Committee having considered the contents of this report are asked to accept the officer's recommendation and resolve that:
- It is not expedient to require the removal of the hardstandings and remaining boundary fencing from the areas covered by Enforcement Notices 2 and 3 where they coincide with areas to be developed as part of the RWF and landscaping permission provided the RWF is implemented within 18 months of this report.
 - It is not expedient to require the removal of any hardstandings covered by the second bite Enforcement Notice where they coincide with areas to be developed as part of the RWF permission provided that the RWF is implemented within 18 months from the date of this report.
 - It is not expedient to enforce against the skip hire business as it currently operates within Area A and is ancillary to the B2 waste processing activities taking place within that Area.
 - It is not expedient to enforce against the existing concrete batching plant operation provided it operates within Area A and the material storage bays are removed from Area E.

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| Contact person | Richard Stott, Principal Planning/Enforcement Officer, 01225 477434 |
| Background papers | <ul style="list-style-type: none"> • Enforcement Reports of 29/10/2008 and 18/02/2009 and Enforcement Notice dated 25/02/09 • Grant of Outline planning permission for Residual Waste Facility dated 04/08/2014 reference 14/00839/EMINW. • Reserved Matters Application - validated on 09/03/2015 • Schedule showing three months data of number of skip deliveries, collections and exchanges |
| <p>Please contact the report author if you need to access this report in an alternative format</p> | |