

**TOWN AND COUNTRY PLANNING ACT 1990**

**SECTION 174**

**APPEAL BY LYNDON THOMAS LIMITED AGAINST THE DECISION OF  
KETTERING BOROUGH COUNCIL TO SERVE AN ENFORCEMENT NOTICE  
AT LAND SITUATED AT LYNDON THOMAS, BIRCHFIELD SPRINGS, RUSHTON ROAD,  
DESBOROUGH IN THE COUNTY OF NORTHAMPTONSHIRE**

**STATEMENT OF CASE**

**PREPARED ON BEHALF OF KETTERING BOROUGH COUNCIL BY  
LUCINDA LEE, SENIOR ENFORCEMENT OFFICER**

**8<sup>th</sup> March 2021**

**Planning Inspectorate Reference: APP/L2820/C/20/3253535**

**And additional Appellants:**

**MR LYNDON THOMAS APP/L2820/C/20/3253536 AND**

**MRS SAMANTHA THOMAS APP/L2820/C/20/3253537**

**Local Planning Authority Reference: ENFO/2016/00136**

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## 1.0. Introduction

- 1.1. Kettering Borough Council, as a Local Planning Authority previously issued an enforcement notice (EN) in respect of the Site at land at Lyndon Thomas Ltd, Birchfield Springs, Rushton Road, Desborough NN14 2QN, 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 Thus, the enforcement notice was withdrawn on the express basis that there would be no attempt to seek costs against the Council.
- 1.2. As to the points raised in the pre-action protocol letter, whilst the Council did not accept the point raised within this letter about service, this re-served enforcement notice will avoid that point re-surfacing as it will put the matter beyond dispute. As to the point that this enforcement notice covers county matters, there is nothing unlawful in this. The County have given their approval for the Council to take this enforcement action. The breaches of planning control include both county and district matters. In such circumstances, it is appropriate for the district to enforce against both – as was found by the Court in ***R.(oao East Sussex County Council) v Secretary of State for Communities and Local Government*** [2009] EWHC 3841 (Admin).
- 1.3. 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 – per s.171B(4)(b) of the Town and Country Planning Act 1990.
- 1.3. The Council on the 1st May 2020 served a 2<sup>nd</sup> enforcement notice under the 2<sup>nd</sup> bite provision in connection with the material change of use of the ‘land’ to a mixed 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.

**1.5. Reasons for serving the Enforcement Notice are:**

- 1) It appears to the Council that the above breach of planning control has occurred within the last ten years.
- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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.

- 6) 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.*
- 7) 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.
- 8) The unauthorised development did not implement this planning permission, which has now lapsed.
- 9) 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 Northamptonshire Joint Core Strategy 2011-2031 (adopted July 2016) (JCS), 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.
- 10) 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.
- 11) 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** 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 (adopted July 2016).**

- 12) 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 of the saved local plan, 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 of the saved local plan. 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.
- 13) 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.
- 14) 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.
- 15) 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.

- 16) 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.
- 17) 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.
- 18) 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 (adopted July 2016).
- 19) Policy 10 of the Northamptonshire Minerals & Waste Local Plan (July 2017) (MWLP) identifies the waste management **capacity** 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 (noninert and hazardous) and sets criteria which development proposals for noninert 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.
- 20) 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 (adopted July 2016).
- 21) 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 (adopted July 2016).

22) 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.

**1.6 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 Step3)**

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.**

Step4: 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.**



- 1.7** The re-issued enforcement notice was granted new times for compliance with the notice. This is to reflect the current pandemic and that complying with the notice in the short term will not be achievable in respect to some issues.
- 1.8** In the event that the notice was appealed, the Council may seek to reduce the time for compliance if the appeal is conducted after the current pandemic.
- 1.9** The Appellant has appealed under the following grounds:
- (a) That planning permission should be granted for what is alleged in the notice.
  - (b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
  - (c) That there has not been a breach of planning control (for example because planning permission has already been granted, or it is, “permitted development”).
  - (d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.
  - (f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
  - (g) The time given to comply with the notice is too short.

## **2.0. Site Description and Planning History**

- 2.1.** The site is located to the east of Desborough outside the settlement boundary and therefore is in the open countryside, it is stated by the landowners that it is presently in the process of being developed as a fishing lake complex as approved by Kettering Borough Council under planning permission KET/2010/0242. It is roughly square in shape and measures approximately 250mx250m. It slopes down from the north to the south into the valley of the River Ise.
- 2.2.** The alleged breach of planning control taking place is sited on the whole land comprising some 8.6 hectares and located to the South side of the town of Desborough.
- 2.2.** 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. It is deemed to be open countryside and apart from the highway is surrounded by agricultural fields.
- 2.3.** 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.

- 2.4.** The enforced titles NN80409 was registered in November 2007 and NN78291 was registered in September 2004.
- 2.5.** The land was granted planning approval under KET/2010/0424 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.
- 2.6.** The mixed use in question is being under-taken on the entire planning unit and has been noted as being incremental in its engineering operations and plant hire beyond that of the approved development since April 2014.
- 2.7. Planning History**
- 2.8.** The Council refer to their expediency report pages 9-11 for a detailed reference.
- 2.9.** On the 28<sup>th</sup> Feb 2005 a complaint was received regarding development of a lake and boundary wall subdividing the agricultural land.
- 2.10.** In March 2005 a retrospective planning application was submitted for the proposal of agricultural water reservoir KET/2005/0319. This was withdrawn by the landowners at their behest.
- 2.11.** In 2005 a Temporary Stop Notice was served by Northamptonshire County Council to cease unauthorised tipping operations.
- 2.12.** In 2007 a Temporary Stop Notice was served by Kettering Borough Council in respect of engineering operations in the form of trenches, hardstanding, access and access track.
- 2.13.** In 2007 and 2008 planning applications were submitted for the creation of Trout Fishing lakes, clubhouse leisure facilities and a mobile home for residential use. The 2007 application was withdrawn and the 2008 application was refused.
- 2.14.** On the 7<sup>th</sup> November 2008 three enforcement notices were served by Kettering Borough Council upon the landowners for breaches of planning control namely; the material change of use of the land for residential purposes, engineering upon the land by formation of a lake and raising of land levels and the importation of soils upon the land.
- 2.15.** Appeal: This was appealed by the Appellant which was dealt with by the same Inspector APP/L2820/C/08/2091907, L2820/C/08/2091976, L2820/C/08/2091983.

- 2.16.** Notice 1, was dismissed with variations on Ground F. The Inspector deemed on completion of Step 4, to return the land back to its former condition before the Notice took place.
- 2.17.** Notice 2, was dismissed however a variation was made whereby the Inspector removed the allegation of 'imported soils and its required steps to remove imported materials'. The Inspector deemed in Step 3, deconstruct all bunds and mounds and infill all excavations forming the lake and together with the soils returned from the land in Notice 3, restore the landform (including the water course to the eastern boundary of the field) to the condition that existed before the breach of planning control described in the notice took place.
- 2.18.** Notice 3, was dismissed with variation on Ground F.
- 2.19.** In 2010 Steps 3, 4, 5 and 6 of Notice 1 remained non-complied with.
- 2.20.** In 2010 Steps 1, 2, 3, 4 and 5 of Notice 2 remained non-complied with.
- 2.21.** In 2010 Steps 1, 2 and 3 of Notice 3 remained non-complied with.
- 2.22.** In 2010KET/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 (temporary) siting of a mobile home for the occupation by the site manager, formation of car parking and access areas, plus landscaping was recommended for refusal by the Planning Officer, but was approved by Planning Committee subject to their conditions identified on the Decision Notice.
- 2.23.** AOC/0242/1001 Conditions 6, 7 part 1, 8, 10, 11, 14 were approved.
- 2.24.** It was not noted by officers that residential use existed on the site between 2013 and 2015.
- 2.25.** On 22<sup>nd</sup> May 2015 an officer of the Council states that the approval KET/2010/0424 had been implemented due to footings of the facilities building in place.
- 2.26.** KET/2015//0523 This application related only to the facilities building. Non material amendment of KET/2010/0242 (formation of 2 no. specimen trout fishing lakes, 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. Approved 19<sup>th</sup> August 2010 subject to conditions).

### **3.0. Planning Enforcement History**

**3.1.** The Council refer to their detailed expediency report pages **9 to 37 ending at paragraph 8.68**, as an addendum to that expediency report, the Council seek to update the Inspector of the LPA's record of new complaints received after the appeal was submitted of increased site intensity and plant works and continues in number format below:

- a)** Paragraph 8.69, In August through to September 2020 several further complaints were received by the Council concerning an intensity of heavy plant vehicles leaving and arriving on the Birchfield Springs site with soil via Dunkirk Avenue and Desborough Town and that a new business for plant hire maintenance was taking place upon the land.
  
- b)** Paragraph 8.70, On the 12th November 2020 an officer visited the site. The site showed two tipper lorries arriving and tipping soil into the area of the largest excavation as shown on the expediency report page. It was noted that a digger now sat on top of what was the deepest and largest excavation and two young males climbed over the mounds of soil to approach the officer, of which was prior to be estimated approximately at 20m deep to the water level.
  
- c)** Paragraph 8.71, It would appear from the activity reported and the infill of soil noted that the appellant has undertaken considerable engineering works to infill the unauthorised excavation since the submission of their appeal.

### **4.0. Planning Policies**

**4.1.** We refer to the expediency report pages 7 to 8, paragraphs 5.1 to 5.7, for detailed description:

#### **4.2. National Planning Policy Framework:**

Section 3

Section 11

The National Planning Policy for Waste

#### **4.3 Development Plan:**

##### **Local Plan for Kettering Borough (LPKB)**

Saved Policy RA5 - The Local Plan 1995 – Rural Area: Housing in the Countryside

Saved Policy 7 – The Local Plan 1995 -Protection of the Open Countryside

##### **North Northamptonshire Joint Core Strategy (JCS) (adopted July 2016)**

Policy 3 – LANDSCAPE CHARACTER

Policy 4 – BIODIVERSITY AND GEODIVERSITY

Policy 6 – DEVELOPMENT ON BROWNFIELD LAND AND LAND AFFECTED BY CONTAMINATION

Policy 8 – NORTH NORTHAMPTONSHIRE PLACE SHAPING PRINCIPLES

Policy 19 – THE DELIVERY OF GREEN INFRASTRUCTURE

**Northamptonshire Minerals and Waste Local Plan (Adopted July 2017):**

Policy 10 - NORTHAMPTONSHIRE WASTE MANAGEMENT CAPACITY

Policy 14 - STRATEGY FOR WASTE DISPOSAL

Policy 15 - DEVELOPMENT CRITERIA FOR WASTE DISPOSAL (non-inert and hazardous)

Policy 16 - DEVELOPMENT CRITERIA FOR INERT WASTE DISPOSAL AND RECOVERY

Policy 18 - ADDRESSING THE IMPACT OF PROPOSED MINERALS AND WASTE DEVELOPMENT

**5.0 Ground (a): that planning permission should be granted for what is alleged in the Notice**

**5.1** The Council reserves its position on Ground (a) until the validity of this ground is determined by the Planning Inspectorate.

**5.2** The appeal proposal in question is EIA development, as seen from the screening opinion that accompanies the enforcement notice. EIA development can only be granted in an enforcement appeal in exceptional circumstances – per Sullivan LJ in *R.(Ardagh Glass) v Chester City Council* [2010] EWCA Civ 172. No such circumstances apply here.

**5.3** However, in any event, the Appellant has not produced an environmental statement with its appeal. This must be produced, notwithstanding the fact that the Appellant has sought to limit the scope of its ground (a) appeal to only certain breaches of the notice.

**5.4** In the absence of an Environmental Statement, Regulation 41 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 apply. Thus, the Secretary of State is required to request an environmental statement or the ground (a) appeal is void. The time for this occurring has already passed and thus the Council's position will be that there is no scope to resolve this now. However, the Council will await further correspondence from the Planning Inspectorate on this point.

**6.0 Ground (b): that those matters have not occurred:**

- 6.1** The Council refer to their expediency report and photographs, which does not agree that the approved scheme KET/2010/0242 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 of a site manager, formation of car parking and access area, plus landscaping* and KET/2015/0523 for *non-material amendment to increase the function room area, reduction of decking area and alterations to doors* has been implemented. Furthermore, page 28, photo 26, page 29, photos 37 & 38 page 30-31, paragraph 8.47 outlines approximate measurements comparison to the recent land survey. The Council will provide evidence that the excavation of minerals is not commensurate with the creation of two lakes, as approved but rather is commensurate with the winning, working, storage and sale of minerals and forms part of an unauthorised mixed use of the site.
- 6.2** The Council refer to its expediency report and inserts which clearly show large amounts of waste and disposal upon the land. Furthermore, the Council will show evidence that importation, storage, processing, sorting, transferring and deposit of waste materials occurred as part and parcel of an unauthorised commercial enterprise for profit and forms part of an unauthorised mixed use of the site.
- 6.3** The Council refer to its expediency report and inserts which clearly show excessive storage of plant machinery and low loaders transporting these to and from the site. The Council will provide further evidence that plant hire was operated from within the site.
- 6.4** The Appellants have not disputed the allegation of 'residential use' of the land and the facilitation of this by the stationing of the caravan and timber lodge indicated as E, furthermore, they state at paragraph 2.4 "Not only do the majority of the other elements remaining benefit from separate planning consent under the 2010 permission" and not 'all', therefore implying that they agree a mixed use of the land has taken place. The Council consider as well as the above A to D, the uses and operational developments remaining indicated as E to L do not accord with the approved scheme and constitutes that a material change of use to a mixed use of the land has occurred.
- 6.5** That the Council consider that the Notice accurately conveys the extent of the mixed use seen on site at the time of its service. The Inspector under s176(1)(a) and (b) has the power to correct or vary the terms of the notice if they are satisfied that no injustice is caused to either party. These powers give the Inspector significant opportunity to make changes to the terms of the Notice to accurately describe the site as a whole if it is held that any alleged use or operation has not occurred.
- 6.6** The Council contend that the Appellants appeal on ground (b) should not succeed.

- 7.0 Ground (c): that those matters (if they occurred) do not constitute a breach of planning control.**
- 7.1** The Council refer to their expediency report and inserts which does not accept that an unnamed majority of the allegations has been implemented in accordance with the permission KET/2010/0424 and as indicated in ground (b) the Council will provide evidence that the operational development and uses upon the land are unauthorised.
- 7.2** The Council will provide evidence (as stated in ground (b)), which demonstrates that planning permission reference KET/2010/0424 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 of a site manager, formation of car parking and access area, plus landscaping* and KET/2015/0523 for *non-material amendment to increase the function room area, reduction of decking area and alterations to doors*, was not implemented – as such, the uses and operational development subject of the enforcement notice was undertaken without planning permission, the 3 year period to implement the originally approved consent has expired and that planning permission has lapsed.
- 7.3** The Council contend that the Appellants appeal on ground (c) should not succeed.
- 8.0 Ground (d): that no enforcement action can be taken against the breach of planning control alleged in the Notice.**
- 8.1** The Council will provide ground (b) and ground (c) evidence which demonstrates that planning permission reference KET/2010/0424 was not implemented – as such, the operational development subject of the enforcement notice was undertaken without planning permission, the 3 year period to implement the originally approved consent has expired and that planning permission has lapsed.
- 8.2** The unauthorised operations comprise a material change of use of the land and are subject to the 10 year time limitation under s171B(3) and are not immune from enforcement action. The Murfitt principle applies where any authorised development which is part and parcel of the material change of use can be required to be removed.
- 8.3** The Council contend that the Appellants appeal on ground (d) should not succeed.
- 9.0 Ground (f): The steps required by the Notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.**

**9.1** The Council reserves its position on Ground (f) until the validity of the appeal on Ground (a) is determined. Indeed, a ground (f) appeal in the absence of a ground (a) appeal can only proceed in limited circumstances (where the notice only applies to amenity), which do not arise here. Thus, if there is no ground (a) appeal, it follows that the ground (f) appeal ought to also fall away.

**10.0 Ground (g): The time given to comply with the Notice is too short.**

**10.1** The Appellant argues that time is required to locate to an alternative site to continue trading. The statutory code does not account for such time, as the Appellant has no entitlement to continue its business. In any event, there is no evidence presented, as of yet, to substantiate this contention.

**10.2** The Council contend that the appellants appeal on ground (G) should not succeed.