

## **APPENDIX 4**

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Ask for: Robin Gregory  
Your Ref: Case 16772  
Our Ref: PAG/SW/04/COMP/0059  
Date: 30 August 2011

Dear Mr Bailey,

Re: **Application SW/11/0866      Stationing of portable office / rest-room.**  
**Application SW/11/0867      Formation of areas of hard-standing, siting of wheel-**  
**spinner, CCTV cameras and stanchion,**  
**Four Gun Field, Otterham Quay Lane, Upchurch**

### *Introduction*

Thank you for your consultation on the two current retrospective planning applications for this site. They have been made to your Authority as they have been linked by the applicant to the B2 Lawful Use originally granted by Swale Borough Council. The County Council defers to you as the determining authority.

### *The County Council's Role*

The County Council has had an association with the site for over 8 years; the first-half in fending-off potential planning contraventions and the second-half, in taking conclusive enforcement action. I attach a copy of our confirmed Enforcement Notice for your convenience.

### *Enforcement Notice*

The Enforcement Notice prohibits any material change of use (within the terms proscribed) from the B2 Lawful Use (and part-residential) to an independent waste management use and related 'facilitating' development (i.e. the means used to carry out the unauthorised use). It is this latter part, which the planning applications are attempting to address. There was the option on the part of the owner / occupiers to remove the items listed under the Enforcement Notice or alternatively to yield to planning control through means of these applications. If they had taken neither course, they would have opened themselves to prosecution by the County Council.

### *Validation*

The County Council did not have sight of the applications during the validation stage. That has unfortunately allowed a number of alleged inaccuracies to creep into them. Those in the County

Council's opinion are at odds with the Planning Enforcement Appeal Decision and recent High Court rulings.

#### *Items covered in relation to the Enforcement Notice*

The County Council confirms that the applications cover the correct operational development on site but the fence-meshing is not included. It remains on site in breach of the Enforcement Notice. The County Council awaits urgent confirmation of either its immediate removal or urgent inclusion within the current applications. It is not permitted development; it is caught by the Notice and is unlawful.

Similarly, the proposed internal 'dog-leg' to the main compound footprint (so as to avoid the residential corner of the site) would require the erection of new fencing. Minor operational permitted development rights would undoubtedly be claimed (see 1.5 of the Supporting Statement); however the side-track may be a highway (there is also a nearby public footpath), potentially limiting the height of any fence to 1 metre. That would be inadequate for purpose. Anything higher in those set of circumstances would potentially require planning permission.

#### *Content of applications*

The applications contain only basic information. There is one drawing identifying the position of items on site. There are no elevational drawings, with reliance instead on photographs and no cross-sectional engineering detail of the hard-surface turning area. Should Borough Members be minded to grant permission, this lack of precision would make enforcement more difficult.

#### *The Supporting Statement*

The supporting statement strays within section 3, from explanation of the proposals into planning legal comment on the applicant's perception of the appeal dismissal against service of the County Council's Enforcement Notice and the outcome of the High Court Appeals. The County Council does not wish to become drawn into these arguments within the context of regularising applications for site infrastructure. That would need to take place through more appropriate channels. Nevertheless, the applicant has chosen to introduce the subject in a public arena and some comment from the County Council is required.

#### *The use on site*

The lawful use of the site is for B2 General Industrial (an open-use version). B2 'concrete crushing' has not been '*legally established*' on site, as asserted. Only an unlawful use, as described within the Enforcement Notice has been carried out. Unlawful remnants of that use remain. It is acknowledged however, that the applications seek to regularise that position, in the context of the B2 lawful use.

Notwithstanding that, the County Council would question, an implied and automatic 'return' to concrete crushing. There would be many 'hoops' to go through before approaching that point. For instance, any such use would need to steer away from the terms of the Enforcement Notice. The current applications would need to be granted in their entirety, including the mesh-fencing. Any 'secondary' permission(s) to secure required safeguarding (e.g. screening bunds, enhanced fencing and even enclosure within a building) would also need to be in place. Environment Agency

Permitting; Medway Council registration and regulation of mobile plant and machinery and WRAP (Waste and Resource Action Programme) compliance would also be required, along with adherence to the Noise Abatement Order.

The Enforcement Appeal established that amongst other matters, any such use would have to be WRAP compliant. In addition to a full set of planning permissions that clearly has in mind a properly organised, safeguarded, managed, specified and conducted use. The WRAP Protocol has been dismissed in the application as *'irrelevant'*. The opposite is true in the context of the currently proposed use. It would have an integral part to play in evaluating the planning status of any such use within the B2 Lawful Use and in ensuring the standard of operation required.

#### *Planning conditions if granted*

Swale Borough Council is the determining authority on the applications and also for any conditions to be attached, if granted. To assist however, a number of areas for conditions spring to mind.

Firstly, to call in any information that is missing (e.g. construction detail of the hard surface). Secondly, to tie the operator to the terms of the applications as submitted (with any negotiated or required amendments). Thirdly, to incorporate within a condition the understanding of the use to which the operational development would apply (B2 General Industrial) and then specify that the B2 use asserted in the applications would not be automatic; rather it would be subject to the qualifying 'hoops' listed in the last paragraph of page 2 above. The grounds would be *'for the avoidance of doubt and understanding of the context of the operational development the subject of these planning permissions'* (or something similar). The County Council has used this construction a number of times. Informatives would be unenforceable.

In addition, operational maintenance of the site surface to and from the wheel-spinner and prevention of mud and debris onto the highway could be conditioned, allied with controls of a similar nature. Direction of the CCTV cameras into the site would be an example. All of that might fall short of hours of working and noise and dust control but any further level of safeguarding development required by amenity regulators might conceivably offer a second layer of control. Further advice on available controls may be sought from the County Council in that scenario.

#### *Grounds if refused*

If either or both of the planning applications are refused, the owner / occupiers would have a duty to comply with the County Council's Enforcement Notice in the same measure. The reasons for issuing the Enforcement Notice (see section 4 of the document) may assist in formulating grounds of refusal, should that emerge as your recommendation or the will of the Committee.

I trust that this consultee return assists Borough Members in determining the two applications

Yours sincerely,

For Head of Planning Applications

**Sharon Thompson**  
Head of Planning Applications