

Statement of Case

Bournewood Sand and Gravel Ltd

Change of use of land from agriculture to the deposit of waste

Town and Country Planning Act 1990

**Appeals by Bournewood Sand and Gravel Ltd at Lower Hockenden Farm, Hockenden Lane, Swanley
BR8 7QH**

Appeal reference 33112256 (linked case 3315439)

16 May 2023

1.0 Introduction

1.1 The area subject to the enforcement notice forms part of a much larger agricultural unit which is being actively managed by a tenant farmer. There are historic and ongoing problems with trespass and antisocial behaviour causing issues with farming the unit effectively – particularly in the area where the enforcement notice applies. In order to address these problems, on notice and with the agreement of Bromley Council officers, the Appellant placed soils and other site derived materials arising from the erection of fencing on the wider farm unit, to form security bunds around the area enforced against, as a means of enclosure in order to deter trespass. These bunds were formed in accordance with permitted development rights under the GPDO (Part 2 Minor operations).

1.2 Bromley Council subsequently served an Enforcement Notice (ref: 21/00270), dated 27 October 2022. The Notice stated the matters which appear to constitute a breach of planning control as:

“Without planning permission, the material change of use of the land from agriculture to the deposit of waste.”

1.3 The Notice required the following steps to be taken:

- *Cease depositing further waste on the land – within 7 days after this notice takes effect.*
- *Cease using the land for the deposit of waste and in particular remove all waste from the land – within 12 months after this notice takes effect.*
- *Restore the land to its condition before the breach of planning control took place – within 18 months of the notice taking effect.*

1.4 The Appellant has appealed against the Enforcement Notice on Ground (b) – that the alleged breach of planning control has not occurred. The Appellant originally requested the Written Representations process, but Bromley Council requested a Public Inquiry, on the basis that it was expected that evidence would need to be given under oath. The previous appeal process was stopped following an initial exchange of Questionnaires and Statements of Case, and a further deadline was set for updates to the Statements of Case on the basis of a new inquiry process. This Statement of Case updates and replaces the Appellant’s previous Statement of Case. There is a linked appeal (3315439) which relates to a separate Enforcement Notice requiring the removal of stored equipment and machinery and a Ground (g) appeal (extension of time).

2.0 Relevant Planning and Agricultural History

2.1 There is no relevant planning history to the appeal in terms of historic planning applications either on the area enforced against, or on the wider agricultural unit.

2.2 The area subject to the enforcement notice forms part of a much larger agricultural unit, which is being actively managed by a tenant farmer. The full agricultural unit is shown on Plan BSG01 (Appendix A).

2.3 Current problems with trespass and antisocial behaviour are causing issues with farming the unit effectively – particularly in the area where the enforcement notice applies. The antisocial behaviour has included but is not limited to: damage to farm equipment property and fencing, fly tipping, drug taking, unsolicited fires, the burning of vehicles, riding motorcycles and quad bikes, and relentless abuse to persons and animals, which has resulted in the loss of life of a young person and animals being destroyed. The historic trespassing (particularly the use of motorcycles and quad bikes) has degraded the land, particularly on this part of the farm.

2.4 The Appellant and tenant farmer have reported these matters to the local police on multiple occasions and have been working with Bromley Council’s Rights of Way Team, at their own expense, to reduce and prevent further trespass and damage to the land. This has included the

stationing of concrete blockades and the construction of security bunds on the site boundaries to prevent vehicles and motorcycles from accessing the land.

2.5 Amongst other activities related to the general management and upkeep of the farm, the farmer has recently erected over 10km of fencing throughout the holding for the protection and management of livestock, etc. The location of the fencing is shown on Plan BSG01 (Appendix A). In order to erect the fencing, some vegetation, including shrubs and trees, were stripped back. Significant earth works were also carried out to even out ground levels so the fencing could be properly aligned. In some areas this has resulted in level changes of approximately a metre.

2.6 The material arising from the erection of the fencing was used in the creation of the new security bunds at the farm as part of a wider plan to restrict and deter access to the land. The location of the bunds is shown on Plan BSG02 (Appendix A), and the indicative sections (as proposed when complete) are shown on Plan BSG03 (Appendix A).

2.7 Bromley Council were consulted before work on the security bunds commenced, and were asked in an email on the 28 October 2018 to confirm if they were happy for the work to proceed:

“Further to our meetings and telephone calls we would like to start works asap on the below;
- Collect, haul and dispose of 8 of the 10 burnt out vehicles from the land and Pauls Cray Hill Park.
- Relocate the remaining 2 burnt out vehicles to the Star Lane land access point to block access.
- Bund the boundary and inner paths of Pauls Cray woods to prevent vehicle access/traveling in this area.
- Bund all other land access points from Star lane / Hockenden Lane onto our land but not to bund the triangle of land whose owners are unknown.
We hope to have works completed asap however works will be weather dependant.
Can you please confirm you are happy for us to proceed?”

2.8 By email on 29 October 2018, T G Smith (Street Enforcement Manager) responded on behalf of Bromley Council.

“Thank you for you’re [sic] your and [sic] assistance.
I confirm that I am happy for you to proceed with the proposed actions / work to be undertaken.
I would be grateful if you could let me know when you intend to start the work.”

2.9 Although the construction of the security bunds and other fencing has significantly reduced the problems, the antisocial behaviour persists. The Appellant continues to work positively and proactively with Bromley Council and the local police to resolve the issue, and make further design changes to the bunds to improve security.

2.10 On 12 April 2023 a meeting regarding the issues and proposed design solutions was held at the farm. Bromley Council planners were asked to attend by the Appellant on several occasions, but these offers were declined. The meeting was attended by Sergeant Alex Farmer, Sergeant Stuart Baker (Metropolitan Police), Sean Laws, Jim Raggett (Bromley Council, Rights of Way Team), Robin Moxin (tenant farmer), Donna McBride (Bournewood Sand and Gravel), Joe Killoughery (Killoughery Properties Ltd) and Adrian Lynham (Continuplan/Bournewood Sand and Gravel).

2.11 During the meeting the Bromley Council officers provided advice in respect of further work that could be undertaken to protect the footpath, and the police provided immediate advice on further measures to secure the wider farm, and offered the services of their Designing Out Crime team to assist with design improvements for the security bunds.

2.12 A statement from the tenant farmer is included in Appendix C which sets out their aspirations for the future of the farm, the problems they have had from trespass, and how the erection of the security bunding has improved things.

3.0 Planning Policy and Other Considerations

3.1 Development Plan Policies

3.2 Since there is no Ground (a) appeal, it is unnecessary to set out the Development Plan and national policy framework.

3.3 Material Considerations

3.4 *Waste Framework Directive (2008)*

3.5 The Directive is generally relevant, but particularly in respect of definitions of waste and soils.

4.0 **Inquiry Witnesses and Appeal Grounds**

4.1 At the Inquiry the Appellant would propose to call two witnesses, namely a representative of Bournewood Sand & Gravel on factual matters (origins of the material subject to the enforcement notice, site security, and agricultural evidence), and Adrian Lynham on planning matters (particularly with respect to permitted development rights).

4.2 We estimate that both witnesses would take a total of approximately 4 hours for examination and cross-examination combined.

4.3 The original appeal was made on Ground (b). However, despite further attempts to obtain clarification from the Local Planning Authority, it remains unclear which precise materials on the land the Council allege are waste, and therefore exactly what is required to be removed from the area enforced against. This is therefore raised as a further issue.

4.4 It is the Appellant's understanding that the Council agree that soils on the land are not waste, on the basis that the soils are not referred to in the Enforcement Notice itself, nor are they referred to in paragraph 5.4 of the Council's Statement of Case which lists materials on the land which, it is assumed, are considered to be waste. Finally, soils are not referred to in the Atkins Site Walkover report which identifies the materials on the land that are alleged to be waste and led to the Notice being served. Furthermore, paragraph 5.9 of the Council's Statement of Case appears to accept that the Council intends any movement of site derived soils to fall outside the definition of waste in respect of the scope of the Notice.

4.5 As previously mentioned, the Appellant has made significant efforts to engage in discussion with the Council to clarify these matters and to clarify what would constitute compliance with the Enforcement Notice, but has to date not received co-operation. A letter to Bromley Council summarising these efforts in the period up until 19 April 2023 is included as Appendix B. In the event that the Local Planning Authority were to assert that the soils within the bunds are waste, and the Inspector were to agree, the Appellant would seek to rely on Ground (f) as a fall-back position, and to argue that it would be excessive to require removal of all such soil from the area enforced against. The Appellant therefore requests that a Ground (f) appeal is considered as a fall-back position, until such time that the full scope of the materials on the land that the Council consider the Notice requires to be removed can be understood and established.

4.6 The need to potentially consider a Ground (f) appeal as a fall-back option (involving the screening and reprofiling of clean soil bunds from the material currently on site) does not prejudice either appeal party, nor will it require the preparation of any significant evidence in the event it becomes an issue. In any case, the Appellant expects to be able to receive clarification on these points from the Local Planning Authority.

5.0 **The Appellant's Case**

5.1 The Appellant's case in respect of Ground (b) at the Public Inquiry will be as follows.

5.2 The area enforced against forms part of a much larger agricultural unit which is managed by a tenanted farmer. The area enforced against remains functionally related to the whole agricultural unit and forms part of a single planning unit.

- 5.3 What has occurred is the placement of soils and other site derived materials arising from the erection of fencing on the wider farm unit, to form a means of enclosure to deter trespass – in accordance with permitted development rights under the GPDO.
- 5.4 As a result, the Appellant contends that there has been no material change of use to the deposition of waste.
- 5.5 Further or alternatively, the Appellant contends that, having regard to the definition of waste under s.336(1) of the TCPA 1990 and the Waste Framework Directive (2008/98/EC), the soils forming the bunds do not constitute waste, and / or it is unclear what materials are required to be removed from the area enforced against.
- 5.6 As explained above, the works have involved the construction of security bunds to form a means of enclosure around this part of the farm - to deter unauthorised trespass and access. The area enforced against forms part of the wider agricultural unit and is functionally related to it. There is further work required to properly profile the bunds, but work has currently stopped due to the service of the Notice and the subsequent appeal.
- 5.7 The material which is the subject of the Notice is site derived, and sourced from the wider farm unit, primarily as a result of works undertaken to install fencing. More detail in respect of the fencing is set out in Section 2 above. The Appellant will present evidence relating to the time period over which the fencing work was undertaken, and estimates of the volume of materials arising from the vegetation clearance and level changes. This will be supported by other available evidence.
- 5.8 The Appellant will demonstrate that there is a significant problem with farming the land and urgent measures are required to secure it before bringing the land back into productive use. The Appellant will argue that not only are these works reasonably necessary for the purposes of agriculture, they are in fact essential to facilitate the use of the land for agricultural purposes at all.
- 5.9 The Appellant will provide evidence to show that all the proposed works can be undertaken as permitted development under Parts 2 (Minor operations) and 4 (Temporary buildings and structures) of the GPDO.
- 5.10 The Appellant will show that the work in connection with the bunds was the construction of a means of enclosure permitted under Part 2A, and that when profiled their height will not exceed 2 metres above ground level. The completed bunds will be constructed from clean soils and subsoils derived from the wider farm unit as part of works to erect fencing. The soils arose on one part of the farm as a result of works necessary for the purposes of agriculture (the erection of fencing) and have been moved to another part of the farm for works necessary for the purposes of agriculture (the construction of security bunds). These materials are not therefore within the definition of waste.
- 5.11 Whilst the Local Planning Authority seems to accept that clean site-derived soils and subsoils used in the construction of bunds are not waste (para. 5.9 of the Local Planning Authority's Statement of Case), if it transpires that the Council in fact considers that these soils are waste, and were the Inspector to agree, the Appellant will show that the erection of the bunds would still be permitted under Part 6 (agricultural development on units of 5ha or more) of the GPDO.
- 5.12 The part-completed security bunds will need screening and reprofiling to finish them. These works will be undertaken using a mobile screen and an excavator. The Appellant will show that this constitutes the provision on land of plant and machinery required in connection with and for the duration of the engineering works required to complete the bunds, and are permitted under Part 4A (temporary buildings and structures) of the GPDO. Once works are complete the machinery will be removed and the land reinstated to its original condition.

- 5.13 As part of the screening operations, the Appellant expects to remove some clean hardcore and hardcore like materials (eg clay pipe) from the soils. The Appellant proposes to use this material in the maintenance of tracks and hardstandings on the wider farm unit and will show these are maintenance works which are reasonably necessary for the purposes of agriculture within the unit, and are permitted under Part 6A(b) of the GPDO. The Appellant will show that even if the Inspector were to find that these materials are “waste”, the works would still be permitted under Part 6 as they comply with all the conditions in A2(1), and specifically part (c) that the hardcore is all site derived from the farm and “*waste materials have not been brought onto the land from elsewhere for deposit.*”
- 5.14 The Appellant will say that the use of a clean site-derived woodchip as a mulch on the farm, and the felling and maintenance of trees (and the use of tree trunks and branches in blocking access) forms part of normal agricultural activities on the land, does not constitute unauthorised development and falls outside the scope of the Enforcement Notice and this appeal. It cannot be considered waste.
- 5.15 Fall-back Position
- 5.16 In the event that it transpires that, contrary to the Appellant’s understanding, the Council adopt a position that the soils in the bunds constitute waste which is required to be removed under the terms of the Notice, the Appellant will adopt a fall-back position that this step is excessive under Ground (f).
- 5.17 The Appellant will show that the erection of perimeter security bunding is essential to facilitate an agricultural use in this area of the farm due to the danger (both to people and to livestock) and the damage caused to arable land from trespass, particularly from motorcycles and quad bikes.
- 5.18 The Appellant will show that the retention of the soil security bunds will also result in an amenity benefit without causing harm to or impacting adversely on the Green Belt. They will refer to the appearance of the wider farm unit, which will be used as a basis on which to illustrate the significance of the improvement which could be generated.
- 5.19 The Appellant will demonstrate that the removal of the soils will result in environmental harm. If moved off the farm, the removal of the soils would also create HGV traffic on surrounding roads, add to traffic volumes, cause climate change impacts from its transport, and result in environmental impacts from its deposit at its eventual destination.
- 5.20 Finally, the Appellant will show that the removal of the perimeter security bunding would serve no planning purpose. The security bunds could be simply reconstructed afterwards from other site derived materials under permitted development rights.

6.0 Summary and Conclusions

- 6.1 The Appellant is in the process of completing (now paused) works to security bunds to deter trespass and vandalism on this part of the farm.
- 6.2 Bromley Council have served an enforcement notice on the Appellant alleging that there has been a change of use of the land from agriculture to the deposit of waste.
- 6.3 The Appellant has since provided further information regarding the source of the material within the security bunds (which is site derived and arises from agricultural works on the wider farm unit), their current proposed design solution for the bunds, and the agricultural justification for the work. The Appellant has set out why the bunds when completed constitute permitted development (under GPDO Parts 2 and 4).
- 6.4 The works are currently on hold due to the service of the enforcement notice and live appeal proceedings, but the Appellant intends to complete the work in collaboration with the Council and police under permitted development rights once the current planning enforcement issues are resolved.

6.5 The Appellant suggests that it would be in the public interest to stay the appeals following exchange of Statements of Case, in order to allow for further discussion between the parties to reach an agreed resolution.