

# Strategic Planning Committee

12 July 2021

<b>Purpose of Report:</b>	<b>To inform Members of notified appeal decisions which may need to be taken into account as a material consideration in the Committee's future decisions</b>
<b>Recommendations:</b>	<b>It is RECOMMENDED that: This report is for Information</b>
<b>Portfolio Holder</b>	<b>Cllr D Walsh, Planning</b>
<b>Executive Director:</b>	<b>J Sellgren, Executive Director of Place</b>
<b>Report Author:</b>	Appeal Decision 1 – 3 Jerry Smith Lead Project Officer (Minerals and Waste) <a href="mailto:j.a.smith@dorsetcc.gov.uk">j.a.smith@dorsetcc.gov.uk</a> 01305 224262 Appeal Decision 4 Jan Farnan Lead Project Officer (Minerals and Waste) <a href="mailto:janice.farnan@dorsetcc.gov.uk">janice.farnan@dorsetcc.gov.uk</a> 01305 228263

## 1 Appeal Decision No. 1

**Appeal Reference: APP/D1265/X/20/3260162**

**Planning Reference: 3/19/1630/CLE**

**Proposal: Lawful Development Certificate for existing building works comprising the construction of a hardstanding area.**

**Address: Guppy's Yard, East Moors Lane, St Leonards, Ringwood, BH24 2SBI**

**Appeal Decision: Appeal allowed and Lawful Development Certificate issued.**

- 1.1 The application by Mr S Guppy for a Lawful Development Certificate (LDC) for existing building works comprising the construction of a hardstanding area was received on 1 August 2019. An LDC was sought on the basis that the hardstanding was substantially completed more than four years before the date of the application. An appeal against non-determination of the application was made in September 2020 and the appeal proceeded by way of a public inquiry held in April 2021 into this and other appeals relating at the same landholding. The Inspector's decision letter is dated 17 May 2021 and allowed the Appeal,

issuing a LDC over a restricted area of the application site.

- 1.2 The appeal site forms part of a landholding known as Guppy's Yard located on the northern side of the A31 in St Leonards. The site includes an area of land which had inert waste deposited on it in the period 1980 to the early 2000s, some of which had been levelled and compacted and is in use for various commercial purposes.
- 1.3 The decision letter records that in the Inquiry considerable agreement was reached between the parties over the issues raised by this appeal and that the dispute was limited to exactly what the LDC to be issued should cover. In particular, the issue was the extent of hardstanding that had been built and that still exists.
- 1.4 The Inspector had to decide what 'hardstanding' actually means and what is required to create it. In this case the background was that waste hardcore and similar materials had been deposited on the land at various times stretching back to the 1980s. There was evidence that in some areas the surface had been engineered specifically to for a hard level surface but in others it had not. In addition the current state of the claimed hardstanding area varies from flat hard ground, largely in use for commercial activities, through to regenerated woodland with no active use, and which had been in this state for many years. The evidence comprised mainly aerial photographs and personal testimony from witnesses.
- 1.5 On behalf of DC, Officers submitted evidence on the limited extent of lawful hardstanding in the application site. The remainder of the site was in dispute at the Inquiry. The Inspector concluded that none of the disputed areas were hardstanding, having been long overgrown, and that simply dumping waste on the land did not create hardstanding. He agreed with the extent of actual hardstanding suggested on behalf of DC and issued a LDC in respect of that area only.

## **2 Appeal Decision No.2**

**Appeal Reference: APP/D1265/X/20/3260188**

**Planning Reference: 3/19/2267/CLE**

**Proposal: Lawful Development Certificate for existing use of land for breaking of waste metal, storage of scrap, and distribution of waste metal from the site.**

**Address: Guppy's Yard, East Moors Lane, St Leonards, Ringwood, BH24 2SBI**

**Appeal Decision: Appeal allowed and Lawful Development Certificate issued.**

- 2.1 The application by Mr S Guppy for a Lawful Development Certificate (LDC) for an existing use of land for breaking of waste metal, storage of scrap, and distribution of waste metal was received on 20 December 2019. An LDC was sought on the basis that the use began more than ten years before the date of the application. An appeal against non-determination of the application was

made in September 2020 and the appeal proceeded by way of a public inquiry held into this and other appeals relating at the same landholding. The Inspector's decision letter dated 17 May 2021 allowed the Appeal, issuing a LDC over a restricted area of the application site.

- 2.2 The appeal site forms part of the landholding known as Guppy's Yard located on the northern side of the A31 in St Leonards. It comprises an area of about 0.6Ha which is used intensively for the storage and processing of scrap and waste metal and is known as the metals recycling area (MRA).
- 2.3 The Inspector's decision letter records that before and during the Inquiry it was agreed that a substantial part of the appeal site has been used for metals recycling and that Officers had, on behalf of Dorset Council, proposed that an LDC be granted for a specific part of the appeal site subject to particular limitations or "characteristics". The matters still in dispute were the extent of the area of lawful use and the limitations proposed to be included in the LDC. However, the appellant agreed to accept the LDC plan proposed by Officers and the Inspector proceeded on that basis. The Inspector rejected, as unfounded, the Appellant's concern that the limitations proposed for the LDC amounted to planning conditions and found the limitations to be appropriate. The Inspector allowed the appeal and issued a LDC in the terms redrafted by Officers during the Inquiry..

### **3 Appeal Decision No. 3**

**Appeal Reference: APP/D1265/C/20/3244610 and linked appeals**

**Enforcement Notice in respect of, in summary: change of use of land to use for storage, processing and recycling of waste materials including construction and demolition wastes and construction of screening mounds.**

**Address: Guppy's Yard, East Moors Lane, St Leonards, Ringwood, BH24 2SBI**

**Appeal Decision: Appeal dismissed and enforcement notice upheld unaltered.**

- 3.1 An enforcement notice (EN) was issued on 17 December 2019 in respect of Guppy's Yard located on the northern side of the A31 in St Leonards, following complaints of unauthorised development and an investigation which commenced in April 2019. The EN required the immediate cessation of use of specific areas within Guppy's Yard for, in summary, storage, processing and recycling of waste materials including construction and demolition wastes, and then the clearance of materials and equipment from those areas, and removal of screening bunds, within four months.
- 3.2 Appeals against the EN were made by a number of persons with an interest in Guppy's Yard in January 2020. The appeals proceeded by way of a public inquiry held in April 2021 into these and other appeals relating at the same landholding.
- 3.3 The enforcement appeals were made on all possible grounds, including on the

basis that planning permission should be granted for the inert waste recycling activity and the associated screening bunds. The Inspector's decision letter dated 17 May 2021 dismissed the appeals, refused planning permission on the application deemed to have been made on appeal, and upheld the enforcement notice without alteration.

- 3.4 The Inspector rejected the appellants' arguments that the EN was not properly served on everyone with an interest in the land, that the development alleged in the EN had not occurred or that there had not been a breach of planning control.
- 3.5 Much of the Appellants' case, and evidence, focussed on an argument that it was too late to take enforcement action because various recycling activities had been taking place on the land for more than ten years. However, the Inspector rejected this on the basis that the EN specifically relates to inert waste recycling and that a significant inert waste recycling activity did not commence on the site until at least 2011, and probably not until 2014 so less than ten years before the EN was issued. This activity, conducted by a single tenant, created a new planning unit within Guppys Yard by 2017, partly defined by screening bunds erected from 2014. The construction of these bunds was part and parcel of the change of use and so the EN could require their removal.
- 3.6 In dealing with the deemed planning application resulting from the appeal on the basis that planning permission should be granted (Ground A) the key issues included the green belt status of the site and the visual and potential ecological effects of the development and whether there was a need for the development which outweighed any harm caused by it. Guppys Yard is mostly fields and woodland but includes developed areas with uses including the metals recycling area (MRA), open storage and the inert waste recycling subject of the EN and appeals.
- 3.7 The Inspector considered in detail the effect of the inert waste recycling use and bunds on the green belt in the light of Development Plan and NPPF policy. He concluded that both the use and the bunds cause harm to the openness of the green belt and are "inappropriate development" in the terms of the NPPF. Inappropriate development is, by definition, harmful and should not be approved except in very special circumstances.
- 3.8 In terms of effects on the landscape and ecology of the site, the Inspector concluded that, on balance, there would be some adverse effects if the appeal was allowed, compared to upholding the EN which would result in improvements to ecology and landscape character. The appellants argued that the need for, and beneficial location of, the recycling facility justified approval of it, and that the Waste Plan demonstrated this need. However, the Inspector concluded that there seems to be adequate inert waste recycling capacity in Dorset and no reason to doubt the Waste Plan or the updated capacity figures provided by Officers for the Inquiry, and so there is no need for the appeal site facility, despite it being well located. He concluded that the benefits of the development do not outweigh its harms and do not amount to very special circumstance to justify approval of it in the green belt.
- 3.9 Having considered the requirements of the EN and decided that, despite the appeal, there was no need to amend them, he dismissed the appeal and upheld the EN.

#### **4 Appeal Decision No. 4**

**Appeal Reference: APP/D1265/C/20/3259944**

**Enforcement Notice in respect of the change of use of the Land to use for the importation, deposit, processing and recycling of waste materials.**

**Address: Former Windmill Stables, off Watery Lane, Weston Street, Portland**

**Appeal Decision: Subject to variations, the Appeal is dismissed the enforcement notice upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.**

- 4.1 The appeal site is located 200m north of Weston street, within the open countryside in a gap separating Easton and Weston. It is surrounded by a network of well used public rights of way (PROW) and is elevated above the surrounding ground therefore readily visible within the landscape. Vehicle access is via Watery Lane, off Weston Street and Perryfields quarry lies to the north.
- 4.2 An enforcement notice (EN) was issued on 23<sup>rd</sup> August 2020 (ref 20/06) in respect of the former Windmill Stables, off Watery Lane, Weston Street Portland, following complaints in April 2020 that the site was being used for waste deposit, storage and recycling purposes which is unauthorised development. Various types of household and other wastes including electrical and electronic equipment waste was being stored in mixed and sorted piles in the open, in the former stable buildings and in two touring caravans on the site.
- 4.3 The EN required the immediate cessation of the importation, deposit, processing, and recycling of waste materials and within one month the removal of all waste and recycled materials to a licensed facility and removal of any vehicles, skips, or other machinery associated with the operation.
- 4.4 An appeal against the EN was made by the operator of the waste business, who is a tenant of the land, on 4<sup>th</sup> November 2020. The appeal proceeded by way of a written representations.
- 4.5 The enforcement appeal was made on two grounds, ground (a) that planning permission should be granted, and ground (g) that the period specified for compliance in the notice falls short of what should reasonably be allowed. The Inspector's decision letter dated 14<sup>th</sup> January 2021 dismissed the appeal, refused planning permission on the application deemed to have been made on appeal, and upheld the enforcement notice with the following alterations.
- 4.6 The address was corrected to reflect the full address and, in section 4 of the notice, specific policy references were added to the reasons for issuing the notice for clarity.
- 4.7 In dealing with the deemed planning application resulting from the appeal on the ground (a) the key issues included the sterilisation of mineral resources as the site forms part of an extant mineral permissions and is within a mineral safeguarding area. A further issue was the harmful visual effect on the local

area's landscape and heritage assets, as the site is within an area designated as an important open gap and the setting of two grade II listed Windmills and Weston Conservation Area. Officers argued that the site does not conform to the locational criteria for unallocated waste sites set out in the Waste Plan and there is no identified need as there is sufficient capacity in existing and allocated sites. In addition, the site is subject to a section 106 Agreement and a condition which requires removal of the stable buildings and restoration of the site.

- 4.8 The appellant's case on ground (a), that planning consent should be granted, was essentially that he performed a legitimate and useful waste recycling operation and that the requirements of the notice would leave him unemployed.
- 4.9 The Inspector concurred with the LPA on all the issues and noted that the waste site's central location in open grassland, playing fields and horse paddocks is severely harmful to the local landscape which clearly provides a strategic open space of recreational importance between Easton and Weston.
- 4.10 The Inspector decided the piles of waste can also be seen in the context of and directly from the two nearby Grade II listed early seventeenth century stone windmills located on PROWs to the north. There is no doubt that the open waste storage significantly detracts from the settings of all these designated heritage assets and harms their significance. No public benefits were indicated by the appellant to weigh against this harm as required by paragraph 196 of the National Planning Policy Framework.
- 4.11 The Inspector agreed that failure to cease the unauthorised waste use and demolish the stables, as required by condition, would unacceptably sterilise mineral resources and prevent restoration of the site to limestone grassland. In addition, the development did not conform to the waste hierarchy, locational criteria for the for non-allocated waste sites, and it had not been demonstrated by the submission of a Transport Assessment that vehicles associated with the development do not adversely impact on the safety of local roads and PROWs, as well as adversely affecting the recreational enjoyment of such PROWs.
- 4.12 The Inspector concluded that planning permission should not be granted, due to failure to comply with development plan policies listed in the varied EN and therefore ground (a) of the appeal failed.
- 4.13 In relation to ground (g) of the appeal, the appellant did not put forward a reason to explain why he cannot comply with the requirements in the time specified in the notice, beyond any additional time sufficient to make a planning application. As ground (a) of the appeal is a deemed planning application, which was determined as above the Inspector concluded that he could see no reason for extending the compliance periods set out in the requirements of the notice. The appeal on ground (g) consequently failed.