

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

KETTERING BOROUGH COUNCIL

ENFORCEMENT NOTICE

**TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)**

ISSUED BY: KETTERING BOROUGH COUNCIL

1. THIS IS A FORMAL NOTICE which is issued by the Council because it appears to them that there has been a breach of planning control, under Section 171A(1)(a) of the above Act, at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the Development Plan and to other material planning considerations.

2. THE LAND AFFECTED

Land situated at Lyndon Thomas, Birchfield Springs, Rushton Road, Desborough in the County of Northamptonshire, as is shown for the purposes of identification only on the attached plan and edged in red.

3. THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission the material change of use of the land to a mixed sui generis use comprising of:

- A) the use of the land for the winning, working, storage and sale of minerals;
- B) the use of the land for the unauthorised importation, storing, processing, sorting, transferring and depositing of waste materials;
- C) the use of the land for the storage of plant, machinery and vehicles associated with uses **A and B** above (processors/crushers);
- D) the use of the land for the storage of plant hire machinery and storage of parts for the purpose of hire;
- E) the residential use of the land, through the stationing of a timber lodge marked **A** on the Plan with decking, a shed and a caravan;
- F) the use of the land for a fishing lake business;

- G) the erection of a building, patio and boundary walls hatched in yellow on the Plan, which is part and parcel to the mixed use.
- H) the use of the land for mechanical repairs, vehicle maintenance, plant maintenance and the storage of mechanical tools;
- I) the erection of a building hatched in blue on the Plan, which part and parcel to use (**H**);
- J) the unauthorised formation of a pond and two lakes, laying down of hardstanding and access roads, pillars and toppings, perimeter walls and gates above 1m adjacent to the high road part and parcel with use (**F**) above;
- K) the creation of a haul road that is shown on the Plan hatched in orange, that is part and parcel of the mixed use; and
- L) the siting and stationing of a portacabin on the land marked **B** on the Plan for the purpose of an office that is part and parcel of the mixed use.

4. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the above breach of planning control has occurred within the last ten years.

The Council previously issued an enforcement notice in respect to the Site on 12 March 2020. Subsequent to this, the Council received a pre-action protocol letter, which sought to challenge the legality of the enforcement notice.

The pre-action protocol letter raised two issues: (i) the minimum 28 days had not been provided before the notice took effect and (ii) the Council had enforced against county matters.

In order to avoid potentially lengthy litigation to resolve this, the Council agreed to withdraw the notice. Indeed, any such litigation would only serve to further delay the breach of planning control being curtailed. Thus, the enforcement notice was withdrawn on the express basis that there would be no attempt to seek costs against the Council.

The Council consider it expedient, having regard to the development plan and all other material considerations, to issue the enforcement notice in exercise of its powers contained in sections 172 and 171B(4)(b) of the 1990 Act, where the original date of the first enforcement notice applies for the purposes of determining whether any development is immune from enforcement, in accordance with the 'second bite' provisions.

On the 19th August 2010 under reference KET/2010/0242 planning approval was granted for the: *for the formation of 2 no. specimen trout fishing lakes, a junior lake, stock pond, the erection of a facilities building, a machinery store, hatchery, the change of use of the land, for the (temporary) siting of a mobile home for the occupation by the site manager, formation of car parking and access areas, plus landscaping.*

On the 15th July 2015 under reference KET/2015/0523 planning approval was granted for a non-material amendment for the: KET/2010/0242 (Formation of 2 no. specimen trout fishing lakes, a junior lake, stock pond, the erection of a facilities building, a machinery store, hatchery, the change of use of land for the siting of a mobile home, formation of car parking and access areas, landscaping): Increase of function room area, reduction of decking area, and alterations to doors.

The unauthorised development did not implement this planning permission, which has now lapsed.

The unauthorised material change of use of the land, and associated operational development to facilitate this mixed use, has failed to enhance the environment for its location and does not respect the environmental quality and is out of character with of the Ise valley and the surrounding rural area. The site is within the Sub Regional Green Infrastructure corridor as shown on the North Northants Joint Core Strategy 2016, Policy 19 states that 'safeguarding the identified sub regional GI infrastructure corridor by not permitting development that compromises their integrity'. This development plainly does compromise the integrity of the GI corridor.

Furthermore, the storage and hire of large industrial plant machinery upon the land grants an unsightly industrialised setting to the Countryside and exposes the local amenity of Desborough and Pipewell to uncontrolled disturbance that includes shaking, noise and pollution when being delivered.

Pipewell Village is defined as a scattered village by the saved Policy RA4 of the Local Plan 1995, which states there is no village boundary and as such Pipewell is in the open countryside, where planning permission would not be granted except for where the proposal is appropriate to the form, character and setting of the existing village. Policy 8 of the JCS 2011 states that (e) it should ensure quality of life and safer, healthier communities by protecting amenity by not resulting in unacceptable impact on the amenities and future occupiers, neighbouring properties or the 'wider area' by reason of noise, vibrations or other pollution. The unconditioned use of large low loaders and transporters to deliver hired plant machinery represents a precedence of negative damage in the long term by noise and vibrations to the local amenity in both directions contradicts the measures required by these policies and therefore the site in its current form fails Policy RA4 of the saved local plan 1995 and Policy 8 of the JCS 2011.

Saved Policy 7 of the Local Plan for Kettering 1995 aims to protect the open countryside and states that 'Planning permission for development in the open countryside will not be granted except where otherwise provided for in this plan.' This Policy seeks to protect the countryside from unjustified development. It allows only limited development otherwise provided for in the Plan, such as rural exception sites and is consistent with Paragraph 215 of the NPPF, in particular one of the core planning principles which recognises the intrinsic character and beauty of the countryside. Policy RA5, states that planning permission will not normally be granted for residential development in the open countryside though states a number of exceptions including housing to meet local needs and replacement dwellings. The reinstatement of residential use and the facilitation of a Timber Lodge, decking and Caravan for the purpose of occupation occurred is without planning permission. The circumstances of the residential use does not rely on a special need that supersedes these policies and there are no special reasons as to why permanent residential use should be allowed to continue and therefore fails in Policies 7 and RA5. Furthermore, the residential use is in an unsustainable location having regard to access to local facilities and services and the isolated nature of the site.

The site is within the Rockingham Forest National Character Area. Key characteristics of this area include broad undulating plateau and ridge, woodland areas forming a prominent feature in the skyline, a patchwork of large to medium size fields and a network of shallow streams and remnant unimproved grassland.

Local landscape character has been assessed by Kettering Borough Council, as the Rolling Ironstone Valley Slopes Landscape Type within which the Kettering and Wellingborough Slopes forms the largest character area. This comprises a gentle rolling landscape of ridges and valleys.

The area is bordered by the River Ise to the east and from the upper slopes of the valleys wide views are possible across surrounding landscapes. From lower slopes views along the valleys are more channelled and contained, in particular along the valley of the River Ise south of Desborough.

The site is not subject to any landscape designations. However, the Council consider that the site has a local value in terms of its contribution to the landscape and setting of Desborough.

The EIA screening opinion is based if an application was submitted today with the current haulage uses and largescale excavations on site, it would be highly probable to fall within EIA development.

The site is not subject to any landscape designations. However, the Council consider that the site has a local value in terms of its contribution to the landscape and setting of Desborough, contrary to Policy 3 of the JCS.

Policy 10 of the Northamptonshire Minerals & Waste Local Plan (July 2017) (MWLP) identifies the waste management needs of the County over the plan period. Policy 14 of the MWLP specifically deals with the strategy for waste disposal including non-inert landfill and inert landfill and recovery by setting out the indicative capacity requirement. Evidence gathered at the site identifies that wastes are being deposited on the land which comprises a mixed non-inert waste and (also known as non-hazardous) and inert wastes contrary to these policies. Policy 15 deals with the development criteria for waste disposal (non-inert and hazardous) and sets criteria which development proposals for non-inert waste must demonstrate. These requirements of Policies 14 and 15 have not been demonstrated for this site and in the absence of this being an extension to an existing site it does not achieve in principle support having regard to these policies. Policy 16 states that where proposals for the disposal or recovery of inert waste does not relate to the restoration of a committed or allocated site for mineral extraction, it must demonstrate that: (i) it will not prejudice the restoration of other mineral sites and (ii) there is clear engineering, agricultural, landscape or recreation amenity justification for the development. These items have not been demonstrated. Policy 18 of the MWLP lists criteria of matters which should be considered and addressed in proposals for minerals and waste development. These have not been demonstrated, including the requirement to demonstrate that local amenity is protected and ensuring the access is sustainable, safe and environmentally acceptable. The fact that the only route available to the site for HGVs is through residential areas in Desborough is an issue.

It has also not been demonstrated that the development does not give rise to ecological harm and it is thus contrary to Policy 4 of the JCS.

It has also not been demonstrated that the development does not have adverse impacts in terms of contamination and thus it is contrary to Policy 6 of the JCS.

The council do not consider that planning permission should be granted as planning conditions would not overcome these objections because of the substantial planning harm resulting from the development.

5. WHAT YOU ARE REQUIRED TO DO

The steps required to remedy the breach of planning control are:-

Step 1: Cease the unauthorised mixed use of the land

Time for compliance: On the day this notice takes effect (save for the residential use see Step 3)

Step 2: Remove any buildings, hardstanding accesses, patio, pathways, ancillary debris, machinery, machinery parts, tools, plant, plant machinery and vehicles associated with the mixed use from the land

Time for compliance: Within 6 months of this notice taking effect.

Step 3: Cease the residential use of the land and remove the associated timber lodge, decking, shed and caravan from the land and all accompanying residential paraphernalia and debris

Time for compliance: Within 6 months of this notice taking effect.

Step 4: Remove all perimeter boundary pillars, toppings, walls and gateways from the land adjacent to the high road.

Time for compliance: Within 1 month of this notice taking effect.

Step 5: Remove all waste materials and minerals from the land.

Time for compliance: Within 3 months of this notice taking effect.

Step 6: Cease all excavations on the land

Time for compliance: On the day this notice takes effect.

Step 7: Deconstruct the haul road and remove all associated materials from the land that is approximately shown hatched in orange on the Plan

Time for compliance: Within 3 months of this notice taking effect.

Step 8: Cease use of the office that is part and parcel of the unauthorised mixed use and remove the facilitating portacabin and all its ancillary utilities and debris from the land (location approximately marked B on 'the Plan)

Time for compliance: Within 3 months of this notice taking effect.

Step 9: Deconstruct and infill all excavations forming the lakes and the pond and restore the landform to the condition that existed before the breach of planning control took place

Time for compliance: Within 3 months of this notice taking effect.

Step 10: Restore the land to how it was prior to the unauthorised development (including in terms of topography)

Time for compliance: Within 12 months of this notice taking effect.

6. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 3rd June 2020 unless an appeal is made against it beforehand.

DATED: 1st May 2020



Signed:

JAMES WILSON
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