



**LONDON BOROUGH OF BROMLEY
HOUSING, PLANNING & REGENERATION**

**THE COUNCIL'S RESPONSE TO THE APPELLANT'S STATEMENT OF CASE DATED
16 MAY 2023**

JUNE 2023

**LBB Ref No: EN/21/00270/CHANGE
PINS Ref No: APP/G5180/C/22/3312256**

Appeal by Bournemouth Sand and Gravel against an Enforcement Notice issued by the London Borough of Bromley in respect of the material change of use of the land from agriculture to the deposit of waste at the site at Lower Hockenden Farm, Hockenden Lane, Swanley, BR8 7QH

1. The comments contained within this document made are in response to the appellant's Statement of Case dated 16 May 2023 ("the appellant's Statement"). It is noted within paragraph 1.4 of the appellant's Statement that it replaces the appellant's previous statement compiled by Icenii Projects. It is further noted within paragraph 1.4 of the appellant's Statement that the appellant wishes to proceed with the appeal under ground (b). The Council's comments in this response are submitted solely on the basis of this ground (b) appeal.

2. Based on the appellant's Statement, their case may be summarised as follows:
 - i. that the materials placed on the land [presumably, what the Council has defined as waste] is soils and other site-derived materials which form security bunds (para 1.1)
 - ii. that earth works have been carried out to even out ground levels so that fencing could be properly aligned, and that in some areas this has resulted in level changes of approximately a metre (para 2.5)
 - iii. that material arising from the erection of fencing was used in the creation of new bunds to restrict and deter access to the land (para 2.6)
 - iv. although the construction of the security bunds and other fencing has significantly reduced problems, antisocial behaviour persists (para 2.9)
 - v. 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 (para 4.6)

- vi. further work is required to properly profile the bunds, but work has currently stopped due to the service of the Notice and the subsequent appeal (para 5.6)
 - vii. 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 (para 5.12)
 - viii. as part of the screening operations, the appellant expects to remove some clean hardcore and hardcore like materials (e.g., 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 (para 5.13)
 - ix. 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. These works are reasonably necessary for the purposes of agriculture and are essential to facilitate the use of the land for agricultural (para 5.8)
 - x. the proposed works can be undertaken as permitted development under Parts 2 (Minor operations) and 4 (Temporary buildings and structures) of the GPDO (para 5.9)
3. The appellant's Statement is accompanied by a letter from a tenant farmer, Robin Maxin, at Appendix C. The letter contains the following assertions:
- i. the whole farm was blighted by anti-social behaviour. However, this has now been narrowed down to the top field on the southern boundary. The fencing and bunding has had a huge impact in reducing the trespassing and intimidation. The problem persists but in a much-reduced scale
 - ii. the farmer has invested in the farm holding with significant fencing and gates to prevent unauthorised access. However, these must be regularly inspected and repaired due to vandalism
 - iii. although the fence has been effective to a degree, the placement of the bunding has had a larger impact. It is more difficult for the trespassers to gain access to the farm across the bunded areas
4. In summary, the appellant claims that the material placed on the site – what the Council has identified as waste material – comprises security bunds made of site-derived material and material arising from the erection of fencing. The appellant says that its purpose is to deter anti-social behaviour, although it claims that anti-social behaviour persists. The tenant farmer himself claims that fencing has been effective to a degree, but that the placement of the bunding has had a larger impact in preventing trespassing onto the land. The appellant further states that the area enforced against forms part of a much larger agricultural unit which remains functionally related to the whole agricultural unit and forms part of a single planning unit; and that the measures required to secure the land (presumably, the bunds) are

reasonably necessary for the purposes of agriculture. The appellant further alleges that the works have not been completed due to the enforcement action pursued by the Council and that the part-completed security bunds will need screening and reprofiling to finish them. The appellant advises that these works will be undertaken using a mobile screen and an excavator and that they expect to remove some "clean hardcore and hardcore" from the soils.

5. As the Council has laid out in its Statement of Case dated January 2023, the areas of land enforced against are situated to the south of a line of post and rail fencing, which separates it from the land to the north which has remained in agricultural use. Its investigations of the appeal site have identified significant changes in land levels across the land (as detailed in the Atkins Report) which has included the deposit of substantial quantities of anthropogenic materials. In regard to the deposit of soils within the site, the appellant previously stated in its grounds of appeal¹:

"The subject site is in agricultural use. The farmer on the land is seeking to improve the quality of the soil. This has required the movement of topsoil across the Site. In addition, the farmer has an exemption from the Environment Agency in order to spread mulch across the land to conserve soil moisture, moderate soil temperature and control growth of weeds..."

6. Whilst the Council, in its Statement of Case, acknowledged that the land to the north of the land enforced against had remained in agricultural use, it stated that this did not account for the appeal site – to the south of the line of post and rail fencing – where substantial waste deposits had been identified. It further stated in relation to the movement of topsoil that it had no reason to dispute that this has occurred within areas of land which had **remained** in agricultural use. The appellant, however, now appears to insinuate that the Council has accepted that the waste deposits – to the south of the line of post and rail fencing – are in fact soil. This is not the case.
7. Contrary to its grounds of appeal, the appellant is now claiming that the material within the appeal site comprises security bunds, rather than agricultural topsoil or mulch subject to an Environment Agency exemption. It now appears to argue that the agricultural use of this land is contingent upon the formation of security bunds which it says are reasonably necessary for the purposes of agriculture. Given its coverage, composition and appearance the Council does not accept that material on site amounts to a security bund. On the contrary, it would appear that the appellant has now simply introduced a new argument to justify the deposit of the waste deposits on the land and in order to identify a new use for this material. Also of note, at no point during its response to the Council's Planning Contravention Notices did the appellant allege that the material on the land comprised a security bund.

¹ Contained within the Iceni letter dated 30 November 2022.

8. While the appellant pleads that it is unclear which materials comprise waste at para 4.3, it subsequently goes on at para 5.13 to provide a breakdown of materials derived from screening operations which it says would be used for farming, including materials it defines as "hardcore" and "clean hardcore". The appellant also goes on to make a contingent argument later at para 5.13 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"*, thereby accepting that the material on site is waste. There is a clear lack of evidence regarding the origin and quantity of the very substantial quantity of waste material within the appeal site, nor any land level surveys to account for the changes in ground levels which have occurred. As to whether the development in question is permitted development, the Council will not address this point in the absence of a ground (c) appeal; nor will it address any planning permits in the absence of a ground (a) appeal.
9. The appellant asserts that the land subject of the Enforcement Notice forms part of a much larger agricultural unit which is managed by a tenanted farmer and that it is functionally related to the whole agricultural unit. The accompanying letter from the tenant farmer, Robin Moxin, asserts that the whole farm *"was blighted by anti-social behaviour [and that] this has now been narrowed down to the top field on the southern boundary"* (presumably, the area of land south of the post and rail fencing). Mr Moxin claims that the fence has been *"effective to a degree"* but that the placement of the bunding *"has had a larger impact"* and that it is more difficult for the trespassers to gain access to the farm across the bunded areas. This would appear to conflict with the appellant's Statement which says that the bunding is incomplete and that anti-social behaviour persists.
10. Moreover, the areas of land which have remained in active agricultural use are bound by post and rail fencing (as shown on Plan No BSG-01 included with Appendix A of the appellant's Statement) rather than by bunding, so it is questioned by what measure the alleged bunding is deemed to have been successful in protecting agricultural activities given that it is occupying an area which is not actually farmed. Furthermore, it is notable that no bunding is proposed beyond the EN area of land (as denoted on Plan No GSG-02 included with Appendix A of the appellant's Statement) so as to protect the *existing* farming activities.
11. As the Council highlighted in its Supplementary Statement of Case dated May 2023, following a request for information made under the provisions of Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 dated 15 June 2022, the landowner stated that the site was occupied by Bournewood Sand and Gravel Ltd and it listed no other parties as being in occupation of the land, including the tenanted farm, Mr Moxin.
12. It remains the case that for a ground (b) appeal to succeed, the burden of proof is firmly on the appellant to demonstrate that the matters stated in the Enforcement Notice relating to the

material change of use of the land have not occurred as a matter of fact. In the Council's view, the appellant has failed demonstrate that this has not occurred.
