

PART 1 - PUBLIC

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Decision Maker: Plan Sub-Committee No. 1

Date: 14th April 2011

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

Title: LAND ADJACENT TO KNOCKHOLT STATION, SEVENOAKS ROAD, HALSTEAD, CHELSFIELD

Contact Officer: Greg Ullman, Team Leader / Tim Bloomfield, Development Control Manager
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Chief Officer: Director of Resources/Chief Planner

Ward: Chelsfield and Pratts Bottom

1. Reason for report

- 1.1 On the 20th October 1994 the Council granting a Certificate of Lawfulness for the use of the area hatched on the plan and identified by the letter B (Area B) as a waste transfer station. The Council subsequently on the 18th January 2002 issued enforcement notices requiring the cessation of the areas identified as C and A on the attached plan (Area C and Area A) for the operation of a waste transfer station and against associated operational development. By a decision letter dated the 4th October 2002 an Inspector on an appeal amended the Notices so as to exclude the Area A. He did so as the area at that time was not within the control of the appellants and was in separate occupation. The Notices were upheld in respect of Area C. An application for planning permission was subsequently made in respect of Area C but was refused on appeal by a decision letter dated the 2nd October 2006.
- 1.2 On 17th August 2007 the Council issued further enforcement notices requiring the cessation of the use of the Land identified by the letter D on the attached plan (Area D) for the stationing/storage of skips/storage containers. The Notices also required the removal of the hard standing and restoration of the land to its former grassed appearance. Appeals were made against the Notices but subsequently withdrawn. The notices accordingly took effect. A recent site visit has confirmed that Area C continues to be used for the operation of a waste transfer station. Area D also continues to be used for the storage of skips/storage containers and the hard standing has also not been removed in breach of the enforcement notices. Area D is also used for the storage of lorry undercarriages and a broken digger.
- 1.3 The purpose of this report is to seek authority for an application to be made to the Court for an injunction to require compliance with the enforcement notices issued in respect of Area C and Area D.

2. RECOMMENDATION(S)

- 2.1 That authority be given for an application to be made to the Court pursuant to section 187B of the Town and Country Planning Act 1990 for injunction orders:
- (i) to require the compliance with the enforcement notices issued by the Council on the 18th January 2002 in respect of Area C and issued on the 17th August 2007 in respect of Area D, and
 - (ii) to require the cessation of the use of Area D for the storage of lorry undercarriages, diggers and any use in connection with the nearby waste transfer station

Corporate Policy

1. Policy Status: N/A.
 2. BBB Priority: Quality Environment.
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Financial

1. Cost of proposal: N/A
 2. Ongoing costs: N/A.
 3. Budget head/performance centre:
 4. Total current budget for this head: £
 5. Source of funding:
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Staff

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory requirement.
 2. Call-in: Call-in is not applicable.
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Customer Impact

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

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

3. COMMENTARY

3.1 On the 20th October 1994 the Council granting a Certificate of Lawfulness for the use of the area hatched on the plan and identified by the letter B (Area B) as a waste transfer station. The Council subsequently on the 18th January 2002 issued enforcement notices requiring the cessation of the areas identified as C and A on the attached plan (Area C and Area A) for the operation of a waste transfer station. By a decision letter dated the 4th October 2002 an inspector on an appeal amended the Notices so as to exclude Area A. He did so as the area at that time was not within the control of the appellants and was in separate occupation. The Notices were upheld in respect of Area C. An application for planning permission was subsequently made in respect of Area C but was refused on appeal by a decision letter dated the 2nd October 2006.

3.2 The Inspector said:-

"I agree the harm caused by extending the waste transfer station use here is less than that which could be caused by setting up such a use on a green field in the open countryside in an attractive rural setting. However, some material harm is caused. The site is not seen in the wider countryside setting. But is easily seen from the nearest station platform and the crossing footbridge, which serve a well used line. The overall look is of an uncompromising industrial waste use and activity, shielded from view, which is discordant, dusty, noisy and intrusive. Adjoining use has become lawful. But adding to this unplanned activity by regularising the waste transfer station extension, doubling the area of use, would substantially add to the harm caused to the appearance of this contained area. I also noted the use of the station car park roadway and its access by heavy lorries going to and from the appeal site, raising dust and fitting in poorly with the car park use".

3.3 The Inspector continued:-

"My view is that the particular needs of the appellant company are not advantages which weigh heavily. There was no evidence the recent UDP had failed to take proper consideration of the Boroughs waste management needs, nor that it had not taken account of the considerations set out in PPS 10. The UDP is almost as up to date as it could be. It does not show an unmet need which might require an expansion of facilities in the Green Belt. The appellants may have been unaware of the progress of the UDP or that they could have objected in respect of areas of concern to them. But they should have known the extent of the LDC area, which excludes the appeal site. Yet they said they could not manage without it. As presently operated, with a large element of skip hire as part of the business, that may be. But I am not persuaded the adjoining LDC Land cannot continue to be used as a waste transfer station. ...I conclude in this case that the benefits arising from the Section 78 appeal site use for the expansion of the adjoining waste transfer station do not amount to the very special circumstances which clearly outweigh the harm by way of inappropriateness and the other harm identified."

3.4 On 17th August 2007 the Council issued further enforcement notices requiring the cessation of the use of the Land identified by the letter D for the stationing/storage of skips/storage containers. The Notices also required the removal of the hard standing and restoration of the Land to its former grassed appearance. Appeals were made against the Notices but subsequently withdrawn. The Notices accordingly took effect. Area D is in separate ownership from Area C.

3.5 A recent site visit has confirmed that Area C continues to be used for the operation of a waste transfer station. Area D also continues to be used for the storage of skips/storage containers and the hard standing has also not been removed. Although the site is predominantly used to store skips it was observed that lorry undercarriages and a broken digger are stored at the site.

Some of the skips displayed the BSP sign and despite being in separate ownership from the nearby waste transfer station, Area D appears to be in use in connection with it. The purpose of this report is to seek authority for an application to be made to the Court for an injunction to require compliance with the enforcement notices issued in respect of Area C and Area D and also to secure the cessation of the other unauthorised uses of Area D.

- 3.6 Section 187B of the Town and Country Planning Act 1990 gives local planning authorities the power to seek injunctive relief to restrain any actual or apprehended means of planning control. Section 187B of the Town and Country Planning Act 1990 states:

“Where the local planning authority considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their powers under this part.”

- 3.7 The case of **South Buckinghamshire DC v Porter (“Porter”)** is an important precedent as far as injunctions are concerned. Although the case involved an application for an injunction in respect of a case involving occupation of Land by travellers the judgment is of general application. The court’s approach to grant injunctive relief under section 187B is set out below in relevant part (emphasis added):

*“...but it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for **himself all questions of the hardship for the defendant and his family** if required to move, necessarily including therefore, the availability of suitable alternative sites. I cannot accept that the consideration of these matters is, as Burton J suggested was the case in the pre-1998 era, “entirely foreclosed” at the injunction stage. Questions of the family’s health and education will inevitably be of relevance. But so too, of course, will be the **need to enforce planning control** in the general interest and, more importantly therefore the **planning history of the site**. **The degree and flagrancy** of the postulated breach of control may well prove critical. **If conventional enforcement measures have failed over a prolonged period of time to remedy the breach**, then the court would obviously be the readier to use its own, more coercive powers. **Conversely however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken**. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise. Preventing a gypsy moving onto a site might, indeed, involve him in less hardship than moving him out after a long period of occupation. **Previous planning decisions will always be relevant**; how relevant, however, will inevitably depend upon a variety of matters, including, not least, how relevant they are, **the extent to which considerations of hardship** and availability of alternative sites **were taken into account**, the strength of the conclusions reached on Land use and environmental issues, and **whether the defendant took the opportunity to make his case for at least a temporary personal planning permission**.”*

- 3.8 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 that due consideration of the human rights of the defendant have been taken account of.

3.9 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 and to have properly posed and approached the article 8(2) questions as to necessity and proportionality.

3.10 **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, the owners have paid little heed to the planning regulations. The unauthorised uses continue despite effective enforcement notices which were served and took effect many years previously.

3.11 **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.

The use of injunction proceedings is the strongest form of enforcement available to the Council and members may feel that this is an appropriate remedy to seek in the circumstances. The appeal Inspector in respect of Area C balanced the private interest of owner with the harm that arises in allowing the unlawful use to continue. He found that Green Belt considerations prevailed and that the particular needs of the appellant company are not advantages which weigh heavily.

3.12 **Planning history and degree of flagrancy** – It will require to be demonstrated that conventional measures have failed over a period of time to remedy the breach. Members will also require to demonstrate that they have considered the possible hardship which might be caused to the defendant,

The owners continue to profit from breach of the effective enforcement notices and from breaches of the criminal law. The owners have had several years to make alternative arrangements for the business but have failed to do so.

3.13 **Failure of conventional methods of enforcement and lack of attempt to try other enforcement methods:** - the Court may take into account any other steps which have been taken by the Council, but which have failed to take effect.

The existence of criminal sanctions in this case has proved insufficient. A prosecution by itself is unlikely to secure a cessation of the unlawful uses.

3.14 **Hardship to the owner** – the Court in considering the matter of the unauthorised development will take into account considerations of hardship caused to the owner.

Area C and Area D are occupied by commercial businesses. In respect of Area C an Inspector found that the particular needs of the appellant company are not advantages which weigh heavily. It is submitted that this is also the position in respect of Area D. In that case an appeal was made but then withdrawn. The needs of the users of the site should not be allowed to prevail over the general public interest in ensuring that planning regulations and the criminal law are complied with.

3.15 An application has been submitted under reference 09/03459/ELUD for a Certificate of Lawfulness for an existing use of respect of Area A. That report and recommendations for enforcement action in respect of that Land are considered elsewhere on the agenda.

4. POLICY IMPLICATIONS

Policy G1 of the Unitary Development Plan and PPG2. The London Plan and Unitary Development Plan contain waste policies.

5. FINANCIAL IMPLICATIONS

In the event of a successful application for injunction, costs would be sought from the defendant. In the event of an unsuccessful application, the Council might be liable in costs to the defendant of an amount which cannot at this stage be quantified.

6. LEGAL IMPLICATIONS

Fully addressed in report.

Non-Applicable Sections:	Personnel
Background Documents: (Access via Contact Officer)	Enforcement notices issued on 18 th January 2002 and 17 th August 2007.