

TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2017 (“the regulations”)

NOTICE UNDER REGULATION 37

Unauthorised development on land known as Birchfield Springs, Rushton Road, Desborough NN14 2NQ

Section 37 (3) of the regulations:

The Local Planning Authority considers that the matters constituting the breach of control specified in the enforcement notice (enclosed) constitute EIA development and have adopted a screening opinion accordingly. Therefore, under **Section 37 (3) (a)** of the regulations, the screening opinion is hereby enclosed below.

Section 37 (3) (b) of the regulations:

Should any person who gives notice of an appeal against the enforcement notice under Section 174 (as amended) of the Town and Country Planning Act, they shall submit to the Secretary of State with the notice of appeal, 2 copies of an environmental statement relating to that EIA development.

Section 38 of the regulations:

A recipient of a notice under Section 37 may, within 3 weeks beginning with the date the notice is served, apply to the Secretary of State for a Screening Direction. The recipient(s) of this notice will need to obtain their own planning/legal advice in this regard.

A handwritten signature in black ink, consisting of a stylized, cursive name followed by a horizontal line and a small dot.

Signed:

Interim Head of Development Services

Date: 30th April 2020

Screening Opinion
The Town and Country Planning (Environmental Impact Assessment)
Regulations 2017

SCREENING OPINION IN RESPECT OF AN ENFORCEMENT NOTICE TO BE ISSUED UNDER SECTION 172 OF THE TOWN & COUNTRY PLANNING ACT 1990, AS REQUIRED BY REGULATION 37(1)(b) OF THE 2017 REGULATIONS.

1. Introduction

Kettering Borough Council seek to serve an enforcement notice on the land known as: Birchfield Springs, Rushton Road, Desborough NN14 2NQ. Following an expediency assessment by the Local Planning Authority, the service of an enforcement notice has been determined to be the most proportionate course of action to remedy the breach of planning control.

The matters constituting a breach of planning control are, 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.

Regulation 37(1)(b) of the 2017 Regulations stipulates, where it appears to the local planning authority whom an enforcement notice is to be issued on behalf on, that matters constituting the breach of planning control comprise or include Schedule 1 or Schedule 2 development, the LPA shall adopt a screening opinion.

Is the proposed development Schedule 1 development as described in Schedule 1 of the Regulations?	No
Is the proposed development Schedule 2 development as described in Column 1 of Schedule 2 of the Regulations?	Yes
If yes, under which description of development in Column 1? (below): 2(a) Quarries, open cast mining and peat extraction (unless included in Schedule 1) 11(b) Installation for the disposal of waste (unless included in Schedule 1) 11(e) Storage of scrap iron, including scrap vehicles	
Is the proposed development within, partly within, or near a 'sensitive' area as defined by Regulation 2 of the Regulations. (below):	No
Are the applicable thresholds/criteria in Column 2 of the Regulations exceeded/met?	Yes
If yes, which applicable threshold/criteria? (below): 2(a) All development except the construction of buildings or other ancillary structures where the new floorspace does not exceed 1,000 square metres. 11(b) The area of deposit or storage exceeds 0.5 hectare. 11(e) (i) The area of deposit or storage exceeds 0.5 hectare; or (ii) a deposit is to be made or scrap stored within 100 metres of any controlled waters	Yes

The Council consider the proposal to be a Schedule 2 Development by virtue of the fact it exceeds the relevant criteria outlined in Schedule 2 Part 2(a) quarries, 11(b) ii and iii and 11(e) i and ii of the 2017 Regulations.

The land, to which the enforcement notice relates, exceeds the threshold criteria of 0.5 hectares and there is a deposit of waste storage, brick rubble and iron storage within 100m of controlled waters.

2. Site Description

The site is located to the east of Desborough outside the settlement boundary and therefore is in the open countryside. It is roughly square in shape and measures approximately 250m x 250m. It slopes down from the north to the south into the valley of the River Ise.

The land is known as Birchfield Springs, and its means of access is from the Northern boundary with the highway which has a roadside verge and apart from the highway is surrounded by agricultural fields.

The land holds no boundaries that separate the land and remains as one planning unit under Land Registry Title NN80409 and NN78291 and is currently deemed to operate as an unauthorised mixed use on one plot.

The land as shown was granted in August 2010 planning approval for 3 fishing Trout lakes under KET/2010/0242, which was deemed not to require EIA screening. The completed lakes are unauthorised by size and depth and subsequent unauthorised use of the land is now deemed to fall under the EIA screening.

To the far East via the second entrance the import and screening of inert waste takes place. Mounds of waste materials, minerals and soil are stored in this area. Also to the East approximately 2.5m of the road verge an approximate 20m depth excavation of minerals, notably Blue Clay is taking place. Additionally, the northern periphery of the site has perimeter bunding. The site office is located in the South West of the site.

The site falls 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 site lies within the character type area of reinstated mineral workings as defined in the Northamptonshire Historic Character Assessment and within sub area 8c Newton to Rushton. A small part of Rushton Park a grade 1 historic park and garden is included in this area and this includes the Triangular Lodge, a grade 1 listed building built by Thomas Tresham in the 16th Century. Rushton Hall is also Grade 1 listed. The site is approximately half a mile away from the edge of the park and the Triangular Lodge.

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 channeled and contained, in particular along the valley of the River Ise south of Desborough.

3. The unauthorised development

According to the information provided in several planning contravention notices served since 2012 by Northamptonshire County Council and Kettering Borough Council, the application KET/2010/0424 and in pursuit of environmental permit EPR/HP393OAU (issued by the Environment Agency), the site has been under construction for approximately 9 years and will be primarily used for:

Formation of 2no. 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 (temporary) siting of a mobile home for the occupation by the site manager, formation of car parking and access areas, plus landscaping.

It should be noted that despite the claims made, the part completed works do not meet the approved plans in size, location and structure. The site has been ongoing for approximately 9 years without any cessation, the landscape partially completed in 2016 has been left to deteriorate and the landscape and formation of the lakes does not resemble the approved scheme. The temporary permission for a mobile home for the site expired in August 2013.

In any event the sites excavations, import and disposal of inert waste, mining of minerals, Plant Hire and storage of parts, raised land levels and residential occupation of the site could exceed the limitations suggested above as there is no lawful mixed use approval at the site.

4. Selection Criteria for Assessment to inform Screening Opinion

Under the terms of the EIA Regulations, only Schedule 2 developments which are likely to have significant environmental effects will be required to go through the EIA process. In accordance with these regulations, this screening exercise has been carried out in order to determine whether the development is likely to have significant environmental effects, and so whether or not an Environmental Impact Assessment (EIA) is required.

In accordance with Schedule 3 of the regulations, the following selection criteria are used to inform the screening opinion:

Characteristics of Development

The characteristics of development must be considered having regard, in particular, to:

- (a) the size and design of the whole development
- (b) the cumulation with other existing development and/or approved development
- (c) the use of natural resources, in particular land, soil, water and biodiversity
- (d) the production of waste
- (e) pollution and nuisances

- (f) the risk of accidents and/or disasters relevant to the development concerned, including those caused by climate change, in accordance with scientific knowledge
- (g) risks to human health (for example due to water contamination or air pollution)

Location of development

The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to:

- (a) the existing and approved land use;
- (b) The relative abundance, Quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
- (c) The absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) Wetlands, riparian areas and river mouths;
 - (ii) Coastal zones and marine development;
 - (iii) Mountain and forest areas;
 - (iv) Nature reserves and parks;
 - (v) European sites and other areas classified or protected under national legislation
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure
 - (vii) Densely populated areas;
 - (viii) landscapes of historical, cultural or archaeological significance.

Types and Characteristics of the potential impact

The likely significant effects of the development must be considered in relation to the criteria set out under paragraphs 1 and 2 above, with regard to the impact of the development on the factors specified in regulation 4(2), taking into account -

- (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected)
- (b) the nature of the impact
- (c) the transboundary nature of the impact
- (d) the intensity and complexity of the impact
- (e) the probability of the impact
- (f) the expected onset, duration, frequency and reversibility of the impact
- (g) the cumulation of the impact of other existing and/or approved development
- (h) the possibility of effectively reducing the impact

5. Assessment: characteristics of the development

Size and Design	<p>The site area is approximately 8.6 ha. It is understood that the unauthorised development occurs throughout the entirety of the site.</p> <p>The majority of the site has no “design” as such as it comprises large excavations and deposits of materials and storage of various equipment in the open. There is a large two storey building which is constructed in ironstone, a metal building of industrial appearance (metal clad) and a mobile home plus other site offices. Overall the site has the appearance of a minerals/waste development.</p>
Cumulation with other developments	<p>The unauthorised development occurs within proximity to Wood Farm, Pipewell village, Rushton Road, Dunkirk Avenue and the River Ise. It is located in on the edge of Desborough and in the vicinity of several permitted residential developments which will involve site traffic having to travel along the old A6 through Desborough</p>
Use of natural resources	<p>Large quantities of soil have been utilised in the construction of the perimeter bunding around the site. A significant amount of top-soil, blue clay, road planings and recycled aggregate has been exported off the site.</p> <p>Due to the constant movement/tracking of plant, piling of rubble and waste etc and the absence of best practice in storing topsoil, the quality of the soil across large areas of the site will be compromised.</p>
Waste	<p>The unauthorised waste transferred use at the site relies fundamentally on the importation of waste; originating within and outside of Kettering Borough Council area.</p> <p>Based on the EA permits the sites maximum throughput should be 45000 tonnes to complete the approved scheme under KET/2010/0242.</p> <p>The unauthorised development generates waste being imported from outside the site, namely in the accumulation of waste not authorised by the EA Permit. Officers have observed mounds of domestic waste, rubble and small amounts of scrap metal on the land.</p>

<p>Pollution and Nuisance</p>	<p>The import and processing of waste materials has generated dust and extraordinary amounts of mud which has an effect on both surrounding roads and villages.</p> <p>The excavations have required the use of a large amount all plant machinery movement. Large low loaders transporting plant machinery has been noted several times a day through the villages. The roads have regular potholes and complaints have been received in regards to noise and vibration of premises. Four tipper lorries make regular trips and every 20 minutes to and from the site with lorry loads of soil and minerals. Heavy machinery such as crushers and screeners leave and return to site on a regular basis. The sale of minerals from the land means that a large amount of plant machinery is required. This has caused noise and a breach of quiet enjoyment for the residents of Pipewell village and Dunkirk Avenue, Desborough.</p> <p>The site has perimeter bunding along the northern and eastern boundaries as well as vegetative screening. These small measures work in combination to mitigate the impact of the development to a limited degree however do not stop the access or view to the site from the roadside.</p> <p>Based on the evidence assessed by the local authority there appears to be no active dust suppression scheme or noise reduction scheme put in place.</p> <p>In light of the aforementioned measures the development is likely to generate significant impacts with regards to dust generation as it continues and the noise and the vibrations of daily heavy plant machinery remains consistent.</p>
<p>Risk of accidents</p>	<p>The development will face the usual risks associated with operational quarry and waste disposal site. The site entrances are not gated or locked. Both entrances lead to dangerous and deep excavations with no security boundary. The storage of blue clay is open and is approximately 10 m high and 24 m in length. Potential for pollution cannot be understood because there is no approved mitigation via an Environmental Permit to prevent potential pathways for contaminated soil, water, waste etc from leaching into the ground or any water course.</p>

6. Assessment: location of the development.

<p>Existing and approved land use:</p>	<p>The site is currently being used for the importation, deposit and transfer of waste materials and for the excavation and mining of minerals for sale.</p> <p>The site is also in use the Storage of scrap iron plant parts. Mechanical works and full time residential occupation, as a principle dwelling for two people on-site.</p> <p>The mixed use is operated without the benefit of planning permission.</p> <p>The site was previously in agricultural use with 3 enforcement notices and subsequently received planning permission for the development of fishing lakes to remedy the harm caused.</p>
<p>Natural resources</p>	<p>The minerals exported off site cannot be regenerated.</p> <p>Quarries and waste sites which operate following a grant of planning permissions are usually subject to phased restoration conditions and other conditions relating to soil handling and storage to minimize damage to a finite natural resource.</p> <p>Quantities of material taken off site and waste brought into the site would normally be specified in planning applications and controlled through conditions on a planning permission. The types of materials suitable for disposal would be considered at the planning application stage to ensure they would be appropriate to the location having regard to pollution control and controlled by planning condition.</p>
<p>Capacity of the natural environment</p>	<p>The site does not lie within any of the following;</p> <p>Wetlands; coastal zones; Mountain and forest areas; nature reserves and parks; landscapes of historical, cultural or archaeological significance.</p> <p>The site is located approximately 1 mile away from the center of Desborough Town Centre and one mile from Pipewell Village. The lorries travelling to and from the site go through densely populated areas.</p>

7. Assessments: characteristics of the potential impact.

<p>Magnitude and Spatial Extent of the Impact</p> <p>The Nature of the Impact</p>	<p>The extent of the site covers some 8.6 hectares. The development can be seen from outside the site. The transportation of heavy vehicles and machinery associated with the unauthorised development also impact on the local population, in particular residents of Desborough.</p> <p>Visual harm of the landscape character of the area and in terms of views from people travelling near to the site, loss and damage to soils and natural resources, noise and dust pollution from the operations at the site and the movement of heavy goods vehicles.</p> <p>The potential for danger to human health due to nature of the site and its open nature, potential for land slippage, potential for ground and water pollution</p>
<p>Transfrontier nature</p>	<p>The impact or not transfrontier in nature.</p>
<p>Magnitude and complexity</p>	<p>In the loss of open countryside across the site. Additionally, bunding along the north to the east boundary has severely encroached and impacted upon the openness and landscape character of the countryside. This has resulted in a net loss in biodiversity for the immediate area. This impact is not expected to be complex in nature although because this development is unauthorised and there is no approved mitigation, this cannot be assured</p> <p>The development as likely to generate a large amount of dust and noise and does not currently have a site wide dust mitigation strategy. Proximity to Dunkirk Avenue and Desborough town impacts on the public highways and in regard to secondary impacts within the wider environment including noise, vibrations and mud on the roads from the regular use and movement of large plant and machinery.</p>
<p>Probability</p>	<p>The probability of dust, noise, pollution, loss of natural resources and biodiversity impact is high. Due to the unauthorised development being operational and the habitat removal already having occurred. The probability of secondary impacts, particularly those affecting surrounding areas remains high.</p>

Duration, frequency and reversibility	<p>The adverse biodiversity impact could last as long as the site remains in unauthorised use and perhaps beyond.</p> <p>This impact is possibly partially reversible through the replacement of the lost habitat. For approved quarry and waste sites this would be achieved through conditions /legal agreement to ensure and deliver a long term restoration and management scheme. The dust and noise impacts have the potential to occur throughout the lifetime of the development. These impacts are reversed in the event of cessation of the unauthorised development.</p> <p>Complex secondary impact upon surrounding bodies of water has the potential to arise throughout the lifetime of the development. Bioaccumulation of the pollutants within the water table may give rise to irreversible environmental impacts, however it is suggested that any resultant impact would likely be unpredictable.</p>
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8. Conclusion

In light of the information before the council, this Scheduled 2 development has been screened in accordance of Schedule 3 of the 2017 Regulations.

Regulation 35 of the 2017 Regulations imposes a duty upon local planning authorities in exercising their enforcement functions, to have regard to the need to secure compliance with the requirements and objectives of the Directive.

Under regulation 37(a), the local planning authority has taken such steps as appear reasonable to them in the circumstances to obtain information about the unauthorised development to inform a screening opinion. These steps include; undertaking site visits, serving a planning contravention notice, working with other authorities and agencies and seeking their advice and commissioning a Topographical Survey which was undertaken on 31 January 2020 and reported on 11 February 2020.

Following consideration of characteristics, location and types and characteristic of the potential impact of the development in accordance with Schedule 3 of the 2017 Regulations, the Local Planning Authority, is of the view that the environmental impact is likely to be of significance that would require Environmental Impact Assessment and therefore require the preparation of an environmental statement.

It is concluded that the development requires Environmental Impact Assessment and an environmental statement is required.

This screening opinion accompanies the enforcement notice to be served in respect of the unauthorised development. It is accompanied by a "Regulation 37 Notice" which sets out what the persons on whom the notice is served are required to do as a result of this screening opinion should the enforcement notice be appealed. Copies of this notice and the screening opinion will also be sent to the Secretary of State, the consultation bodies and any other person who is likely to be affected by or has an interest in the regulation 37 notice.