

**Decision Maker:** Plans Sub Committee 2

**Date:** 13 October 2011

**Decision Type:** Urgent Non-Executive Non-Key

**Title:** LAND AT LOWER HOCKENDEN FARM, STAR LANE, ORPINGTON - UNAUTHORISED DEPOSIT OF WASTE MATERIAL, FORMATION OF VEHICLE ACCESS AND CONSTRUCTION OF HARDSTANDING.

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**Chief Officer:** Chief Planner

**Ward:** Cray Valley East

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1. Reason for report

A substantial volume of waste material has recently been deposited in a field forming part of Lower Hockenden Farm, Star Lane. A new vehicle access has been created from Star Lane and high entrance gates erected. Hardcore has been deposited near the entrance to the field to form a large area of hardstanding. The site is within the Green Belt and deposited material significantly detracts from the open character and appearance of the surrounding area.

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2. **RECOMMENDATION(S)**

1. Authority be given to issue an Enforcement Notice requiring the deposit of waste material to cease and the deposited material to be removed from the land.
2. In the event of further waste material being deposited on the land after the issue of the enforcement notice further authority be given to take injunction proceedings in the County Court to prohibit the unauthorised tipping of waste material on the land.

### Corporate Policy

1. Policy Status: <please select>.
  2. BBB Priority: <please select>.
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### Financial

1. Cost of proposal: <please select>
  2. Ongoing costs: <please select>.
  3. Budget head/performance centre:
  4. Total current budget for this head: £
  5. Source of funding:
- 

### Staff

1. Number of staff (current and additional):
  2. If from existing staff resources, number of staff hours:
- 

### Legal

1. Legal Requirement: <please select>
  2. Call-in: <please select>
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes.
2. Summary of Ward Councillors comments:

### 3. COMMENTARY

- 3.1 On 30 September 2011 information was received that hardcore and rubble was being deposited in a field forming part of Lower Hockenden Farm, Star Lane, adjacent to a telecommunications mast.
- 3.2 The site was visited on 3 October 2011 and it was confirmed that an access had been formed into the field from Star Lane and metal gates installed in a new opening in the hedge. From this entrance a large expanse of flattened hardcore extended approx. 30-40m into the field. A digger was in the process of levelling and compacting the hardcore to form a large hardstanding.
- 3.3 Beyond the extent of hardcore there was a large depression in the middle before the land rises to the northern boundary. Waste material had been deposited in the dip and the digger operator stated that the field was being levelled in order that it could be cultivated.
- 3.4 The operator produced an Exemption Certificate dated 25 August 2011 from the Environment Agency, addressed to the leaseholder of Lower Hockenden Farm. This document gave Confirmation of Registration under the Environmental Permitting Regulations 2010 and gives exemption for the deposit of non harmful material subject to a number of conditions. One condition relates to the need to obtain planning permission for the activity before operations commence. No such permission has been sought or granted.
- 3.5 On 5 October 2011, a further site visit was carried out by officers from the Environment Agency and LB Bromley. There was evidence of extensive deposit of waste material including rubble, concrete brick, metal, plastic and timber. The leaseholder of Lower Hockenden Farm, Mr Mark Harvey, was present and stated that the material had originated from the Sitec waste transfer site at Cornwall Drive off Sevenoaks Way, St Pauls Cray. He was advised to cease work and secure the site to prevent any further tipping. This was confirmed in writing on 6 October when the leaseholder was advised not to carry out any further tipping and would be required to remove the tipped material.
- 3.6 It is estimated that approx. 1000 tons of waste material has so far been deposited on the land. The activity involves extensive engineering operations and a material change of use of the land which require planning permission. The depth of the tipped material has raised ground levels by up to 2m and has materially changed the appearance of the landscape when viewed from Star Lane. The site is within the Green Belt and the deposit of waste material significantly detracts from the openness and rural character of the area to the extent that enforcement action is considered to be expedient.
- 3.7 A further site visit on 7 October indicated that no further tipping appeared to have occurred but a significant amount of waste material remains on the land. The metal entrance gates were padlocked and large concrete blocks had been placed behind the gates to deter unauthorised access. Further visits will be made to monitor the situation before the matter is considered by committee.
- 3.8 Members are requested to authorise enforcement action in respect of the operational development and the material change of use requiring:
- the deposit of waste material to cease
  - the removal of the waste material from the land
  - restoration of the land to its former condition and appearance
  - removal of the entrance gates

- closure of the access onto Star Lane and reinstatement of the hedge along the road frontage

- 3.9 In the event of further tipping taking place after the notice is issued it is further recommended that an application is made to the Courts to take injunction proceedings against to prohibit the deposit of waste and require the restoration of the land.
- 3.10 In reaching a decision to apply to the County Court for an injunction, the Committee must therefore take various matters into account:-

The London Borough of Bromley is the Planning Authority for the area and as such has a duty to enforce planning control, taking into account relevant legislation, Government guidance and its own policies as set out in the Unitary Development Plan. It must, however, also demonstrate that the use of an injunction is in the public interest, and it must give consideration to all possible remedies and be convinced that no alternative means of enforcement would be effective, and that due consideration of the human rights of the defendant have been taken account of.

- 3.11 In considering an application for an injunction, the Court will apply various tests set out in the Porter judgement which must be satisfied and it will have to be demonstrated that, in reaching a decision to seek this form of enforcement, the Committee has also taken into account all material considerations.

**(a): Necessity** – whilst the court will not question the correctness of the planning status, it is bound to come to a broad view as to the degree of damage resulting from the breach and the urgency or otherwise of bringing it to an end.

*In this case, it is estimated that approx. 1000 tons of waste material has been deposited on the land without planning consent. This has resulted in a material change of use of the land due to the carrying out of extensive engineering operations which requires planning consent. The depth of the tipped material has raised ground levels by up to 2m which has resulted in a material change of the landscape when viewed from Star Lane.*

*Members will need to consider reasons for the urgency . Members may feel that in view of the location within the Green Belt the deposit of waste material significantly detracts from the openness and rural character of the area, and in view of the previous enforcement history at the site it may be appropriate in the this instance to institute injunction action in order to rectify the breach.*

**(b): Proportionality** – it is essential to demonstrate that the use of an injunction is appropriate and necessary for the attainment of the public interest objective sought but also that it does not impose an excessive burden on the individual whose private interests are at stake.

*In this case, members may wish to consider the importance of preserving the character of the Green Belt and as such believe that the use of an injunction would be proportionate in this case in order to rectify the breach.*

*Members should note that any breach of an injunction once granted may give rise to sanctions including imprisonment.*

**(c): Planning history and degree of flagrancy** - There have been recent planning applications for the conversion/change of use of existing farm buildings at Lower Hockenden Farm but no relevant applications on the land where tipping of waste is taking place.