

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

ENFORCEMENT NOTICE

ISSUED BY: KENT COUNTY COUNCIL

1. THIS NOTICE is issued by the Kent County Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) 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 considerations. The Annex at the end of this notice and the enclosures to which it refers contain important additional information.

2. THE LAND TO WHICH THE NOTICE RELATES

Land at Four Gun Field, Otterham Quay Lane, Upchurch, Kent as shown edged thick black on the attached plan.

3. THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission, the material change of use of the land from that described within the Certificate of Lawfulness of Existing Use or Development dated 8 May 2001 (as granted on appeal), and the material change of use of an additional and smaller area of land (shown within a dotted line on the attached plan) from a former residential use, to a sui generis waste management use by the carrying out on the land of the following waste management activities and related facilitating development:

- (a) The importation of waste materials and associated plant and machinery for the processing of waste, together with their storage on the land;
- (b) The processing of waste concrete and other waste materials by crushing, grinding, screening or other operation leading to a size reduction of the waste;
- (c) The exportation of size-reduced waste materials.
- (d) The screening and size separation of waste materials and their exportation from the site.
- (e) The use of the site for the transfer of waste materials.
- (f) On-site development facilitating the above waste management activities, including excavation of the bank of material on site, creation of an area of hard surfacing, concrete bases and lighting structures, installation of a wheel spinner, weighbridge and the

stationing and use of office accommodation, welfare facilities, waste containers, skips, storage tanks, noise monitoring and dust suppression equipment, green fence meshing, perimeter landscaping, CCTV cameras and stanchion and residential accommodation for the site security guard.

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 and that in the context of the development plan, central government guidance and emerging regional policy the development conflicts with relevant policies as summarised below:

Countryside intrusion

- (a) the development represents an unacceptable intrusion into the countryside at this sensitive location, which is protected for its own sake. It adversely affects rather than conserves, maintains or enhances the area and is therefore contrary to Government advice contained within PPS7 'Sustainable Development within Rural Areas (2004); Adopted Kent and Medway Structure Plan (2006) Policies SS8, EN1, QL1 and WM2 and Policies SP11, SPV, E1 and E6 of the Swale Borough Local Plan First Review Re-Deposit Draft July 2005 and Policies SP2, SP5, E1 and E6 of the (pre-publication) Draft Swale Borough Local Plan (2008)

Erosion of Strategic Gap

- (b) the development represents an unacceptable urban intrusion into the Medway Towns and Sittingbourne Strategic Gap; a vulnerable area of open and undeveloped countryside between Rainham and Upchurch. It contributes to the erosion of this protected section of the Thames Gateway Planning Area, designated to maintain the separation of the Medway Towns and Sittingbourne urban areas. Such an intrusion is contrary to Adopted Kent and Medway Structure Plan (2006) Policies SS3 and QL4; emerging Regional Plan Policy W17 and Policies TG1, E1 and E7 of the Swale Borough Local Plan First Review Re-Deposit Draft and Policies TG1, E1 and E7 of the Draft Swale Borough Local Plan (2008).

Does not demand a rural location

- (c) the siting of the development is inappropriate in that it does not demand a rural location within the terms of Adopted Kent and Medway Structure Plan (2006) Policy SS8 and is adversely impacting upon the character, amenity and functioning of the area, particularly adjoining residential interests and those using the adjoining Public Right of Way and sections of the Saxons Shore Way. This situation is contrary to Policy QL1 of the Kent & Medway Structure Plan (2006), Kent Waste Local Plan Policies W18, W22, W27 and Policies RC1, E1 and E6 of the Swale Borough Local Plan First Review Re-Deposit Draft and Policies RC1, E1 and E6 of the Draft Swale Borough Local Plan (2008).

Not an identified waste location

- (d) the site is not identified in the Kent Waste Local Plan as being suitable in principle for waste related activities. The activity is in fact causing material and unsustainable amenity and environmental impacts on the locality and wider afield including in part the servicing of the site through potential routing of Large / Heavy Goods Vehicles through the Villages of Upchurch and Lower Halstow, other rural roads and along sections of the Saxons Shore Way. The activity is also remote from groupings of similar and compatible uses. Overall the development is contrary to Policies W7, W9, W18, W19 and W22 of the Kent Waste Local Plan.

No overriding case of need

- (e) there is no apparent case of need for waste related activities at this particular site, to override and justify the adverse material harm being caused to the environmental quality and amenity of the area. The waste management activities at this location fail to represent the best balance between the most efficient and most sustainable method of managing the waste streams involved. The underlying sustainability principles of the BPEO (Best Practicable Environmental Option) are not reflected in the scheme. This state of affairs is contrary to Adopted Kent and Medway Structure Plan (2006) Policy WM2 and Policy W6 of the Kent Waste Local Plan.

Unsustainability

- (f) the waste management activities at Four Gun Field are not located '*in the right place*' in the context of paragraph 2 of PPS10 (Planning for Sustainable Waste Management) and run counter to the principles of the waste hierarchy laid down in the Executive Summary of the Waste Strategy for England 2007 and contained within Policy WM1 of the Kent and Medway Structure Plan (2006). They are further contrary to emerging Regional Plan Policy W17; Kent Waste Local Plan Policies W7 and W9 and Policy E1 of the Swale Borough Local Plan First Review Re-Deposit Draft and Policy E1 of the Draft Swale Borough Local Plan (2008).

Amenity impacts to surrounding interests

- (g) unacceptable impacts are being caused to residential amenity by virtue of noise, dust, odour, fumes, vibration and visual and light intrusion. These impacts are disrupting the tranquillity and quality of life of local residents to an unacceptable degree. That in turn is contrary to Kent and Medway Structure Plan Policies QL1 and NR5; Kent Waste Local Plan Policies, W7, W9, W18, W22 and W25 and Policy E2 of the Swale Borough Local Plan First Review Re-Deposit Draft and Policy E2 of the Draft Swale Borough Local Plan (2008).
- (h) the pattern of the breach and its potential to be further intensified, is placing local residents and the community as a whole, in an increasing state of fear and apprehension, concerning the level of amenity impacts that may arise, their exposure to them, together with associated health risks and damage to their quality of life and wellbeing. Such a state of affairs is contrary to: 'The Key Planning Objectives' of PPS10 (Planning

for Sustainable Waste Management), which seeks amongst other matters ‘....to secure the recovery of waste without endangering human health to reflect the concerns and interests of communities’ (paragraph 3) by considering ‘..the cumulative effect on the wellbeing of the local communityand its social cohesion’ (paragraph 29) and overall to ensure that ‘the location of[waste] development is acceptable’ taking account of the fact that ‘health can be material to such decisions’ (paragraph 30). The activity is further contrary to Policy QL1 of the Kent & Medway Structure Plan (2006), particularly regarding the provision of a healthy, safe and secure environment; Policy W18 of the Kent Waste Local Plan (1998) and Policy E2 of the Swale Borough Local Plan First Review Re-Deposit Draft and Policy E2 of the Draft Swale Borough Local Plan (2008).

- (i) unacceptable impacts are being caused to rural amenity by virtue of noise, dust, odour, fumes, vibration and visual and light intrusion. These impacts are disrupting the tranquillity and quality of life of users of this countryside setting, including along the adjoining Public Right of Way, in turn subjected to traversing vehicles and plant & machinery from the excavation of site banking and along sections of the Saxons Shore Way, forming part of some of the available access routes. Such impacts are contrary to: Policy QL17 of the Kent & Medway Structure Plan (2006) and Policies W22 and W27 of the Kent Waste Local Plan.

Highway Impacts

- (j) rural access routes from the north, north-east, east and south-east of the site are not well related to the primary and secondary route network. In addition, the north-eastern coastal route and some local servicing would be directed through Upchurch Village and potentially Lower Halstow Village, which is contrary to Policy TP15 of the Kent & Medway Structure Plan (2006); Policies W7, W9 and W22 of the Kent Waste Local Plan; and Policy T1 of the Swale Borough Local Plan First Review Re-Deposit and Policy T1 of the Draft Swale Borough Local Plan (2008).
- (k) the uncontrolled movement of Large / Heavy Goods Vehicles travelling to and from the site, from the north, north-east, east and south-east is capable of affecting in a materially adverse way the amenity (by virtue of noise, dust, smell, vibration and other emissions) of those coming into contact with the vehicles, including, cyclists, pedestrians and those resident along such access routes, particularly through the Villages of Upchurch and Lower Halstow and along sections of the Saxons Shore Way. Such impacts are contrary to Kent & Medway Structure Plan (2006) Policy EN14 and QL17; Policies W7, W9, W18, W22 and W27 of the Kent Waste Local Plan; Policy RC7 of Swale Borough Local Plan First Review Re-Deposit Draft and Policy RC7 of the Draft Swale Local Plan (2008).

Groundwater / surface water protection

- (l) the uncontrolled importation, storage, handling and processing of waste on the site, in the absence of a properly constructed operating base with impermeable surface and integral drainage is placing surface and groundwater resources at unnecessary risk from contamination (including through the medium of surface water run-off), which is contrary to Kent and Medway Structure Plan (2006) Policy NR5 and Kent Waste Local Plan Policies W19 and W20 and Swale Borough

The Council does not consider that planning permission should be granted since planning conditions could not overcome these material planning objections. The rights and interests of the landowner(s) have been balanced against those people affected by the alleged breach. It is considered that proportionate controls are being used to protect the enjoyment of local amenity and the quality of residential life and therefore no breach under the human rights act is caused in serving this Notice.

5. WHAT YOU ARE REQUIRED TO DO

(a) to cease:

- (i) The importation of waste materials and associated plant and machinery for the processing of waste, together with their storage on the land.
- (ii) The processing of waste concrete and other waste materials by crushing, grinding, screening or other operation leading to a size reduction of the waste.
- (iii) The exportation of size-reduced waste materials, other than to meet the requirements of 5(b) of this Notice.
- (iv) The screening and size separation of waste materials and their exportation from the site, other than to meet the terms of 5(b) of this Notice.
- (v) The use of the site for the transfer of waste materials.
- (vi) The carrying out of development facilitating the above waste management activities, including excavation of the bank of material on site, the laying of waste materials to create areas of hard surfacing, the use of high-intensity site lighting, the stationing and use of office accommodation and welfare facilities, containers, skips and storage tanks, the installation of amenity safeguarding measures and equipment, CCTV camera surveillance and residential accommodation for the site security guard.

Time for compliance: 1 day from the date when this Notice takes effect.

(b) to remove from the land stockpiles of imported waste materials.

Time for compliance: 2 months from the date when this Notice takes effect.

(c) to remove from the land the area of hard surfacing, concrete bases and lighting structures, the wheel spinner, weighbridge, office and residential accommodation and welfare facilities, containers, skips, storage tanks, noise monitoring and dust suppression equipment, CCTV cameras and stanchion and green fence meshing.

Time for compliance: 2 months from the date when this Notice takes effect.

- (d) to remove plant and machinery and vehicles associated with the waste management uses alleged in this Notice.

Time for compliance: 2 months from the date when this Notice takes effect

- (e) in meeting steps 5 (b) to (d) above:
 - (i) material required to be removed from the land under 5 (b) and 5 (c) above shall be taken to a site permitted to accept such waste;
 - (ii) all vehicles used shall approach and leave the site via Otterham Quay Lane / A2, avoiding use of Canterbury Lane, Wallbridge Lane and Upchurch Village (see attached 'Road Traffic Compliance Route Plan');
 - (iii) removal shall take place in a manner such that the carrying of mud and debris onto the public highway is minimised;
 - (iv) all departing materials shall be sheeted;
 - (v) activities shall only take place between 0700 to 1800 hours on weekdays and 0700 to 1300 hours on Saturdays. There shall be no vehicular movements on Sundays or Public Holidays.

6. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on the 20 June 2008 unless an appeal is made against it beforehand.

Dated:

Signed:

By authorised signatory on behalf of: County Secretary
Legal Services
The Kent County Council
Sessions House
County Hall
Maidstone
Kent
ME14 1XQ

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