

## NOTICE OF MEETING

<b>Meeting</b>	Regulatory Committee
<b>Date and Time</b>	Wednesday, 25th July, 2018 at 10.00 am
<b>Place</b>	Ashburton Hall - HCC
<b>Enquiries to</b>	members.services@hants.gov.uk

John Coughlan CBE  
Chief Executive  
The Castle, Winchester SO23 8UJ

## FILMING AND BROADCAST NOTIFICATION

This meeting may be recorded and broadcast live on the County Council's website. The meeting may also be recorded and broadcast by the press and members of the public – please see the Filming Protocol available on the County Council's website.

## AGENDA

### 1. APOLOGIES FOR ABSENCE

To receive any apologies for absence received.

### 2. DECLARATIONS OF INTEREST

All Members who believe they have a Disclosable Pecuniary Interest in any matter to be considered at the meeting must declare that interest and, having regard to the circumstances described in Part 3 Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter is discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore all Members with a Non-Pecuniary interest in a matter being considered at the meeting should consider whether such interest should be declared, and having regard to Part 5, Paragraph 2 of the Code, consider whether it is appropriate to leave the meeting while the matter is discussed, save for exercising any right to speak in accordance with the Code.

### 3. MINUTES OF PREVIOUS MEETING (Pages 5 - 8)

To confirm the minutes of the previous meeting

### 4. DEPUTATIONS

To receive any deputations notified under Standing Order 12.

**5. CHAIRMAN'S ANNOUNCEMENTS**

To receive any announcements the Chairman may wish to make.

**6. APPLICATION TO CORRECT A MISTAKE MADE BY THE COMMONS REGISTRATION AUTHORITY AT BROXHEAD COMMON, IN THE PARISH OF HEADLEY (APPLICATION NO. 01/17) (Pages 9 - 58)**

To consider a report from the Director of Culture, Communities and Business Services, for the purpose of exercising functions under the Commons Act 2006 as the Commons Registration Authority ('CRA') regarding an application in Headley.

**7. UNIT 7 WATERBROOK ESTATE, WATERBROOK ROAD, ALTON (Pages 59 - 90)**

To consider a report of the Director of Economy, Transport and Environment regarding an application for variation of conditions 5, 11 and 18 of planning permission 51471/003 to allow for importation of road plantings and the night-time importation and exportation of waste at Unit 7 Waterbrook Estate, Waterbrook Road, Alton. (Application No. 51471/006) (Site Ref: EH156)

**8. REGULATION 3 DEVELOPMENT PROTOCOL (Pages 91 - 94)**

To consider a report of the Director of Economy, Transport and Environment regarding a Protocol for dealing with breaches in planning control relating to Regulation 3 developments, which sets out Hampshire County Council's approach to planning enforcement for the County Council's own developments.

**9. MONITORING AND ENFORCEMENT UPDATE (Pages 95 - 112)**

To consider a report of the Director of Economy, Transport and Environment regarding the Monitoring and Enforcement work undertaken by Strategic Planning during the period January 2018 – June 2018.

**ABOUT THIS AGENDA:**

**On request, this agenda can be provided in alternative versions (such as large print, Braille or audio) and in alternative languages.**

**ABOUT THIS MEETING:**

**The press and public are welcome to attend the public sessions of the meeting. If you have any particular requirements, for example if you require**

**wheelchair access, please contact [members.services@hants.gov.uk](mailto:members.services@hants.gov.uk) for assistance.**

County Councillors attending as appointed members of this Committee or by virtue of Standing Order 18.5; or with the concurrence of the Chairman in connection with their duties as members of the Council or as a local County Councillor qualify for travelling expenses.

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# Agenda Item 3

AT A MEETING of the Regulatory Committee of HAMPSHIRE COUNTY COUNCIL held at the castle, Winchester on Wednesday, 16th May, 2018

Chairman:

\* Councillor Peter Latham

- |                                |                                  |
|--------------------------------|----------------------------------|
| * Councillor Judith Grajewski  | * Councillor Alexis McEvoy       |
| Councillor Christopher Carter  | * Councillor Russell Oppenheimer |
| * Councillor Charles Choudhary | Councillor Stephen Philpott      |
| * Councillor Mark Cooper       | Councillor Roger Price           |
| * Councillor Roland Dibbs      | * Councillor Lance Quantrill     |
| Councillor Jane Frankum        | Councillor David Simpson         |
| * Councillor Marge Harvey      | * Councillor Wayne Irish         |
| * Councillor Keith House       |                                  |
| Councillor Gary Hughes         |                                  |

\*Present

## 57. APOLOGIES FOR ABSENCE

Apologies were received from Councillors Carter, Frankum, Hughes, Philpott, Price and Simpson. Councillor Irish attended as the Liberal Democrat substitute.

## 58. DECLARATIONS OF INTEREST

Members were mindful that where they believed they had a Disclosable Pecuniary Interest in any matter considered at the meeting they must declare that interest at the time of the relevant debate and, having regard to the circumstances described in Part 3, Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter was discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore Members were mindful that where they believed they had a Non-Pecuniary interest in a matter being considered at the meeting they considered whether such interest should be declared, and having regard to Part 5, Paragraph 2 of the Code, considered whether it was appropriate to leave the meeting whilst the matter was discussed, save for exercising any right to speak in accordance with the Code.

## 59. MINUTES OF PREVIOUS MEETING

The minutes of the last meeting were reviewed and agreed.

## 60. CHAIRMAN'S ANNOUNCEMENTS

The Chairman announced that in order to follow stricter laws around clothing and equipment required for Councillors to attend site visits, an audit was needed to ascertain Members' requirements going forward. Members were therefore asked to complete the form which had been circulated at the meeting.

At the Chairman's request, the Head of Strategic Planning provide advised the Committee on BREEAM (Building Research Establishment Environmental Assessment Method) in relation to the two items of business on the agenda.

It was noted that BREEAM is assessed through third party certification of an asset's environmental, social and economic sustainability performance, using standards developed by BRE. This means BREEAM rated developments are more sustainable environments that enhance the well-being of the people who live and work in them, help protect natural resources and make for more attractive property investments.

In both items on this agenda, it was expected that the County Council would exceed these standards.

61. **DEPUTATIONS**

The Chairman confirmed there were 2 deputations for the meeting and the process was explained to the attendees.

62. **JOHN DARLING MALL SELBORNE DRIVE EASTLEIGH (APPLICATION NO. CS/18/82602) (SITE REF: EAS005)**

The Committee considered a report of the Head of Strategic Planning (Item 6 in the Minute Book) regarding a planning application for 18 one bedroom assisted living units and supporting communal space within the C2 Use Class with associated car parking and landscaping at John Darling Mall, Selborne Drive, Eastleigh (Application No. CS/18/82602) (Site Ref: EAS005).

The officer introduced the item and showed several photographs and plans for the site. The Committee were made aware of **an amendment to Condition 2, which was as follows:**

'No work relating to the construction of the development hereby permitted, (including works of preparation prior to operations, the delivery of construction materials, skips or machinery, nor the removal of waste materials) shall take place before 0800 or after 1800 Monday to Friday inclusive, before 0800 or after 1400 on Saturday and not at all on Sunday or recognised Public Holidays.

There shall be no access to the development site by any traffic associated with the construction/demolition (i.e. no delivery vehicles, no contractors' cars, nor plant and machinery) Monday to Friday inclusive during school term between the hours of 0830-0915; and 1445-1530.

**Reason:** To protect the amenities of occupiers of nearby properties and in the interests of public safety, to avoid traffic conflict at the times of the day when pupils are arriving at and departing from school.

The Committee received 2 deputations on this item.

Ken Lord who spoke against the application and had concerns over the lack of tree management which had taken place over a number of years and how this had impacted upon him.

The 2<sup>nd</sup> deputation was from Simon Waite and Louise Hague from Hampshire County Council who spoke on behalf of the applicant.

During questions of the deputees, the following was clarified:

- the facility would allow residents to leave their mobility scooters in the property
- there would be a covered area for buggies
- the height of the new buildings
- the landscape requirements for the site

During questions of the officers, it was confirmed that the widening of a footpath would take place in Shakespeare Road.

In debate, it was agreed that should the application go ahead subject to the inclusion of the revised wording for **Condition 2**.

**RESOLVED:**

That subject to the receipt and consideration of further comments from the Lead Local Flood Authority, that planning permission be GRANTED subject to the conditions listed in Integral Appendix B and including the revised wording of Condition 2 as shown above.

**Voting:**

Favour: 11 (unanimous)

63. **LAND NORTH OF MADDOXFORD LANE BOORLEY GREEN BOTLEY SOUTHAMPTON**

The Committee considered a report of the Head of Strategic Planning (Item 7 in the Minute Book) regarding a planning application for development of the site for a new 2 form-entry Primary School, consisting of a two-storey building with single storey kitchen/plant room attached, inclusion of a grass sports pitch and hard courts as well as staff car-parking at Land north of Maddoxford Lane, Boorley Green, Nr. Botley Southampton (Application No. CS/18/82664) (Site Ref: EAE046).

The officer introduced the item and showed several photographs and plans for the site. Members were made aware that the scheme has already been granted planning permission by Eastleigh Borough Council and that the County Council was in receipt of one objection relating to a rights of way matter. The officer also advised the Committee on changes to the report since publication of the papers:

**Corrections:**

Paragraph 2.7 – The end of the first sentence should read:  
..relevant policies of the adopted Eastleigh Borough Local Plan 2001-2011 (2006) .... Continue as before

**Amendments to conditions:**

Public Right of Way Condition 6 to be amended as follows:  
No works shall commence on any land which currently forms part of Public Footpath No 2 Botley until the diversion of the public right of way has been confirmed by the relevant planning authority or the Secretary of State.

The Committee received one deputation on this item from Simon Waite and Dan Keeler on behalf of the applicant who confirmed that the design had been configured to minimise disruption and allow expansion to the car parking facilities. Members were advised that the proposals had the support of the Wildern Academy Trust.

During questions of the deputees, the following was clarified:

- the opening of the new school would be September 2018.
- there was suitable provision for cycle spaces
- how the school would manage pupils from outside the area
- the building had a flat roof design.

During debate some Members had concerns over the timing and design of the building.

**RESOLVED:**

That planning permission shall be GRANTED subject to the conditions listed in Integral Appendix B and the revised wording to Condition 6 as shown above.

**Voting:**

In favour: 8

Against: 2

Abstention: 1

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Chairman,



## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	25 July 2018
<b>Title:</b>	Application to correct a mistake made by the commons registration authority at Broxhead Common, in the parish of Headley (Application No. 01/17 )
<b>Reference:</b>	
<b>Report From:</b>	Director of Culture, Communities and Business Services

**Contact name:** Sylvia Seeliger

**Tel:** 01962 846349

**Email:** sylvia.seeliger@hants.gov.uk

#### 1) Summary of information:

1.1. Hampshire County Council is the Commons Registration Authority ('CRA') for the purpose of exercising functions under the Commons Act 2006. An application has been made under section 19 of that Act, by a member of the public, to correct an alleged mistake made by the CRA in relation to the non-registration of common rights on 80 acres of land at Broxhead Common (CL 147) in 1978. The Registration Authority is required to make any required correction if it is shown that such a correction is necessary. Regulations relating to the processing of the application suggest that it should be submitted to the Planning Inspectorate for determination, and therefore this report is advisory, to give members of the Regulatory Committee information on the circumstances and processes involved.

#### 2) Legal framework for the information:

##### 2.1. S.19 COMMONS ACT 2006

Correction:

(1) A commons registration authority may amend its register of common land or town or village greens for any purpose referred to in subsection (2).

(2) Those purposes are—

(a) correcting a mistake made by the commons registration authority in making or amending an entry in the register;

(4) An amendment may be made by a commons registration authority—

(a) on its own initiative; or

(b) on the application of any person.

### 3) Purpose of report:

3.1. The purpose of this report is to advise members of the Regulatory Committee that the application has been made, and to set out the process by which it will be determined, for their information.

4) **Applicant:** Mrs. Maureen Comber, The Old Cottage, Frith End, Bordon, GU35 0QS, Honorary Secretary of the Broxhead Commoners Association (BCA)

5) **Landowners:** title absolute to the land in question lies with Mr. Anthony Whitfield, of Headley Wood Farm, Headley, Bordon, GU35 8SG, under title SH6984.

### 6) Description of the land (please refer to the map attached to this report):

6.1. The land which is the subject of the application ('the Land') is shown edged red on the plan annexed to this report. It consists of approximately 80 acres (32.37 hectares) of land, and is an irregularly-shaped piece of land to the east of the road A325. The land is comprised in the registered title number set out in paragraph 5.

### 7) The application:

7.1 The application was received on 10 July 2017. The application states that it is made under paragraph section 19(2)(a) of the Commons Act, which relates to a mistake made by the CRA at the time of registration. The application is appended as **Appendix 1** to this Report.

7.2 A number of documents were attached to the application as supporting material and these are attached at **Appendix 2**.

7.3 The receipt of the application was recorded and a unique number allocated to it, in this case 01/17.

### 8) Processing the application:

8.1. The Regulations require the CRA to give notice of the application to all interested parties, that is the landowner or his or her representative, the Planning Inspectorate ('PINs'), the local District Council, the local Member and all common rights holders. The notice was advertised on the County Council's notice portal, in the local press and three notices were put up on site, on 22 November 2017. The notice period for receipt of representations relating to the application expired on 5 January 2018.

8.2. The notice attracted 3 responses. The most substantial has been submitted by the representative, Mr. Edward Harris, of the landowner Mr. Whitfield, and it objects to the application on the grounds that it is fatally flawed, citing a Court of Appeal judgement of 1978. A response was sent by Ms Sophie Burr, supporting the application, but this concerns itself primarily with lack of access to the land and its overgrown state, and does not address any of the legal issues. A third representation was received from T.J. Plumbley, who appears to be acting on behalf of Alton Ramblers. This submission does address the history of the land and the application, and raises questions regarding ownership of the land and

what procedures required by the Court of Appeal judgement were carried out. The substantial objection submitted by Mr. Harris on behalf of the landowner has implications on how this application can be determined.

8.3. The Commons Registration (England) Regulations 2014, (the 'Regulations') set out how such an application is to be processed by the CRA. Section 26 of these Regulations, entitled '*Responsibility for determining applications and proposals*' addresses the question of what body is to determine whether the application meets the necessary legal tests. Section 26(2) states that '*in cases specified in paragraphs (3) and (4), a registration authority must refer to the Planning Inspectorate for determination by it – (a) any application made to the registration authority in accordance with these Regulations*'. The application, made under section 19(2)(a) of the Commons Act 2006, has been made according to the Regulations.

8.4. Section 26(3) further sets out details of those cases that must be referred to PINs for determination. These are firstly '*where the registration authority has an interest in the outcome of the application...such that there is unlikely to be confidence in the authority's ability impartially to determine it*', and secondly '*where a person having a legal interest in the land the subject of an application...has made (and not subsequently withdrawn) representations amounting to an objection in respect of the application..., and –*

*(a) the application...is made under section 19(4) of the 2006 Act [Commons Act 2006] and seeks –*

*(i) to add land to, or to remove land from, a register; or*

*(ii) to correct an error as to the quantification of rights of common in a register;...*

This application seeks to add land to the register, under section 26(3)(a)(i). Therefore, the other parts of section (3) and section (4) of the 2014 Regulations do not apply to this application.

8.5. Officers are advised that a person with a legal interest in the land covers the freeholder of the land, any leaseholder, trustee or mortgagee of the land, and those with rights of common over the land. An objection has been made by the freeholder of the land, who therefore has a valid legal interest in the outcome, and this falls under the scope of section 26(3)(a)(i), as outlined in the previous paragraph. Therefore, under this provision, the County Council must refer the application to PINs for determination under section 26(2), and is in the process of so doing. For the avoidance of doubt, Members should be aware that it is possible that PINs may decide that this application does not meet the criteria of section 26, in which case the matter would be returned to this Committee for determination in the exercise of its quasi-judicial function.

8.6 Therefore, in accordance with advice to registration authorities issued by Defra (see page 7 at <https://www.gov.uk/guidance/commons-registration-authorities-correct-mistakes>), this application can be processed by the CRA, but requires to be determined by the Planning Inspectorate. This report is for Members' information only, and the Committee is not required to make a determination of the application.

## 9) Summary of report of information for the Committee:

- 9.1 That an application has been made to add to the commons register for Hampshire 80 acres of land at Broxhead Common in the parish of Headley, in order to correct a mistake allegedly made by the CRA, and that this application is referred to the Planning Inspectorate for determination in the first instance, on the grounds that it meets the requirements of section 26(3) of the 2014 Regulations. There is a possibility that the Planning Inspectorate may take a different view, and that the application would then come back to this Committee for determination.

**CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:**

<b>Hampshire safer and more secure for all:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>OR</b>	
<p><b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to decide whether or not the commons register should be amended, or refer it to the Planning Inspectorate for determination where there is an objection from a person with a legal interest in the outcome.</b></p>	

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report.

(NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

*(Quote list of documents here: e.g. list the relevant letters, memos, etc. and their location)*

<u>Document</u>	<u>Location</u>
File: 01/17 Broxhead Common	Countryside Access Team Room 0.06 Castle Avenue Winchester SO23 8UL

## **IMPACT ASSESSMENTS:**

### **1. Equality Duty**

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

### **2. Impact on Crime and Disorder:**

2.1.

### **3. Climate Change:**

- a) How does what is being proposed impact on our carbon footprint / energy consumption?
- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

**This report does not require impact assessments but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to amend the register of town and village greens in the circumstances described in this report.**

## Commons Act 2006: section 19

**Application to correct the register****This section is for office use only**

Official stamp

Application number

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Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

- All applicants should complete boxes 1–8.
- Any person can apply under section 19 of the Commons Act 2006.
- You will be required to pay a fee unless your application is to correct a mistake made by the registration authority (section 19(2)(a)) or to remove a duplicate entry (section 19(2)(c)). Ask the registration authority for details. You would have to pay a separate fee should your application be referred to the Planning Inspectorate, unless it is to correct a mistake made by the authority or to remove a duplicate entry.

**Note 1**

*Insert name of commons registration authority.*

**1. Commons Registration Authority**

To the: Hampshire County Council

Tick one of the following boxes to confirm that you have:

enclosed the appropriate fee for this application:

or

applied for a purpose in section 19(2)(a) or (c), so no fee is enclosed:

**Note 2**

If there is more than one applicant, list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or an unincorporated association. If you supply an email address in the box provided, you may receive communications from the registration authority or other persons (e.g. objectors) via email. If box 3 is not completed all correspondence and notices will be sent to the first named applicant.

**Note 3**

This box should be completed if a representative, e.g. a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here. If you supply an email address in the box provided, the representative may receive communications from the registration authority or other persons (e.g. objectors) via email.

**2. Name and address of the applicant**

Name:

Maureen Comber

Postal address:

The Old Cottage,  
Frith End,  
BORDON,  
Hants

Postcode GU35 0QS

Telephone number:

01420 472318

Fax number:

N/A

E-mail address:

m.comber@btinternet.com

**3. Name and address of representative, if any**

Name:

Firm:

Postal address:

Postcode

Telephone number:

Fax number:

E-mail address:



**Note 4**

For further details of the requirements of an application refer to Schedule 4, paragraph 11 to the Commons Registration (England) Regulations 2014.

**4. Basis of application for registration and qualifying criteria**

Specify the register unit number to which this application relates:

CL 147 Broxhead Common, Headley, Hants

Specify the rights number to which this application relates (if relevant):

All

Tick one of the following boxes to indicate the purpose (described in section 19(2)) of your application. Are you applying to:

- Correct a mistake made by the commons registration authority:
- Correct any other eligible mistake:
- Remove a duplicate entry from the register:
- Update the details of any name or address referred to in an entry:
- Record accretion or diluvion:

**Note 5**

Explain why the register should be amended and how you think it should be amended.

**5. Describe the purpose for applying to correct the register and the amendment sought**

Hcc has removed 80 acres from the Register without consent of the Secretary of State

In 1963 complaints from the local community to Hampshire County Council (HCC) were made with regard to the unauthorised fencing of 80 acres of Broxhead Common. The Open Spaces Committee resolved to deal with the problem by way of sec.194 LPA 1925, to secure the removal of the unlawful fences.

Despite much unrest and application by the Broxhead Commoners Association at the time of the Commons Registration Act 1965, this great injustice has continued.

1. It has deprived the public of their rights of Access to the 80 acres of common land and to the only site of historic importance of an ancient burial mound.
2. It has deprived the Commoners of Broxhead of their Rights of Common.
3. It has particularly deprived access by horse riders, who had access to at least 25 tracks across the common which were obstructed by the illegal fencing.

The 80 acres should be restored to the Register of Common Land from which it has been removed by HCC. The Rights of the Commoners should be restored

Access by the neighbourhood, which they have been deprived of for over 50 years, should be restored immediately.

The said owner Mr Peter Whitfield, should be subjected to full disclosure for his claim of ownership as a 15 year route of title is insufficient for claimed ownership of common land. He did not register the common until 2002 having bought a property adjoining the common in 1970.

## Note 6

List all supporting consents, documents and maps accompanying the application, including evidence of the mistake in the register. There is no need to submit copies of documents issued by the registration authority or to which it was a party but they should still be listed. Use a separate sheet if necessary.

## 6. Supporting documentation

I have not attached the final Land & Rights Decisions of the CCC as I assume you will have a copy. Likewise the judgement of Brightman J, 1977 High Court.

1. 1964 Copy of Minutes of HCC Open Spaces Committee.
2. 1977 Objections to the fencing from Headley and Kingsley Parish Councils'
3. 1979, May, Letter Clerk of the Commons Commissioners to Whitehill Parish Council
4. 1979 Letter from County Secretary to Mr Nicholson, a commoner.
5. 1974 Bradley Trimmer, Solicitor to Mrs Nicholson, commoner
7. 1975 Appeal by AGP Whitfield to the 'said land'.

I have very many documents in relation to this case i.e. Minutes, BCA correspondence, etc.

Please ask for any further required.

## Note 7

List any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

## 7. Any other information relating to the application

1964, 8th December, Minutes of HCC Open Spaces Committee record resolution to act under s.194 LPA 1925 to remove the unauthorised fences around 80 acres of Broxhead Common.  
1974, 25 April, a Hearing is held in London before the CCC with regard to the Registration of Land & Rights on Broxhead Common.

1974, 22nd November the Final Decision of the CCC.

1975, 22nd July, Notice of Appeal by AGP Whitfield to this decision.

1977 23rd March, Hearing in the High Court by Brightman J. Page 6 of his Judgement states: "The CCC found as a fact that there was a right of common of pasture over the whole of the common attached to each of the tenements, whether customary, freehold, copyhold or leasehold, mentioned in the survey of the unpartitioned manor in 1636." Page 7 continues, "There are no sufficient grounds for challenging the findings of the CCC, that in ancient days the manorial enjoyed rights of common both before and after partition. There is in my judgement plenty of documentary evidence to justify that finding of fact." The CCC's decision was therefore confirmed.

1978, 24th May, The matter went to the Court of Appeal where it was dismissed. The Consent Order confirmed again the CCC's decision. The Final Determination states "the registration became final on 24th May 1978, with exclusion of the land edged red on the plan (note singular) marked GDS1 & GDS2."

These were the initials of George Squibb, CCC. The areas referred to were small areas in his Land decision where he also states. "The land to be excluded has been indicated on A PLAN (again singular) prepared by the County Council." The Schedule of agreement between the parties, which is not itself an operative part of the Order, states that any application for the retention of the fencing around the 80 acres will be supported by HCC. SUCH APPLICATION HAS NEVER BEEN MADE.

~~Nevertheless HCC did nothing with regard to the retained fencing despite much local protest and over the course of the years, nine PI's.~~

These were for claims for bridleways on the common as the illegal fencing had obstructed 23 paths used by horse riders. Even though HCC rent the remaining 100 acres of common land, it has been allowed to deteriorate to the extent that it is now unusable for riding.

In addition existing bridleways have been gated even though they are outside the curtilage of the 80 acres. The gates are an obstruction and should never have been permitted on public bridleways which cross the common land outside the fences.

<p><b>Note 8</b>  <i>The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or an unincorporated association.</i></p>	<p><b>8. Signature</b></p> <p>Date: <input data-bbox="584 210 1493 282" type="text" value="6th July, 2017"/></p> <p>Signatures: <input data-bbox="584 331 1493 586" type="text" value="Maureen C Comber&lt;br/&gt;Hon Sec. Broxhead Commoners Association (BCA)"/></p>
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**REMINDER TO APPLICANT**

**You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.**

**You are advised to keep a copy of the application and all associated documentation.**

***Data Protection Act 1998***

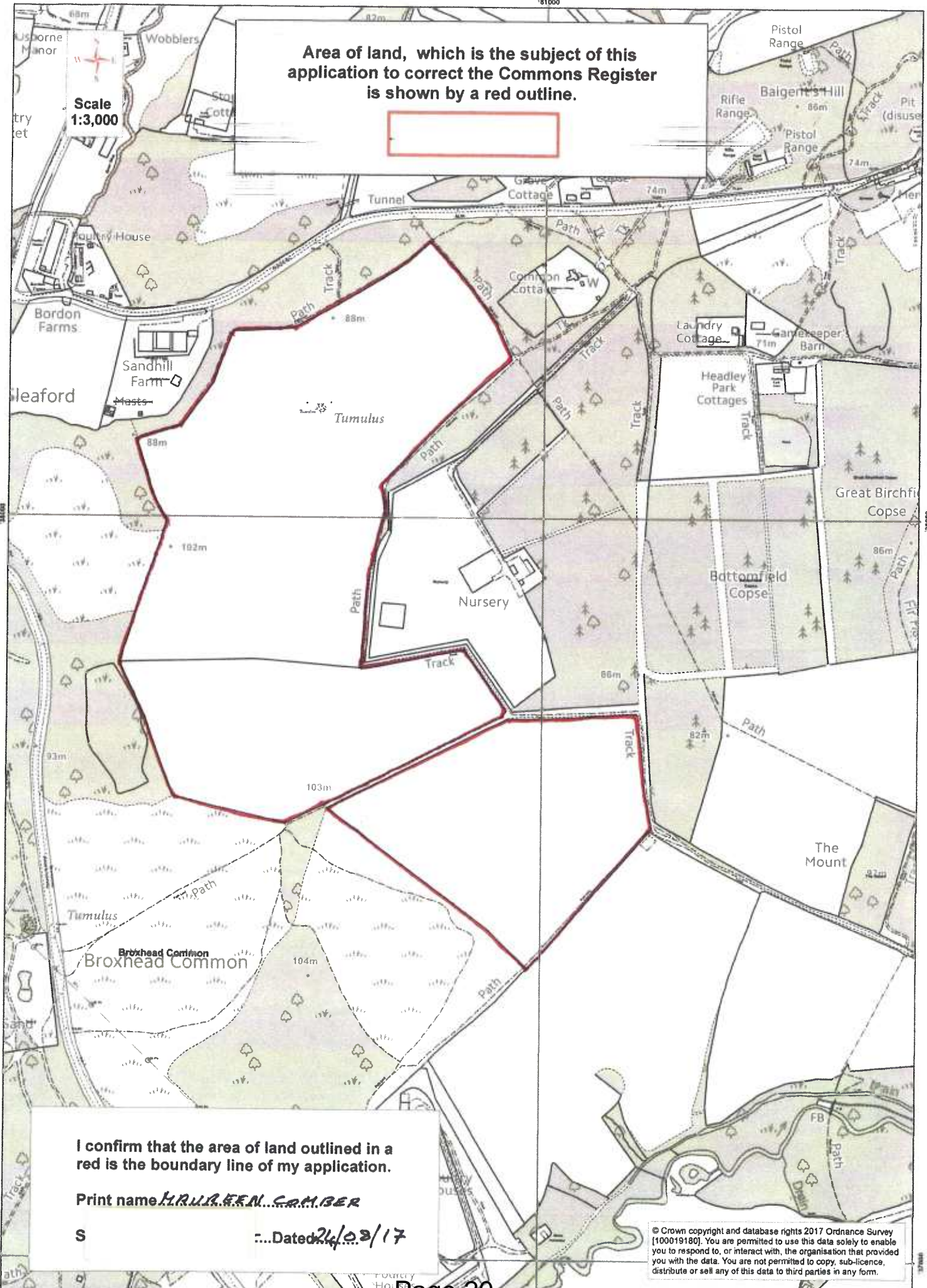
*The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the commons registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.*

*A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.*

Area of land, which is the subject of this application to correct the Commons Register is shown by a red outline.



Scale 1:3,000



I confirm that the area of land outlined in a red is the boundary line of my application.

Print name MURRIN CAMBER

S

Dated 24/03/17

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Supporting information supplied by Mrs M Comber for her application to 'correct a mistake on the Commons Register' - Application 01/17.

'You are required to state clearly what mistake you consider has been made in the 'register of common land'.'

- 80 acres of Broxhead Common CL147 was unlawfully fenced in 1963.
- No application or retrospective application has ever been made to the Secretary of State for the retention of the fencing.
- Therefore the 80 acres has mistakenly been removed from the register of common land.

'You will need to state the 'number of the register unit' so far as it is relevant to the mistake or other matter in the register in respect of which the application seeks correction.'

Approximately 100 acres of Broxhead Common CL147, to the east of the Sleaford/Lindford road, has been let to Hampshire County Council

by a lease dated 5th March 1980, from Anthony Gary Peter Whitfield, who claimed ownership of the 'said land'. The Broxhead Commoner's

had not agreed to such leasing. They could never understand why the fencing had been allowed to remain.

' You need to provide a 'description of the amendment sought in the register of common land'

The amendment sought in the register, is


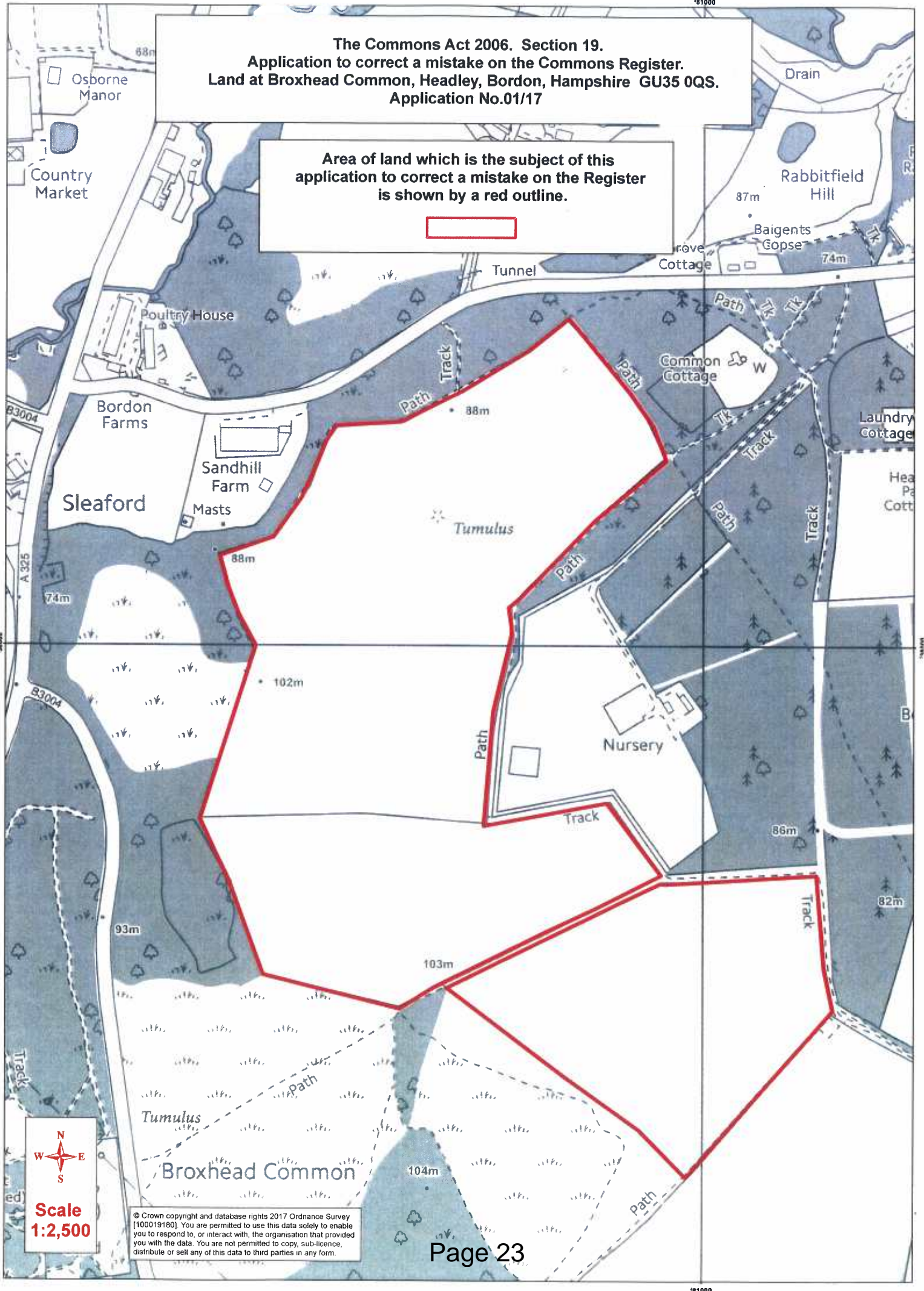
1. The removal of the unlawful fencing,
2. The return of the rights of the commoners of Broxhead to the fenced area.
3. Access by the public to that part of the 'said land' presently enclosed by the unauthorised fencing.
4. Full disclosure of such documentary evidence as Mr Whitfield may have upon which to support his claim of ownership to the 'said land'. The Land Registry seems to have relied on a Statutory Declaration by Mr Whitfield's estate manager, Michael Royden Porter dated 6th December 2001. This contains statements which are clearly false. However more than once this document states " Neither I nor Mr Whitfield hold any deeds or documents relating to the Common including the Blue Land,.....".

Received by email on 22 September 2017 from Mrs M Comber. Applicant.

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**The Commons Act 2006. Section 19.**  
**Application to correct a mistake on the Commons Register.**  
**Land at Broxhead Common, Headley, Bordon, Hampshire GU35 0QS.**  
**Application No.01/17**

**Area of land which is the subject of this application to correct a mistake on the Register is shown by a red outline.**


**Scale**  
**1:2,500**

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# Broxhead Commoners Association

Founded 6<sup>th</sup> June 1968



Chairman: Mr Richard Ellis  
Headley Mill  
Headley  
BORDON  
Hants  
GU35 0LL

Hon.Sec: Mrs M C Comber  
The Old Cottage  
Frith End  
BORDON  
Hants  
GU35 0QS

Email: [m.comber@btinternet.com](mailto:m.comber@btinternet.com)

7<sup>th</sup> July 2017

Dear Countryside Team at Hampshire County Council.

## **Application under Section 19(2)(a) to Correct the Register of Common Land CL147 Broxhead Common**

This is a covering letter to accompany the notes taken from the Opinion of George Laurence QC, Lincolns Inn, 2015. But please also note that we advise that Mr Whitfield should be subject to Full Disclosure for the documents which he supplied to register ownership of Broxhead Common with the Land Registry, as from what we can see there is nothing of substance to support his ownership.

The following and attached is an excerpt from Elizabeth Derrington ICR's Report.

In addition it seems that when Mr Whitfield eventually registered his title with the Land Registry in 2002, ALRI (assistant Land Registrar) noted on 6<sup>th</sup> December 2000 "...where the applicant owns land on both sides of rivers and roads, the whole width of the river bed and soil of the road will be included in the registration, but, as regards road, a verbal entry along the following lines will be made "The roads and footpaths in this title are subject to public rights of way". The alternative would have been for us to serve notice on the local highway authority in respect of long lengths of road, with consequent further delay". Part of the land had been conveyed for the seller's estate, right and interest and evidence had been lodged in the form of a 1962 Statutory Declaration. He asked for an up-to-date declaration to be provided. Part of the land for which they had applied (identified on one of the plans to the letter) fell within the fenced extent but did not fall within any of the title deeds (except the 1970 conveyance) and no Statutory Declaration of any age had been lodged – if the solicitors wished the necessary wording

could be included in the up-to-date declaration he had already asked for; *“As Broxhead Common or at least part of it, forms part of your application, notice has been served on the County Council as registration authority under the Commons Registration Act 1965 in accordance with the established procedure. Once I have the Declaration/s requested above, and provided they are satisfactory, the mapping of your application can be completed fairly promptly, whereupon your application will be referred for executive examination, which may give rise to further requisitions”.*

It seems the solicitor at AJG became ill and the matter was taken over by a colleague. There was a long delay in providing a full response to ALR1's letter and correspondence passed between AJG and Land Registry while the new solicitor familiarized herself with the case. In one of her letter dated 31<sup>st</sup> May 2001, she asked whether *“with regard to Broxhead Common, please advise us as to whether you have received any communication from the Local Authority.”*

In his letter dated 4<sup>th</sup> June 2001, ALR1 replied to this point.

*The Registry has heard nothing back from the County Council about Boxhall[sic] Common, but we would not expect to. As I understand it the procedure is a one-way notification by the Registry to the Council of the fact of the registration of the title to the land under the Land Registration Acts.”*

Following further correspondence AJG provided a Statutory Declaration made by Mr M R Porter on 6<sup>th</sup> December 2001 who had been the Estate Manager since 1962.

I have a copy of that Declaration where it states *“with regard to the land edged green...having made the searches of the estate records and enquiries, I confirm that neither Mr Whitfield nor I hold any deeds or documents to the land in question...”*

There is much to show that evidence in this declaration is false, e.g. Headley Wood Estate had not owned the land for centuries. Broxhead Common can be found in the Headley 1847 Tithe awards as *‘having no Proprietor and used by Sundry people’*

However it occurs to me that Hampshire County Council may not have been properly made aware of the public nature of all the roads and footpaths or whether they were properly advised at the time of the registration of ownership?

It should also be remembered that there are seventeen other Commoners who all have rights over the whole of CL147. (See Rights decision of Mr Squibb 22/11/1974).

Maureen Comber

Hon. Sec.

For and on behalf of Broxhead Commoners Association (BCA)

*Abstracting on attached MB1 and copy list of docs shows all title and affecting deeds etc.*

*Abstracting*

*14/7/70 orig conv 23<sup>4</sup> = DIR<sup>5</sup>..*

*6/5/65 orig Conv 17 As to pt...*

*19/11/64 Orig Conv 15 As to pt...*

*25/10/62 Orig Assent/Conv 11 As to pt*

*See Stat Dec for edged green (Doc 10)..*

*21/4/61 Copy conv 8 pt of as to pt*

*29/9/28 Orig Conv 2 pt of as to pt*

*Lease 8/3/60 7 affects. See also surrender 19/4/84 which is a memo thereon.<sup>6</sup>*

Among the ALR1s replies are the following:

*A (i) (a) Where both sides of the river is in the title, we can inc the whole width of the river in the title;*

*...*

*B I will request an up-to-date- Stat Dec*

*E. Yes. Notices are required.*

*F. I will ask for a Stat Dec. Pse provide a corres plan & file copy.*

3. On 6 December 2000 ALR1 wrote to the solicitors. His letter said:

- He identified certain parts of the land for which they had applied and said that they would be excluded from the registration as no title had been shown;
- Where land had been conveyed *"for the seller's estate, right and interest only. The Registry does not accept that a conveyance so worded is effective to pass the legal estate unless there is evidence that the seller really did have a legal estate in the land"* but
- *"where the applicant owns land on both sides of rivers and roads, the whole width of the river bed and soil of the road will be included in the registration, but, as regards road, a verbal entry along the following lines will be made: "The roads and footpaths in this title are subject to public rights of way". The alternative would have been for us to serve notice on the local highway authority in respect of long lengths of road, with consequent further delay";*
- Part of the land had been conveyed for the seller's estate, right and interest and evidence had been lodged in the form of a 1962 Statutory Declaration. He asked for an up-to-date declaration to be provided;
- Part of the land for which they had applied (identified on one of the plans to the letter) fell within the fenced extent but did not fall within any of the title deeds

<sup>4</sup>The number following the deeds refers to the numbered documents on the Form DL, a copy of which was annotated by the plans officer.

<sup>5</sup> Deed Inducing Registration

<sup>6</sup> The Conveyances referred to above were also highlighted on the annotated form DL as being the "Title Deeds".

(except the 1970 Conveyance) and no Statutory Declaration of any age had been lodged – if the solicitors wished the necessary wording could be included in the up-to-date declaration he had already asked for;

- *“As Broxhead Common, or at least part of it, forms part of your application, notice has been served on the County Council as registration authority under the Commons Registration Act 1965 in accordance with the established procedure. Once I have the Declaration/s requested above, and provided they are satisfactory, the mapping of your application can be completed fairly promptly, whereupon your application will be referred for executive examination, which may give rise to further requisitions.”*

4. It seems the solicitor at AJG became ill and the matter was taken over by a colleague. There was a long delay in providing a full response to ALR1’s letter and correspondence passed between AJG and Land Registry while the new solicitor familiarised herself with the case. In one of her letters dated 31 May 2001, she asked whether, *“with regard to Broxhead Common, please advise us as to whether you have received any communication from the Local Authority.”*

5. In his letter dated 4 June 2001, ALR1 replied to this point,

- *“The Registry has heard nothing back from the County Council about Boxhall [sic] Common, but we would not expect to. As I understand it, the procedure is a one-way notification by the Registry to the Council of the fact of the registration of the title to the land under the Land Registration Acts.”<sup>7</sup>*

6. Following further correspondence AJG provided a Statutory Declaration made by Mr MRP on 6 December 2001 who had been the Estate Manager since 1962. The Declaration deals with a number of the issues that had been raised in ALR1’s letters, but I shall refer only to those points which appear to relate to the ownership of two small parts of Broxhead Common. MRP said in the declaration:

- He referred to one of the Land Registry plans (attached to the Declaration) which showed two areas of land tinted blue both of which lay to the East of A325 and to the South East of the New Inn;
- He had been told and believed that both pieces of land were included in the application for first registration but that they did not fall within any of the title deeds which had been lodged;
- Apart from part of the land which formed part of Tollgate House, this land (the Blue Land) comprised part of Broxhead Common, which had been in the *“ownership of the Headley Estate for centuries as is evidenced by the estate records”*;
- The position had been looked into in the 1970s and had been the subject of court action because an application had been made under the Commons Registration Act 1965 to seek a declaration whether certain people had common rights over the Common (including the Blue Land);

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<sup>7</sup> I have not found any evidence in the files that Land Registry did in fact send any notification to Hampshire County Council.

# HEADLEY PARISH COUNCIL

27

CLERK: Mr. J. McGhee

No. 20, Church Fields,

Headley,

BORDON, Hampshire GU35 8PF

Tel: Headley Down 3192

HPC/3

27th September, 1977

R.A. Leyland Esq., IEB,  
County Secretary,  
Hampshire County Council,  
The Castle,  
WINDHILL, Hants.

Dear Sir,

BROXHEAD COMMON

In reply to your letter R.7/2/Broxhead/ENM/JP dated 13 September 1977.

The proposal to erect fencing on the above mentioned land was considered by my Council at their meeting held on 26 September and I am instructed to inform you as follows.

The Parish Council would not lend its support to erect fencing on this land despite the temporary benefit which might accrue. In addition, they would like to see the existing fencing removed as it is felt that it detracts from the natural outstanding beauty of the Common which can be appreciated from the public footpaths and bridleway.

Yours faithfully,



Clerk

c.c. W.J. Davies Esq., Clerk to Whitehill Parish Council  
Mrs. R.W. Taylor, Clerk to Kingsley Parish Council

Chairman: Mr N. Moody  
"Sandyfields"  
Kingsley,  
Bordon,  
Hants.  
Tel: Bordon 2553

Clerk: Mrs M. Taylor  
5 Gold Hill,  
Kingsley,  
Bordon,  
Hants.  
Tel: Bordon 2347

29th September 1977

Your Ref: R7/2/Broxhead/AM/JP

Dear Sir,

Broxhead Common

Thank you for your letter dated 13th September.  
The Parish Council has discussed the proposals put forward by  
Mr Whitfield, and I have been instructed to send you their decisions.  
The fencing in of Common Land keeps all commoners off.  
The fencing in of part of Broxhead Common is unauthorised, and my  
Council is opposed to any type of fencing that restricts commoners.  
Mr Whitfield's proposal to fence in an area of Broxhead Common is  
too vague for my Council to make any comment.

Yours faithfully, *[Signature]*

Clerk.

Mr R.A. Leyland LL.B.  
County Secretary,  
Hampshire County Council,  
The Castle,  
Winchester.

R. A. LEYLAND, LL.B.,  
County Secretary.

THE CASTLE, WINCHESTER, SO23 3UJ.  
Tel.: Winchester 4411

 29

Please quote:

R. 7/2/Broxhead/EWM/JP

Your ref.:

Telephone enquiries to:

Mr. Mason

Ext.:

227

20th October, 1977.

Dear Mrs. Taylor,

BROXHEAD COMMON

I refer to my letter of 13th September, 1977.

Mr. Whitfield's proposal, and the views of your Council were considered by the Rights of Way Sub-Committee on 13th October.

I set out below the Resolution which calls for further information and in particular proposals concerning public access.

"That as fencing could entail substantial changes in the local scene and patterns of informal recreation -

1. That on the information currently to hand the Sub-Committee see no distinct benefit to the neighbourhood as -

- (i) there are no detailed proposals to consider; and
- (ii) there is no assurance of public access which could produce a distinct benefit to the neighbourhood.

2. That the Committee would wish to consider any detailed proposals in the light of further information on environmental, agricultural and ecological implications, having particular regard to the impact on the area identified by the Nature Conservancy Council as a potential SSSI\*"

I will keep you informed about the continued progress of this matter.

Yours sincerely,

*R. A. Leyland*

County Secretary

TO: The Secretary and Solicitor of East Hampshire District Council  
The Clerks to ~~Headley Parish Council~~  
~~Whitehill Parish Council~~  
~~Kingsley Parish Council~~

Copies to: Councillor B.L.P. Blacker  
Sir James Scott  
Councillor Mrs. E.A.L. Cole

\* SSSI - Site of Special Scientific Interest

All communications should be addressed impersonally to the County Secretary

## RIGHTS OF WAY SUB-COMMITTEE

12TH JANUARY 1978

## HAZELEY HEATH AND BROXHEAD COMMON - PROPOSED FENCING

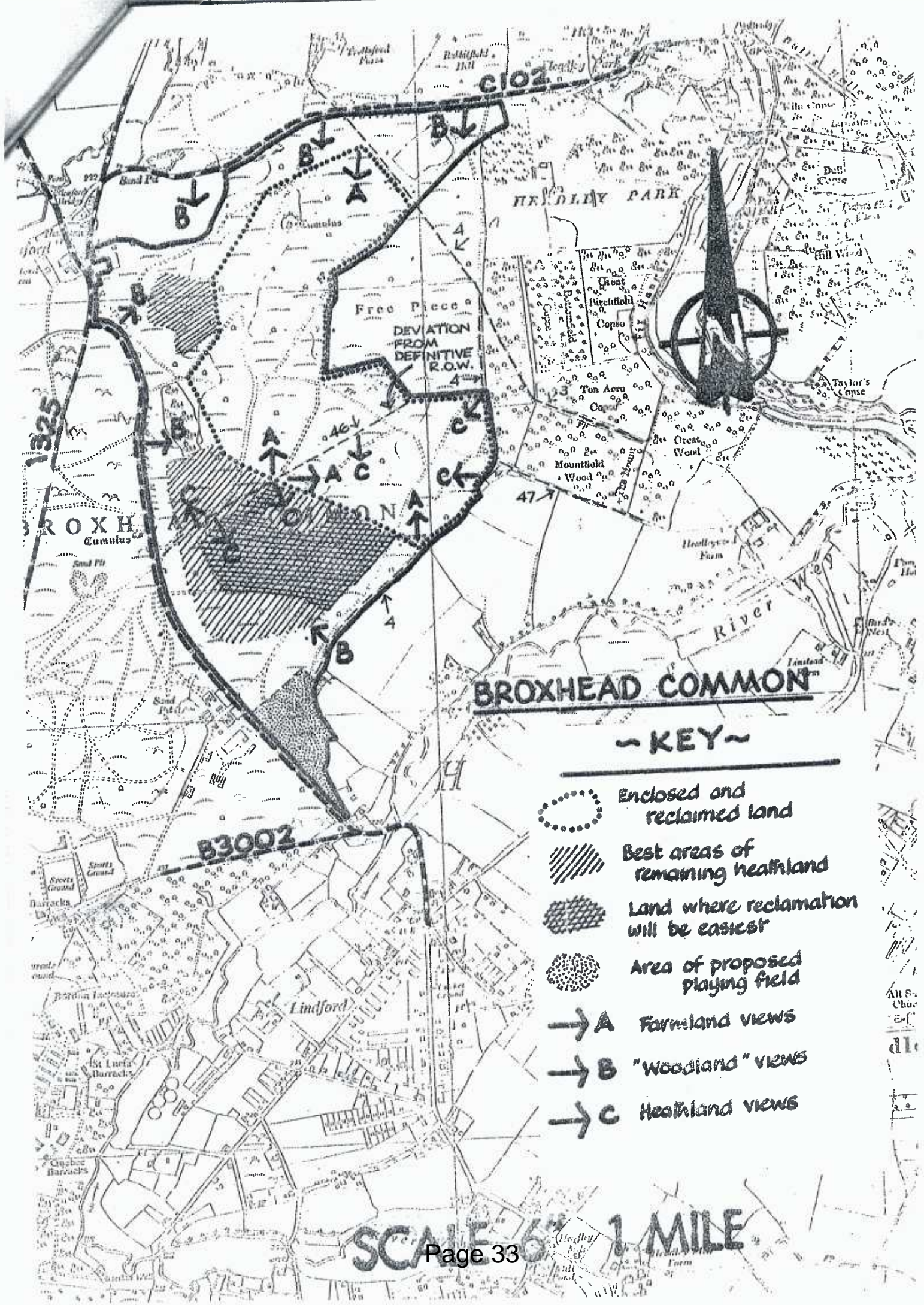
Report of the County Recreation Officer

At the last meeting of the Sub-Committee I was asked to investigate the environmental and scientific implications of fencing in parts of the above commons.

The enclosed reports by Jim White, the Conservation Officer in my Department, indicate that in both cases the natural history interests of these commons would be considerably damaged. He points out that although both Broxhead Common and Hazeley Heath are pleasant enough places for walking and to some extent are already used as unofficial open spaces, the scientific interest they contain is unusually high, being fine examples of lowland heath which in national terms is becoming extremely rare. Although the owners will naturally want to make the best and most profitable use of their land, any reclamation for agricultural purposes would be extremely damaging to this scientific interest.








Therefore it is recommended that the Committee should authorise the officers to discuss with the owners how the scientific and landscape values of these areas can be safeguarded and enhanced, whilst permitting the appropriate degree of public access. One possibility could be through Management Agreements similar to the one which has operated satisfactorily for some years at Tidpit Common near Martin. Alternatively the possibility of purchasing both freeholds could be explored. In any event there seems to be no evidence to show that fencing of either common would be in the public interest.





**BROXHEAD COMMON**

**~ KEY ~**

-  Enclosed and reclaimed land
-  Best areas of remaining heathland
-  Land where reclamation will be easiest
-  Area of proposed playing field
-  A Farmland views
-  B "Woodland" views
-  C Heathland views

SCALE 6" = 1 MILE

W. Bradly Trimmer & Son,

Solicitors.

AND  
COMMISSIONERS FOR OATHS

J. BRADLY TRIMMER, B.A. (CANTAB)

M. A. GOWAN.

B. A. MAUNDER.

D. M. WHELAN, B.A. (CANTAB)

ASSISTANT SOLICITOR

D. P. EGGAR.

R. J. LOOSELY.

61, High Street,

Alton, Hants.

GU34 1AB

TELEPHONE No. ALTON 82028 (3 LINES) AND 82679  
(STD 0420)

AND AT: 12, CHEQUERS ROAD, BASINGSTOKE, HANTS.  
TELEPHONE No. BASINGSTOKE 22322 AND 22517  
(STD 0256)

OUR REF: RJL/DD

PLEASE ASK FOR

MR. Loosley

3rd December, 1974.

YOUR REF:

Dear Sir/Madam,

Re: Broxhead Common.

We have now received the final decision from the Commons Commissioner and your rights over the part of the common lying to the west of the Sleaford/Lindford road (i.e. the part owned by the Ministry of Defence) have been registered in accordance with the agreement as set out below.

As you will know Mr. Connell has a grazing right over the whole of the common and Mrs. Cooke has a grazing right over the whole of the land belonging to Mr. Whitfield. This means that effectively the whole of the common has been established as a common in law.

We are also pleased to say that the Commons Commissioner has not made any order for costs and whilst, therefore, the Broxhead Commoners Association will have to pay its own costs, there is no danger of any of the applicants having to pay Mr. Whitfield's costs, although this is, of course, a matter which could be upset if Mr. Whitfield decided to appeal against the decision.

Yours faithfully,

RIGHT REGISTERED FOR YOU OVER THE  
MINISTRY OF DEFENCE PART OF THE COMMON.

1. To graze 1 horse
2. To dig and take sand.
3. Turbary.
4. Estover.

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

No.

GROUP B

22nd July 1975



IN THE MATTER of Broxhead Common, Whitehill, Hampshire  
(Register Unit CL. 147)

AND IN THE MATTER of The Commons Registration Act 1965

TAKE NOTICE that the High Court of Justice, Chancery Division at the Royal Courts of Justice, Strand, London, WC2A 2LL will be moved at the expiration of 7 days from the service upon you of this Notice or so soon thereafter as Counsel can be heard, by Counsel on behalf of the Appellant ANTHONY GARY PETER WHITFIELD :

(i) for a decision as to the questions of law set out in the case stated by the Chief Commons Commissioner in the above matter and in particular for a decision that the Chief Commons Commissioner erred in law in confirming the registration of rights of common so far as they effected the land owned by the said Mr. Whitfield lying to the east of the Sleaford/Lindford road;

(ii) an order that the register of common land be amended accordingly by deleting the said land and by amending the rights of common as registered to exclude any reference to the said land;

(iii) such order as to payment of the costs of and incidental to this appeal as the Court may think just;

(iv) further or other relief

AND FURTHER TAKE NOTICE that the grounds of this appeal are that the decision of the Chief Commons Commissioner in so far as it affected the Appellant's said land was erroneous in law:

P A R T I C U L A R S

1. The decision of the Chief Commons Commissioner in relation to Claim No. 1 was unreasonable and not supported by

the evidence in that:-

- (1) There was no evidence upon which the Commissioner could reasonably have concluded (at page 6 of his said decision) that rights of common over all or any specific part of the registered unit attached either to all the tenements mentioned in the survey of 1636 or to any specific tenement there mentioned
- (2) There was no evidence that there were after 1637 any rights of pasturage, rights in the soil or any other rights appurtenant to or enjoyed with any tenement over the land now comprised in the registered unit
- (3) There was no evidence upon which the Chief Commissioner could reasonably have identified the holding the subject of Claim No. 1 with any of the land or tenements mentioned in the survey of 1636 or on which he could reasonably have concluded (on page 7 of his decision) that such holding was part of the manor of Broxhead at that time or any other time
- (4) There was no evidence that any rights over the registered unit or any part of it were ever granted or enjoyed under the leases relating to the said holding referred to on page 7 of the decision and in particular there was no evidence that the relevant lessors had at any material time any interest in the part of the registered unit east of the Sleaford-Lindford road ("the Eastern part") which would have entitled them to grant any such right over it
- (5) The Chief Commissioner erred in law in holding that any rights over the Eastern part passed with a conveyance of the said holding dated 30th November 1929 (referred to on page 7 of his decision) in view of the absence of any evidence:-

- (a) that the grantor under the said conveyance had any interest in the Eastern part at the date of the said conveyance; and

(b) that any right over the Eastern part was ever created or reserved by or for the benefit of the said grantor or his predecessors in title

(6) The Chief Commissioner erred in law in holding that any rights could pass under a lease in the absence of express words relating thereto

2. The decision of the Chief Commissioner in relation to Claim No. 12 was unreasonable and not supported by the evidence in that:-

(1) There was no evidence upon which the Chief Commissioner could reasonably have concluded (on page 11 of the decision) that any rights or quasi-rights were enjoyed with the holding the subject of the said claim at the date of the conveyance to Mr. Sotnick on 5th January 1948

(2) In particular:-

(a) the evidence of Mr. White referred to on page 11 of the decision related to the grazing of cattle on areas of land not within the registered unit;

(b) there was no evidence that cattle (from the said holding) were grazed on any part of the registered unit at any time between 1912 and the date of such conveyance

(3) Further and in any event the Chief Commissioner erred in law in holding that any such rights over the Eastern part could pass by virtue of the said conveyance in view of the fact that the said holding was in the ownership and possession of the owner of the Eastern part at the date of such conveyance

(4) If, which is not admitted any cattle from the said holding were grazed on any part of the common at or before the time of such conveyance, the nature and extent of such use was not sufficiently clear or precise to pass as a right of common by virtue of section 62 of the Law of Property Act 1925

(5) Further and in any event any such alleged right of common would have been extinguished on the conveyance to Mr. Sotnick of part of the alleged common

3. In relation to both the said Claims No. 1 and 12 the Chief Commissioner erred in law on page 15 of the decision by adopting for the purposes of registration the measure of levancy and couchancy without any evidence that the rights allegedly enjoyed were by grant or usage so limited

4. In the premises the Appellant's said land is not subject to rights of common and is wrongly included in the register of common land

DATED the 22nd day of July 1975

Stones Porter & Co

Solicitors for the above named Appellant A.G.P. Whitfield whose address for service is 26/27 Farringdon Street, London, EC4A 4AQ

- TO the (1) Chief Commons Commissioner of Watergate House, 15 York Buildings, Adelphi, London, WC2N 6LB
- and (2) The Hampshire County Council of The Castle, Winchester, SO23 8UJ
- and (3) The Ministry of Defence whose address for service is that of the Treasury Solicitor of Matthew Parker Street, London, SW1
- and (4) David Innes Hadfield of Mellow Farm, Dockenfield, Farnham, Surrey
- and (5) Amey Gravel Limited of Lower Wootton, Boar's Hill, Oxford
- and (6) A.G. Jeffree (Male) of The Bungalow, Trottsford Farm, Headley, Hants
- and (7) Ernest Alexander Connell of Lindford Bridge House, Lindford, Hants
- and (8) Gladys Barbara Wallesley Nicholson (Married woman) of Amberwood, Headley Fields, Headley, Hants
- and (9) Laura Emily Bicknell (Married woman) of Hazel Cottage, Chase Road, Lindford Bordon, Hants
- and (10) Fiona Rosemary Diana Cooke (Married woman) of Trottsford Farm, Headley, Hants

- and (11) Kingsley Strawberries Limited of Headley Mill Farm, Bordon, Hants
- and (12) Leonard Hope Atkins of Chase Farm, Lindford, Bordon, Hants
- and (13) Patricia Margaret Elphinstone Barnard (Widow) of Picketts Hill Farm, Headley, Hants
- and (14) Mr. and Mrs. Grinsley of Apple Tree Cottage, Headley, Hants
- and (15) John Harry Ellis and Peter George Ellis both of Headley Mill, Bordon, Hants
- and (16) J. Ellis & Sons (Bordon) Limited of Headley Mill Bordon, Hants
- and (17) Joan Hunter Jackson (Married woman) of Lynton Dene, Headley, Hants
- and (18) Kristiana Maria Blackwell (Married woman) of Lindford Farm, Lindford, Bordon, Hants
- and (19) D.J.D. Youles (Married woman) of Watermeadow Farm, Lindford, Bordon, Hants
- and (20) M. Heather (Spinster) of Blacksmith's Shop, Chase Road, Lindford, Bordon, Hants
- and (21) John Conway of Five Acres, Chase Road, Lindford, Bordon, Hants
- and (22) Commodore J.S. Rawlins of Wey House, Standford Lane, Lindford, Bordon, Hants
- and (23) William H. Kerridge of Hatch House Farm, Lindford, Bordon, Hants



The Office of the Commons Commissioners  
Watergate House, 15 York Buildings  
Adelphi, London  
WC2N 6LB  
Telephone 01-839 7198 ext

208

39

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The Clerk  
Whitehill PC  
Council Offices  
Millchare Road  
Bordon

Our Reference  
14/D/20-23

Date  
- 4 MAY 1979

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Dear Sir

Commons Registration Act 1965

In accordance with Regulation 32 of the Commons Commissioners Regulations 1971, I enclose for your information a copy of a Notice to the registration authority.

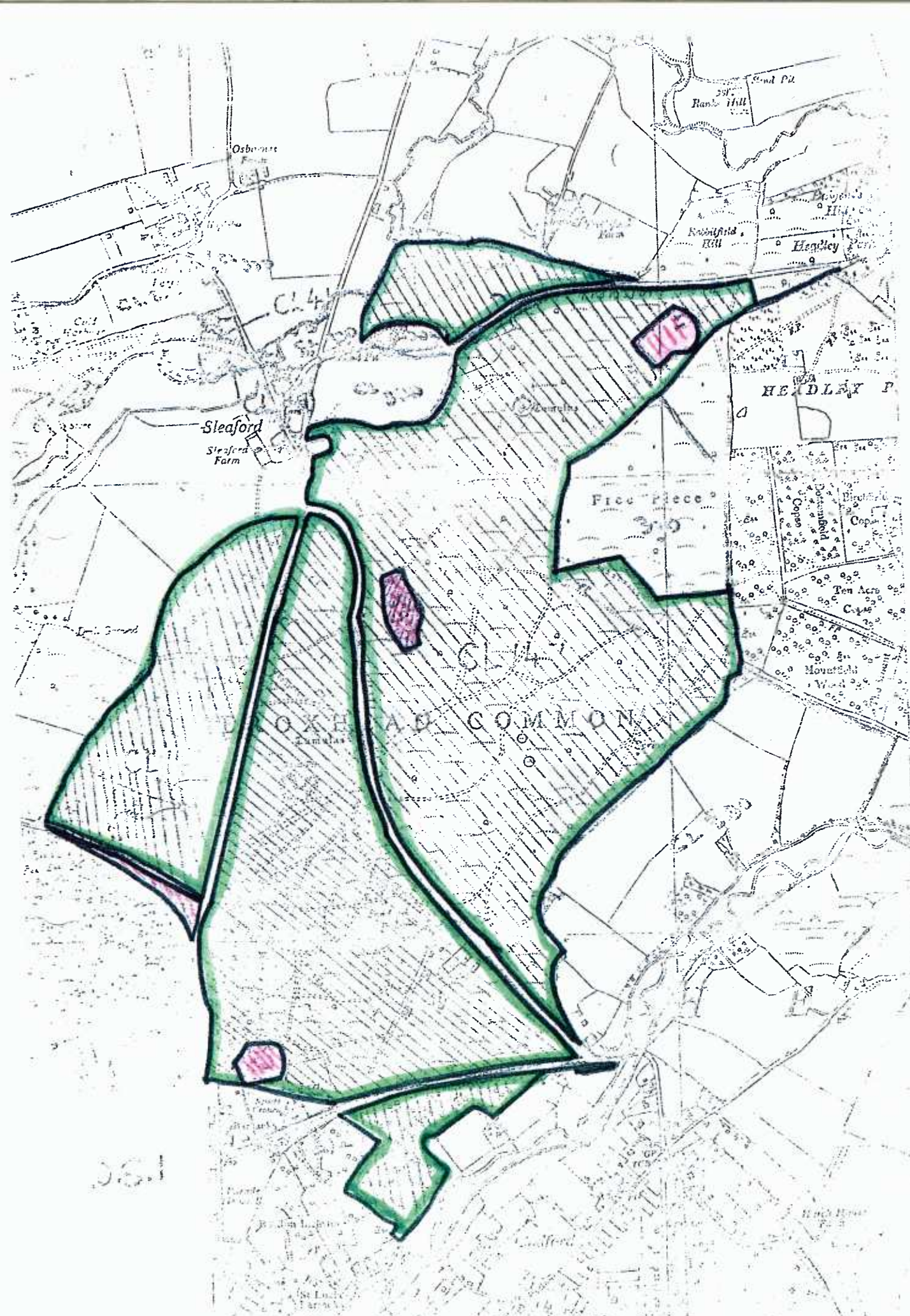
Yours faithfully,

L. FORRESTER  
S. P. TAYLOR

Clerk of the Commons Commissioners







This is a copy  
of the document  
held @ Whithill Town Council



RACHELLE D. CRICKARD

# Hampshire



R. A. LEYLAND, LL.B., Solicitor,  
County Secretary.

THE CASTLE, WINCHESTER, SO23 8UJ.  
Tel.: Winchester 4411.

Please quote:

Your ref.:

Telephone enquiries to

Ext.:

CR/CL147/PD

Mrs. Davidson

229.

1st. November, 1979.

Dear Madam,

Commons Registration Act, 1965

Broxhead Common

Register Unit No. CL 147

With reference to the Common Rights registration submitted by you on the 14th. June, 1968 on Form CR 9, these Common Rights have been provisional, but I have to inform you that they are now final following the decision of the Commons Commissioner.

A copy of the entry as it now appears on my register is attached.

Also enclosed is a copy of the Land Entry which has now been amended, showing verged in green the area of land over which Common rights may be exercised.

Yours faithfully,

*R. A. Leyland.*

County Secretary

Mrs. G.B.W. Nicholson,  
"Amberwood",  
Headley Fields,  
Headley,  
BORDON,  
HANTS.



44. BOUNDARY CONTROL  
The Committee considered a specimen of the material under the control of the Committee.

**RESOLVED:**

- (a) That approval in principle be given to the production of 1,000 copies;
- (b) That the booklet be sold to the public at a price of 2s. 6d. per copy.

**45. BROXHEAD COMMON**

The Clerk reported upon complaints received in connection with the alleged intention of the owner to enclose part of Broxhead Common.

**RESOLVED:** That the Clerk be authorised, in consultation with the Chairman, to take such steps as may be necessary to protect Broxhead Common against unlawful encroachments, including the institution of proceedings under Section 194 of the Law of Property Act, 1925, to secure the removal of any unlawful building, fence or other work.

*A. S. Rumpford*

Chairman,  
8th December, 1964.

07/07/2014 10:17

7<sup>th</sup> July 2017

**Notes on the registration of Broxhead taken from an Opinion of George Laurence QC Lincolns Inn 2015**

Hampshire County Council rightly, provisionally registered all 400 acres of the common CL147 in 1968 under the CRA 1965.

The Chief Commons Commissioner, GDS Squibb decided that all of this should be registered as common land.

Mr Whitfield objected which triggered a 12 day hearing before the Commissioner in London. The outcome was that five small areas outlined in red were excluded - see Land Decision 22nd November 1974. This was his final Determination.

He could not alter anything save the dates to that decision after that.

Mr Whitfield objected again appealing to the High Court in 1975. Brightman J. Agreed with the CCC that there was no reason to doubt the CCC's decision. See pages 6 & 7 of his judgement in 1977, thus confirming the Rights of the other seventeen commoners.

Mr Whitfield appealed to the Court of Appeal 24th May 1978.

The Case was dismissed and the CCC's decision once again affirmed.

4. You will see from the CA's consent order dated 24/5/78 that, by it, Mr Whitfield's appeal was expressed to be dismissed *"upon the said terms [those being] the terms for the settlement of the said Appeal set forth in the Schedule hereto"*. Those terms in paragraph 3 of the Schedule, envisage Mr Whitfield making application to the Secretary of State (with the consent and support of HCC) for his consent under section 194 LPA 1925 to the fences surrounding the 80 acres. The reason why such consent was required is that the fences had been erected in 1963 (by Mr Whitfield's predecessor Siegfried Sefton Myers) without consent. They had the effect of preventing access

to the 80 acres. Sec.194 originally applied to the 80 acres (pursuant to section194(3) because of the 1/1/26 (the See Report dated 12/01/1978 of the County Recreation Officer which "[encloses] reports by Jim White, the Conservation Officer in my Department," Also County Recreation Officer's Report of 12/01/1978 and of [pp 1,3,and 5] one Mr Whites reports dated 17.11.1977. (For that date, see p 5). On page 1 of Mr White's Report, under the heading "Background" the following appears: *"Some 80 acres of Broxhead Common wee enclosed with fences and reclaimed for agriculture in 1963/4 by a previous owner. That fencing was and is still unauthorised."* Mr Connell in 1958 acquired the property (Lindford Bridge House) for the benefit of hich the existing rights of pasture and soil over Mr Whitfield's land subsisted. See Mr Squibb's judgement of 22/11/1974 at pp7,8 of the transcript and Brightman J's judgement at pp (G-H) and 6 (A-C). See also Land judgement of the same date.

date of the commencement of LPA 1925), the 80 acres were subject to rights of common. That was the consequence of Brightman J's decision upholding that of Mr Squibb's dated 22/11/1974. The fences were therefore unlawful because they had the effect of preventing or impeding access to the 80 acres within the meaning of section 194(1).

5. The compromise of the appeal did not, however, change things. It is true that Mr Connell was due to release all his rights over the 80 acres on or after 24/5/78 (see again paragraph 3 of the schedule). I am assuming that he duly did so. However such extinction did not occur "*under any statutory provision*" within the meaning of proviso (a) to section 194(3), neither was proviso (b) to subsection (3) ever subsequently invoked so as to cause section 194 to cease to apply to the land. As a result, and despite the fact that the 80 acres may have ceased to be subject to rights of common and if and when Mr Connell released his rights over them, section 194 continued to apply to the Land and the fences continued to be unlawful.

6. The parties to the appeal of Brightman J. obviously recognised that section 194 would not cease to apply even after Mr Connell released his rights, which is why they made provision, as mentioned above, for Mr Whitfield to make an application (sc under subsection (1) to the Secretary of State for his consent to the erection of the fences surrounding the 80 acres. However, no such consent has ever been sought. Even though HCC agreed to support any application for such consent (see paragraph 3 of the Schedule to the consent order), HCC never agreed that it would remain inactive in relation to the fences if Mr Whitfield failed to seek, or was refused the consent of the Secretary of State. If HCC had formally considered the matter at any time after 24/5/78 and *correctly* directed itself on it, we feel sure that it would have insisted on Mr Whitfield seeking the Secretary of States consent to the fences and (if he refused to seek, or failed to get such consent) HCC would have sought an order of the County Court for removal of the fences under section 194(2). It would not and could not properly, simply have left the matter in limbo, without contradicting the basis upon which it had been prepared to compromise the matter before the CA

7. We respectively suggest that the matter so far may be summarised as follows:

- i. Rights of common (Mr Connell's) had been found by Brightman J in 1977 to exist over Mr Whitfield's land (including the 80 acres)

- ii. Those self same rights existed on 1/01/1926;



- iii. Their release made no difference to the continuing application of section 194 as demonstrated above;
- iv. HCC had itself initiated the registration of Broxhead Common in 1968;
- v. HCC must have recognised that there was a public interest in any land to which sec.194 applied remaining open and unenclosed;
- vi. HCC must have realised that Mr Whitfield's application to the Secretary of State would not be a foregone conclusion even with HCC's support; and
- vii. HCC would, we submit, never have reached the terms of settlement it did in May 1978 as a colourable device to enable Mr Whitfield to keep his fences *without* making the necessary application to the Secretary of State.

8. Had Mr Whitfield made such application, the detailed and exacting procedures prescribed by section 194(1) would have had to be gone through, the interested public would have been able to express their views (very probably at a public inquiry) and proper and detailed consideration could and would then have been given by the Secretary of State to the question whether the fences should remain. If he gave his consent, well and good. But if he refused his consent, HCC would undoubtedly have sought and would undoubtedly have obtained an order from the County Court that the fences be removed.

9. We know that HCC did consider the matter on 22<sup>nd</sup> June 1978 – a month after the CA consent order. See the Report of the County Secretary of that date, Paragraph 9 of that Report reads where material as follows:

*The effect of the settlement is as follows:*

- a) *The registration by the County Council and the Commoner is confirmed with the exception of the already ploughed and fenced 80 acres; the Commoner has released his rights over the 80 acres thereby extinguishing them. The County Council and the Commoner will support an Application by the Owner to the Secretary of State to authorise the existing fences."*

That makes it clear that HCC (correctly, as I would submit) interpreted the CA's consent order as effectively requiring Mr Whitfield to apply to the Secretary of State for his consent. And it is plain that the issue actually before the Land Sub-Committee at its meeting on 22/6/1978 (whether to authorise the lease of the

unenclosed part of Mr Whitfield's land) was being presented as part of what HCC saw as a package reflecting the compromise reached before the CA.

10. An important element of that package, as stated in paragraph 9(a) of the Report of 22/6/1978, was that Mr Whitfield would seek to obtain the Secretary of State's consent to the retention of his fences around the 80 acres. Moreover, the County Secretary recognised in paragraph 10 of the Report that such consent would not be a foregone conclusion:

- b) *The owner may use his enclosed area with the prospect that the overall package now agreed should enable him to obtain the Secretary of State's consent to authorise the fencing with support from the County Council, because he has had due regard to the "benefit of the neighbourhood", the statutory test which he must satisfy. (Emphasis supplied).*

In fact, the Report understates the difficulty of getting consent. It is the Secretary of State, not the landowner, who must have regard to the benefit of the neighbourhood.

11. The Committee was being implicitly advised that the prospect of getting consent was good for the reasons given; but also implicitly being reassured that the fencing would have to satisfy a statutory test of "benefit to the neighbourhood" (that being a criterion to which the Minister had to have regard, in deciding whether to authorise a fence. See section 194(1) and the preamble to the Commons Act 1876 therein referred to). In the event, although the *lease* contemplated by the consent order was entered into on 5/03/1980, the Secretary of State's consent never was sought.

12. That it had never been obtained was evidently questioned, nearly 10 years later, by a Mrs Potter. She had been discussing the matter with Mr E. W. Mason, Assistant County Secretary dated 7/2/1989. The penultimate paragraph of that letter reads as follows:

- c) *"You will see from paragraph 3 of the Schedule to the Court Order that the County Council would support any application by Mr Whitfield regarding the fences around the 80 acres, for the purposes of Section 194 Law of Property Act 1925. It seems probable that Mr Whitfield did not apply to the Secretary of State, because the fences enclose land which is not common land. (Emphasis supplied).*

13. In giving the reason he did as to why Mr Whitfield had never sought consent, Mr Mason was plainly mistaken. As we have demonstrated above, section 194 continued to apply notwithstanding that Mr Connell had (as we are assuming) released his rights of common over the 80 acres. Subject to what follows below.

- i. We respectfully submit that HCC should *now* remind Mr Whitfield that the fences surrounding the 80 acres are unlawful and give him the opportunity to apply to the Secretary of State for consent. If, on receipt of that reminder, Mr Whitfield fails to respond or declines to apply for consent,
- ii. we request that HCC should apply to the County Court to secure the removal of the fences. As we contend above, that is action which we have no doubt, HCC could, should and would have taken long ago if it had realised that the fences were unlawful and Mr Whitfield had refused to apply for, or been refused, the Secretary of States consent. The fact that in the person of Mr Mason (and perhaps others) it had taken the view that Mr Whitfield did not *need* consent is irrelevant. Now that the mistake has been pointed out, the appropriate action should *now*, if necessary be taken.

14. If Mr Whitfield fails to seek, or is refused, the consent of the Secretary of State and HCC seeks relief in the County Court, we submit that the County Court is highly likely to take the view that the fences should be removed. The delay will not have prejudiced Mr Whitfield, for he will have had more than 50 years of enjoyment of the 80 acres with the benefit (to him) of a fence which ought never to have been there. It is true that Mr Whitfield may say that he has lost the opportunity to seek the Secretary of State's consent owing to the repeal of section 194 by the Commons Act 2006. (As to that see further below) paragraphs ) If he *has* lost that right, it is his own fault: his advisers in 1978 will have told him that he needed consent (which is why the closing words of paragraph 3 of the Schedule to the consent order make specific reference to section 194.) Despite that, he never sought consent. \* In any event he will have the opportunity in the County Court proceedings, to submit to the judge that, if he had earlier sought consent, he would have been more likely than not to get it. If he can persuade the judge of that, as he would be entitled to try to do, that might or might not make a difference to the judge's decision. But it would certainly not be a reason why HCC should refuse to seek relief from the County Court in the first place.

15. In his report of 22/06/1978 the County Secretary put forward some reasons in defence of the 1978 compromise. But it is clear from the Report that HCC (quite correctly) was prepared to support the compromise precisely because the Secretary of State – and *not* HCC – would be the ultimate arbiter of whether the fences should be allowed to remain or not. For his own reasons (probably because he feared consent might be refused and because he calculated that, if he failed to seek consent, he would be allowed to get away with not doing so) Mr Whitfield chose not to seek such consent. Whatever the reasons, I respectfully submit it would be quite wrong for HCC to set itself up as the arbiter, in place of the Secretary of State, of whether the fences should be allowed to remain by continuing, now that its previous mistake has been brought to its attention, to do nothing.. By doing nothing, HCC would itself effectively grant consent to the erection of the fences without the matter being tested as the Secretary of State would have to do on an application to him under section 194(1) or as the County Court would have to do on an application to it under 194(2). Subject to what follows, we therefore repeat our invitation to HCC to invoke the two stage procedure (outlined in paragraph 13 above) of (i) inviting Mr Whitfield to apply for consent and, if he refuses to apply or is refused consent, (ii) taking enforcement action under section 194(2).

16. Strictly speaking HCC is not concerned with stage one at all. It is for Mr Whitfield as owner to decide whether he is prepared to apply for consent or not. However it is for HCC to decide whether to act under section 194(2) by applying to the County Court. And in the context of the 1978 compromise it would obviously make sense for HCC to invite and encourage Mr Whitfield to seek to regularise the position (as he should have done in 1978) before taking action itself.

We have no doubt that Mr Whitfield will be prepared to seek the necessary consent, whereupon the matter will be dealt with by the Secretary of State in accordance with **[the latest version of the “Statement of considerations” referred to in footnote above]**. The Secretary of State there advised that he would need to be satisfied that it was expedient to grant consent having regard to (i) the “benefit of the neighbourhood” meaning

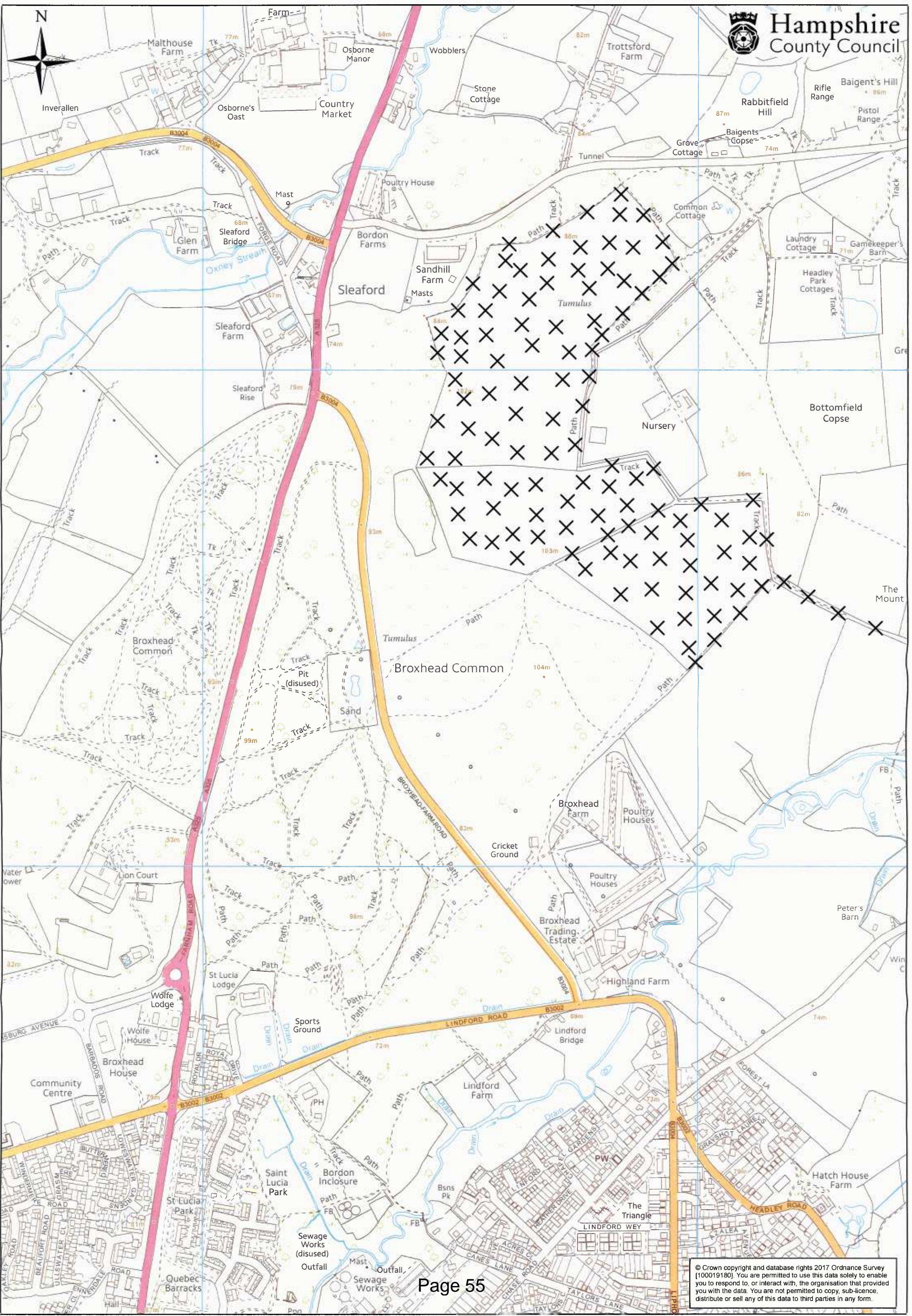
*“ the health comfort and convenience of the [relevant] inhabitants in the general context of the enjoyment of the [Land] as an open space”.*

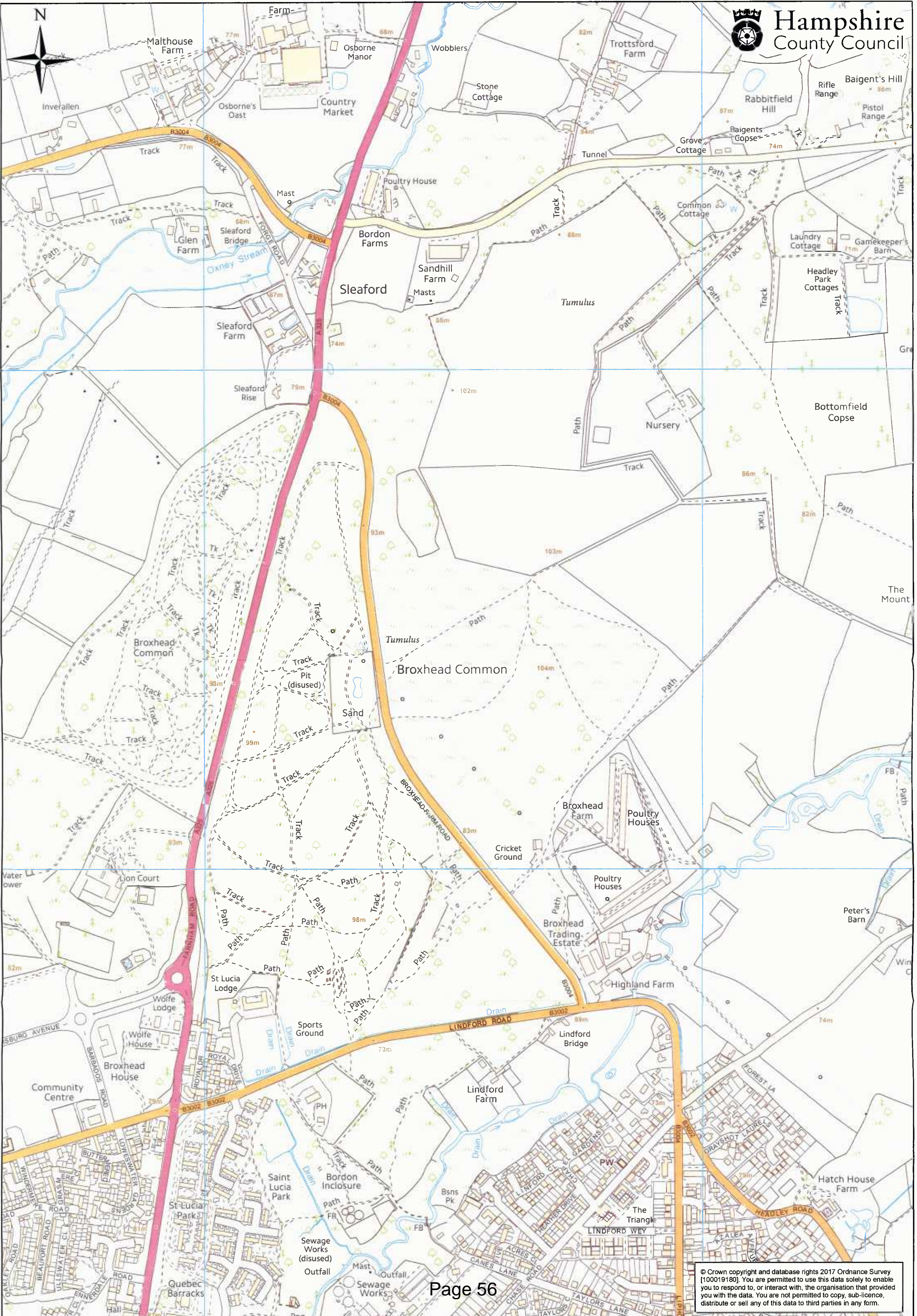
This would be balanced against (ii) the private interests (in this case) of Mr Whitfield,

We strongly doubt whether Mr Whitfield could any longer insist on HCC supporting and consenting to any such application pursuant to paragraph 3 in the Schedule to the consent order, he having effectively repudiated his implied obligation to seek such consent within a reasonable time by his failure to do so at the time. HCC will have to make up its own mind about that. If HCC takes the view that, however late in the day, Mr Whitfield is still entitled to have HCC support his application, so be it. We and others will have the opportunity to object and have their views about the weight to be attached to HCC's support taken into account. We believe that the rationale for HCC's view as expressed in paragraph 10 of its June 1978 report (that Mr Whitfield had had regard to the benefit of the neighbourhood in seeking to keep 80 acres enclosed) is very unimpressive and would readily be exposed as being so.

19. We do not need to go into further detail now on the implication if Mr Whitfield seeks and is refused consent or refuses to seek it. We should however make it clear we do not suggest HCC would have an *obligation* to take enforcement action in that event. It would still be a discretionary matter. But we respectfully suggest that the public interest would be badly let down if HCC did nothing in that event. HCC no doubt believed that it had properly served the public interest in 1978 when it reached the compromise it did. See the June 1978 report. But it is clear from that report and from the terms of compromise set forth in the Schedule to the consent order that HCC recognised, properly, that the unlawful fence surrounding the 80 acres must be legitimised. Mr Whitfield knew that he had to get such consent. Brightman J had upheld Mr Connell's common rights and the CA by consent dismissed Mr Whitfield's appeal. Mr Connell's rights were accordingly upheld. It is true that he agreed to release his rights (which had existed since well before 1926) but knew that in so doing section 194's protection would remain. The fence around the 80 acres would remain unlawful unless and until consent to its retention was granted. Mr Connell and anybody else concerned for the benefit of the neighbourhood would be free to oppose the grant of such consent. If the grant of consent was successfully opposed, it was implicit in the compromise reached that Mr Connell's co-Respondent, HCC who had registered the land as common in the first place, would seek the removal of the fence.









PLANNING REGISTRATION ACT 1985

BROXHEAD  
COMMON  
(C. 147)

Plan C  
10/01/12  
Sheet 58



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## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	25 July 2018
<b>Title:</b>	Variation of conditions 5, 11 and 18 of planning permission 51471/003 to allow for importation of road planings and the night-time importation and exportation of waste at Unit 7 Waterbrook Estate, Waterbrook Road, ALTON GU34 2UD (Application No. 51471/006) (Site Ref: EH156 )
<b>Report From:</b>	Head of Strategic Planning

**Contact name:** Philip Millard

**Tel:** 01962 846496

**Email:** philip.millard@hants.gov.uk

#### 1. Recommendation

- 1.1. It is recommended that planning permission be granted, subject to the completion of a Section 106 [S106] agreement for the control of routing of out of hours heavy good vehicle [HGV] movements to and from the site and the conditions listed in integral Appendix B.

#### 2. Executive Summary

- 2.1 The proposal is for variations to conditions 5 (Operating times), 11 (Dust and noise management) and 18 (Materials permitted) of Planning Permission [51471/003](#) to allow for the importation of road planings, and the night-time importation and exportation of waste at the existing Waste Recycling Centre at Unit 7 Waterbrook Estate, Waterbrook Road, Alton GU34 2UD. It comprises the following:
- Variation of Condition 5 (Operating times) to allow for 12 HGV movements to and from the site, of the existing 612 limit stated by Condition 20 (HGV movements), to occur outside the existing operating hours of the site, and therefore, allow for limited night time operations to occur at the site;
  - Variation of Condition 11 (Dust and noise management plan) to allow for the approval of a revised Dust and Noise Management Plan for the site; and
  - Variation of Condition 18 (Materials permitted) to allow for the addition of road planings to the list of waste types accepted at the site.

- 2.2 The proposed development includes:
- 10 HGV movements to and from the site outside of the approved operating hours to enable the importation and tipping of road planings;
  - 2 HGV movements to and from the site outside of the approved operating hours to enable the drop off and collection of a preloaded trailer; and
  - Limited on site operations associated with the above HGV movements to include no additional lighting and limited to that defined in the application.
- 1.1. A committee site visit took place on 16 July 2018.
- 1.2. The application is being considered by the Regulatory Committee as the local member consulted on the application has requested for the application to be determined at Regulatory Committee.
- 1.3. Key issues raised are:
- The amenity impacts of noise and light pollution from limited 24 hour site operations;
  - The amenity impacts of noise pollution from limited 24 hour HGV movements to and from the site on the local highway;
  - Dust and noise management at the site;
  - The importation and storage of road planings at the site; and
  - Provision of waste transfer and storage for highways works, located on the Strategic Road Network.
- 1.1. The proposed development is not an Environmental Impact Assessment development under the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#) and an environmental statement has not been submitted.
- 1.2. It is considered that the proposal would be in accordance with the relevant policies of the adopted [Hampshire Minerals and Waste Plan](#) (2013) [HMWP], in that it provides a suitable location to support highways works in Hampshire through the transfer of road planings to an existing Waste transfer facility located on the Strategic Road Network in a central Hampshire location. It is considered that the proposal's benefits in providing this facility for road planings outweighs the impacts to neighbourhood amenity and the environment within the site's context on an existing industrial estate adjacent to a residential area of Alton along the Strategic Road Network.
- 1.3. It is considered that the proposed development for 12 HGV movements per night, when considered with the proposed mitigation, subject to conditions and legal agreement, has been demonstrated to not cause a significant adverse impact on public amenity, noise or light pollution, or to highway safety or amenity.

1.4. Recommendation for Planning Application 51471/006 hereby considered:

That subject to all parties entering into a Section 106 Agreement with the County Council by 25 October 2018 to secure the routing of out of hours Heavy Good Vehicle [HGV] movements to and from the site the Director of Economy, Transport and Environment be authorised to GRANT permission subject to the conditions listed in integral appendix B. In the event that a satisfactory Section 106 Agreement is not entered into by all parties by 25 October 2018 then planning permission may be refused under the adopted scheme of delegation.

### 3. The Site

- 1.1. Unit 7 is a 2.2 hectare site within the Waterbrook Industrial Estate, within the settlement boundary on the Eastern Edge of Alton, Hampshire. The site is formed of land which was previously part of the adjacent Alton Sewage Treatment Works. The site is currently used as a Waste Transfer Station [WTS]. The site is a safeguarded aggregates recycling site through in the [Hampshire Minerals and Waste Plan](#) [HMWP] 2013. The area is allocated as existing employment land (CP4-Existing employment land) in the [East Hampshire Local Plan Part 1 \(Joint Core Strategy\) \(2014\)](#).
- 1.2. The site is surrounded by industrial and commercial land uses with the remaining operational waste water treatment works to the north-east boundary of the site. Mill Lane Industrial Estate is 100 metres [m] to the north-west, Alton Household Waste Recycling Centre [HWRC] is 40 metres to the west, and Alton Business Centre and Omni Business Centre are 150 and 90 metres respectively to the south-west of the site. Kendall Bros, Waterbrook concrete batching site is located on the northern boundary of the site. The site is secured by way of metal palisade fencing along the boundary and gates. Both the Alton HWRC and the Kendall Bros Waterbrook concrete batching site are both safeguarded in HMWP (2013).
- 1.3. The site is surrounded by industrial and commercial land uses with the remaining operational waste water treatment works to the north-east boundary of the site. Mill Lane Industrial Estate is 100 metres [m] to the north-west, Alton Household Waste Recycling Centre [HWRC] is 40 metres to the west, and Alton Business Centre and Omni Business Centre are 150 and 90 metres respectively to the south-west of the site. Kendall Bros, Waterbrook concrete batching site is located on the northern boundary of the site. The site is secured by way of metal palisade fencing along the boundary and gates. Both the Alton HWRC and the Kendall Bros Waterbrook concrete batching site are both safeguarded in HMWP (2013).
- 1.4. The site is located within the Townscape Character area of Alton in the [Hampshire Integrated Character Assessment](#). It sits in Area of ALT03 Industrial Estate and Business Park. This is a large, fragmented industrial area and retail park to the south-eastern edge of the town, following the line of the valley and the railway. There is small-, medium- and large-footprint

buildings set on a series of small skewed grids. Buildings are functional, generally offering large blank facades to roads. There is a mix of low-key manufacturing and storage facilities and retail and food store. Buildings set in large expanses of hardstanding, much of it used for parking of cars, vans or heavy goods vehicles [HGVs].

- 1.5. The nearest residential property from the application boundary is 262 metres (Lynch Hill Cottage) on Waterbrook Road, set back from Waterbrook Industrial Estate. There is also a large cluster of housing 500 metres to the south west located south of Ashdell Road and West of Wilsom Road. There are a few elevated detached properties 230 metres to the west of the site, off Wilsom Road.
- 1.6. The site lies approximately 1.8 kilometres (km) to the north-east of the South Downs National Park Boundary.
- 1.7. Caker Stream borders the site from the north-west to the south and is separated from the site by vegetated bank (in the form of a steep sloped bund of around 4 metres in height), metal palisade fencing and trees. Caker Stream is a chalk stream and is identified as a Biodiversity Action Plan Priority Habitat. Along the southern boundary of the site is a designated woodland improvement area and beyond this is a priority Habitat of Flood Plain Grazing Marsh. The western edge of the site falls within Flood Zone 2.
- 1.8. The site is bordered to the south east by the A31, categorised in the HMWP (2013) as part of the [Strategic Road Network](#). This road has mature trees along each siding. Access to the site is gained from Waterbrook Road, which adjoins the B3004, Mill Lane. The B3004 runs north east to join the A31 approximately 800m to the north east. The B3004 also runs south west into the residential area around Mill Lane, Ashdell Road and Wilsom Road.
- 1.9. The western stretch of the Public Right of Way (PROW) footpath known as Alton, Route Number 40, is 140 metres to the south of the site. The eastern element which crosses the Caker stream is known as Worldham, Route number 26.
- 1.10. The approved working hours for the site are set out in Condition 5 of Planning Permission [51471/003](#). These are Monday to Saturday between 0700 and 1800 with no working on Sundays or recognised Public Holidays. The site currently operates with Condition 20 (Vehicle movements) of Planning Permission 51471/003 limiting HGV movements to and from the site to 612 per week.

#### 4. Planning History

1.1. The planning history of the site is as follows:

<b>Application no.</b>	<b>Location</b>	<b>Proposal</b>	<b>Decision Date</b>
<a href="#">51471/005</a>	Unit 7 Waterbrook Estate, Waterbrook Road, Alton GU34 2UD	Variation of condition 5 of planning permission 51471/003 (to extend the operational hours to 24 hours, 7 days per week for HGV movements and associated loading shovel for the importation of road planings)	Withdrawn 19.01.2018
<a href="#">51471/003</a>	Hutchings & Carter Yard, Waterbrook Road, Alton GU34 2UF	Variation of conditions 3 (Site Layout) and 18 (to allow storage of wood) of planning permission 51471/002	Granted 29.09.16
<a href="#">33089/032</a>	Hutchings & Carter Yard, Former Sewage Works, Waterbrook Road, Alton Hampshire GU34 2UD	Change of use (with associated building modifications) from existing builders storage depot to a waste recycling facility to accept and process commercial and industrial waste (including the use of a waste picking station and trommel) on industrial land at the former sewage works off Waterbrook Road, Alton	Granted 23/01/2013
<a href="#">SCR/2011/0226</a>	Alton Recycling Centre, Waterbrook Road, Alton	Waterbrook Road, Alton Screening Opinion: Proposed change of use (with associated building modifications) to skip waste recycling facility to accept and process commercial and industrial skip waste	EIA not required 15/11/2011
<a href="#">51471/002</a>	Former Sewage Works, Waterbrook Road, Alton, Hampshire	Retention of Waste Recycling Centre for construction & demolition waste to include a light weight structure, landscaped bund, parking and associated plant and machinery	Granted 11/04/2011
<a href="#">SCR/2009/0261</a>	Former Sewage Works, Waterbrook Road, Alton	Screening Opinion: Waste Recycling Centre for construction & demolition waste	EIA not required 20/10/2009

<a href="#">SCR/2007/0139</a>	Phase 2, The Waterbrook Estate, Mill Lane, Alton, GU34 2QH	Screening Opinion: Waste transfer & recycling centre for construction & demolition waste; commercial & domestic waste; including screening, crushing & an operation centre for the storage & sorting of skips	EIA required 23/07/2007
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1.2. The site currently has planning permission for the following waste uses:

- [33089/032](#) - Commercial and industrial waste (non hazardous waste arising from the activities of wholesalers, catering establishments, shops and offices such as metals, plastic, wood, paper, card, black bag waste) processing and transfer, granted by Hampshire County Council [HCC] as Waste Planning Authority [WPA]; and
- [51471/003](#) - Construction and demolition waste (non inert rubble, concrete, soils and stone, and wood waste) processing, crushing, screening and transfer, granted by HCC as WPA.

1.3. In addition to the above, the application site has a number of existing planning permissions for business uses (B1, B2 and B8) granted by East Hampshire District Council [EHDC]. These are:

- [33089/28](#) – Office facilities used by the WTS; and
- [33089/24](#) – retained permission for the site security fencing.

1.4. In accordance with Policy 26 (Safeguarding – waste infrastructure) of the HMWP (2013), the site is safeguarded as a Waste Transfer Station.

## 5. The Proposal

1.5. The proposal is for variations to conditions 5 (Operating times), 11 (Dust and noise management) and 18 (Materials permitted) of Planning Permission [51471/003](#) to allow for the importation of road planings, and the night-time importation and exportation of waste at the site:

- Variation of Condition 5 (Operating times) to allow for 12 HGV movements to and from the site, of the existing 612 limit stated by condition ???, to occur outside the existing operating hours of the site, and therefore, allow for limited night time operations to occur at the site;
- Variation of Condition 11 (Dust and noise management plan) to allow for the approval of a revised Dust and Noise Management Plan for the site; and
- Variation of Condition 18 (Materials permitted) to allow for the addition of road planings to the list of waste types accepted at the site.

1.6. The development would comprise of:

- A revised Dust and Noise Management Plan, dated January 2018, to include for the proposed night time activities listed below. This is to



supersede Dust & Noise Management Plan (LL/v1.1) that was submitted to and approved by the Waste Planning Authority [WPA] on 15 December 2017 in accordance with Condition 11 (Dust and Noise Management) of PP 51471/003. The new Dust and Noise Management Plan adds night time operations, this makes no change to the management of dust on the site. For the management of noise, the revised plan includes clarification of activities to occur out of the conditioned operating hours, 0700-1800 Monday to Saturday;

- The addition of road planings to the list of permitted waste that can be imported to the site in Condition 18 (Materials permitted);
- A new, revised site layout plan, drawing 002 rev 3. This includes the location for storage of the road planings, and the locations for the night-time HGV activities;
- The addition of night-time site activities and HGV movements to and from the site for the importation of road planings (referred to as Activity 1 in the application) consisting of:
  - A maximum of 10 HGV movements (to and from) per night, including Sundays and Public Holidays, to delivery road planings outside of the existing operating times of 0700-1800 Monday to Saturday, set out in Condition 5 (Operating times);
  - The delivered road planings would be unloaded in the bay area identified on the proposed layout plan (drawing 002 rev 3). The material would not be operated upon until the next morning, when it would be consolidated by loading shovel as required during the existing, approved operating hours; and
- The addition of night-time site activities and HGV movements to and from the site for the importation of hard core and crushed concrete and the exportation of construction and demolition waste (referred to as Activity 2 in the application) consisting of:
  - 2 HGV movements (to and from) per night (the same vehicle), including Sundays and Public Holidays, to deliver and collect outside of the existing operating times of 0700-1800 Monday to Saturday, set out in Condition 5 (Operating times);
  - This HGV would drop off the imported trailer of hard core and crushed concrete, and collect a second pre loaded trailer to export construction and demolition waste at the locations identified on drawing 002 rev 3, near to the entrance of the site. The imported trailer would be emptied during the next day's existing, approved operating hours. The trailer load for export would be readied for collection before the end of the last day's existing, approved operating hours.

1.7. The following is proposed in the application to mitigate and restrict operations for the benefit of neighbourhood amenity:

- No fixed plant will be operated out of operating hours (0700-1800 Monday to Saturday);
- There will be no loading shovel operations at night after 1800;
- All HGVs entering and egressing the site out of hours will be set to silent reversing alarms and use white noise systems (be in 'night mode');

- Condition 20 (vehicle movements) of PP 51471/003 is to be retained, limiting HGV movements to 612 (in and out) per week. Therefore the proposed night time movements would be included in this limit. Heavy Goods Vehicles (HGVs) (defined as vehicles over 3.5 tonne un-laden) will access and leave the site via Waterbrook Road as the existing traffic; and
- Agreement to enter into a legal agreement (S106) with the WPA to define the routing of the out of hours HGV movements to and from the site associated with the development hereby considered. This is to obligate the HGVs to travel from the site north up Waterbrook Road, north up the B3004 Mill Lane, and then to turn right directly onto the A31 during the out of hours period. This is to ensure no out of hours HGV movements through the residential area to the south of the Waterbrook Road/Mill Lane junction.

1.8. The following documents have been submitted with the application and can be found on the WPA webpage for the case, [51471/006](#):

- A supporting statement, dated January 2018;
- Site Location Plan, drawing 01;
- Site layout plan, drawing 002 rev 3;
- Noise Assessment for night-time site activities, dated January 2018;
- A revised Noise and Dust Management Plan, dated January 2018;
- Addition information statement, dated 3 May 2018, confirming lighting for the proposal and need for the development of planing transfer facilities; and
- A Further Noise Assessment for night-time HGV movements to and from the site, dated 3 May 2018.

1.9. The proposed development has been assessed under [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#). The development is classified as a Schedule 2 development as it falls within Category 13 (Changes and extensions), section (b) as it is a change to a installation falling within Category 11(b) (ii) and (iii) (Installations for the disposal of waste (unless included in Schedule 1)). However, whilst being identified under the Regulations, it is not deemed an EIA development requiring an Environmental Statement.

## **6. Development Plan and Guidance**

1.10. The following plans and associated policies are considered to be relevant to the proposal:

### **National Planning Policy Framework (2012) (NPPF)**

1.11. The following paragraphs are relevant to this proposal:

- Paragraph 11: Determination in accordance with the development plan unless material considerations indicate otherwise;
- Paragraph 14: Presumption in favour of sustainable development;

- Paragraph 17: Core land-use planning principles should underpin both plan-making and decision-taking;
- Paragraph 19: Support of sustainable economic growth;
- Paragraph 30: support reductions in greenhouse gas emissions and reduce congestion;
- Paragraph 34: Sustainable transport;
- Paragraph 56: Good design;
- Paragraph 64: refuse poor quality design;
- Paragraph 118: Conserving and enhancing the natural environment;
- Paragraph 123: noise impact; and
- Paragraph 125: good quality design limiting impact of light pollution.

### **National Planning Policy for Waste (2014) (NPPW)**

1.12. The following paragraphs are relevant to the proposal:

- Paragraph 1: Delivery of sustainable development and resource efficiency;
- Paragraph 5: Suitability criteria for new or enhanced waste management facilities; and
- Paragraph 7: Determining planning applications.

### **National Waste Planning Practice Guidance (NWPPG)** (last updated 15/04/2015)

1.13. The following paragraphs are relevant to the proposal:

- Paragraph 007 (Self sufficient and proximity principle);
- Paragraph 0046 (Need);
- Paragraph 047 (Expanding existing waste facilities); and
- Paragraph 0050: (Planning and regulation).

### **Hampshire Minerals & Waste Plan (2013) (HMWP)**

1.14. The following policies are relevant to the proposal:

- Policy 1 (Sustainable minerals and waste development);
- Policy 3 (Protection of habitats and species);
- Policy 8 (Protection of soils);
- Policy 10 (Protecting public health, safety and amenity);
- Policy 12 (Managing traffic);
- Policy 13 (High-quality design of minerals and waste development);
- Policy 17 (Aggregate supply – capacity and source);
- Policy 18 (Recycled and secondary aggregates development);
- Policy 25 (Sustainable waste management); and
- Policy 27 (Capacity for waste management development).

[East Hampshire and South Downs Joint Core Strategy \(2014\) \(EHCS \(2014\)\)](http://www.easthants.gov.uk/planning-policy/local-plan)  
<http://www.easthants.gov.uk/planning-policy/local-plan>  
[South Downs Local Plan: Preferred options September 2015 \(Emerging Plan\) \(SDLP \(emerging\) \(2015\)\)](#)

1.15. The following policies are relevant to the proposal:

- Policy CP4 - Existing employment land; and
- Policy CP20 – Landscape.

## **7. Consultations and Equalities**

7.1 **County Councillor Joy:** Raises concern about the potential impact in terms of noise, vibration and amenity and the precedent 24/7 operation could set.

7.2 **County Councillor Kemp-Gee:** Was notified.

7.3 **East Hampshire District Council:** Has objection due to noise, dust and odours, and concerns about the robustness of the noise assessment data, and setting a precedent for 24 hour working in the area.

7.4 **East Hampshire District Council Environmental Health Officer (EHO):** Has no objection.

7.5 **Alton Town Council:** Has objection due to querying the accuracy of the noise assessment, the precedent of 24 hour operations and HGV pollution.

7.6 **Kingsley Parish Council:** Has objection and request a condition to prevent lorries using the B3004 to travel through Kingsley.

7.7 **Binstead Parish Council:** Was notified.

7.8 **Worldham Parish Council:** Was notified.

7.9 **Local Highway Authority:** Has no objection with conditions relating to continuation of the limit of 612 HGV movements to and from the site and measures to ensure prevention of mud and spoil on the public highway.

7.10 **Planning Policy (HCC):** responded with reference to the Hampshire Minerals and Waste Plan 2013.

7.11 **Waste and Resource Management (HCC):** was notified.

7.12 **County Ecology (HCC):** Has no objection based on the site not being lit at night.

7.13 **Environment Agency:** Was notified.

## 8. Representations

- 1.1. Hampshire County Council's [Statement of Community Involvement \(2017\)](#) (SCI) sets out the adopted consultation and publicity procedures associated with determining planning applications.
- 1.2. In complying with the requirements of the SCI, Hampshire County Council:
  - Published a notice of the application in the [Hampshire Independent](#);
  - Placed a total of 5 notices of the application at the application site and at key locations in the local area, and extending the period of neighbour consultation;
  - Consulted all statutory and non-statutory consultees in accordance with [The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#); and
  - Notified by letter all properties within 100 metres of the boundary of the site, as well as key residential properties in a wider area.
- 1.3. As of 15 June 2018, a total of 45 representations objecting to the proposal have been received. The main areas of concern raised in the objections related to the following areas:
  - Impact on wildlife;
  - Noise pollution and amenity impact from 24 hour site operations,
  - Noise pollution and amenity impact from 24 hour HGV movements on local highway,
  - Emissions from 24 hour HGV movements,
  - Associated health impacts of disturbance caused to dwellings by 24 hour operation;
  - Visual amenity and landscape impact;
  - Impact of lighting associated with the development for night-time operations;
  - Proximity to residential properties;
  - Impact of HGV routing, particularly on B3004;
  - Dust pollution and amenity impact;
  - Impact on the amenity of the local residents;
  - lack of demonstrated need for the development;
  - Poor operator record with respect to dust and noise;
  - Concern that information submitted is inaccurate; and
  - Concern that night-time operation of non-fixed plant will not be controlled.
- 1.4. The above issues will be discussed and addressed primarily within the following commentary, except where identified as not being relevant to the decision or included as a factual record for clarification.

## 9. Commentary

### Principle of the development

- 1.5. The [National Planning Policy Framework](#) (2012) [NPPF] sets out the Government's planning policies for England and how these are expected to be applied. Paragraph 11 states that a proposal should be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 14 includes an overarching 'presumption in favour of sustainable development' which means 'approving development proposals that accord with the development plan without delay'. The presumption allows for only refusing planning permission where adverse impacts clearly outweigh the benefits, or the provisions of the NPPF (2012) indicate developments should be restricted. This is translated into the adopted Hampshire Minerals and Waste Plan [HMWP] (2013) through Policy 1 (Sustainable minerals and waste development), which states that the Hampshire Authorities will take a positive approach to minerals and waste development that reflects the presumption in favour of sustainable development contained in the NPPF (2012).
- 1.6. NPPW paragraph 7 also states that WPA should ensure that waste management facilities in themselves are well-designed, so that they contribute positively to the character and quality of the area in which they are located.
- 1.7. Paragraph 47 of the [National Waste Planning Practice Guidance](#) [NWPPG] states that a WPA should not assume that because a waste disposal facility is present in a particular area, that is appropriate to add to these facilities. It is important to consider the cumulative effect of waste facilities on a community's wellbeing.
- 1.8. The site is located on the Waterbrook industrial estate on the edge of Alton. The estate is formed from a mixture of commercial, industrial and waste uses. It has been identified in conjunction with East Hampshire District Council [EHDC] that the developments on the estate do not have specific planning permissions that allow for night-time operations, i.e. those outside of typical operating hours. Therefore, the proposed development to allow limited night time operations and HGV movements would be a significant change to the current situation in the area.
- 1.9. Therefore the weight of consideration for the introduction of night time operations on the estate needs to be determined.
- 1.10. The consultation response from the Local County Councillor raises concern, and Alton Town Council and a significant number of public representations object, amongst other reasons, on the issue of setting a precedent for night time operations in the Waterbrook Industrial Estate. It is established that there are no sites in the industrial estate with specific permission to carry out

night time operations, however, there are no restrictions to other land uses on the industrial estate to prevent night time operations either.

- 1.11. The concept of precedence in this context (i.e. how the grant of any individual planning permission will impact upon the grant or refusal of any future planning permissions) is not a material consideration in the determination of a planning application. Rather, each application for a proposed development should be considered on its own merits and not in view of its anticipated impact or otherwise on any future application. In this case, with no established night time operations in the area of the site, the applicant is required to provide sufficient information to demonstrate that their proposal for night time operations would not have unacceptable adverse impacts in accordance with the HMWP (2013). Any future planning applications on this site or in the area for night time operations would need to be determined on their own merits in accordance with the policy and material considerations relevant to those applications, for which cumulative impact and existing night time operations could be relevant.
- 1.12. It is considered that the applicant has provided sufficient demonstration to be considered sustainable in accordance with Policy 1 (Sustainable minerals and waste development) of the HMWP (2013).

#### Demonstration of need

- 1.1. Policies 17 (Aggregate supply – capacity and source) and 18 (Recycled and secondary aggregates development) of the HMWP (2013) support development of infrastructure to provide supply of recycled and secondary aggregates.
- 1.2. Policy 25 (Sustainable waste management) of the HMWP (2013) supports the co-location of activities with existing operations where considered appropriate and commensurate with the operational life of the site. It states provision will be made for the management of non-hazardous waste arising that achieve at least 60% recycling and 95% diversion from landfill by 2020.
- 1.3. Policy 27 (Capacity for waste management development) of the HMWP (2013) states the need for additional waste infrastructure capacity was for non-hazardous recycling and recovery capacity in Hampshire. The policy supports proposals where they provide additional capacity for non-hazardous recycling and recovery through the use of existing waste management sites.
- 1.4. The [National Planning Policy for Waste \(2014\)](#) (NPPW) sets out the Government's ambition to work towards a more sustainable and efficient approach to resource use and management. Policy 7 of the NPPW states that when determining waste planning applications, Waste Planning Authorities should only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan. In this case, the

proposed development is considered consistent with the HMWP (2013) and so the applicant is not required to demonstrate market need. The site is located close to a junction of the A31, part of the Strategic Road Network as identified in the HMWP, and is therefore considered to be in proximity to the waste sources and markets of Hampshire.

- 1.5. The applicant has provided information upon the benefit of the storage and transfer of road planings at the site and proposed timings of such. The applicant states that highways work typically occurs at night and on a campaign basis (a campaign refers to intense, but usually short lived, projects). A proportion of the road planings generated need to be deposited at a suitably licensed waste facility. Allowing for the night time storage of road planings at the Waterbrook Road site would enable safe, secure and licenced storage providing operational flexibility to benefit highways projects in Hampshire.
- 1.6. It is therefore considered that the proposed development is in accordance with Policies 17, 18, 25 and 27 of the HMWP (2013).

#### Potential pollution associated with the development

- 1.7. National Planning Practice Guidance states that Planning Authorities should assume that other regulatory regimes will operate effectively rather than seek to control any processes, health and safety issues or emissions themselves where these are subject to approval under other regimes ([Paragraph 050 Reference ID: 28-050-20141016](#)).
- 1.8. Planning and permitting decisions are separate but closely linked. Planning permission determines if a development is an acceptable use of the land. Permitting determines if an operation can be managed on an ongoing basis to prevent or minimise pollution.
- 1.9. Upon receiving this application, the case officer contacted the Environment Agency [EA] for definition and information on road planings. The EA officer confirmed that the site's environmental permit includes bituminous mixtures such as road planings as acceptable waste, with the exception of certain road planings, such as those containing coal tar, as these are hazardous waste. Therefore the operator holds a permit for the importation and processing of non-hazardous road planings. Therefore this report considers the proposal to import and process non-hazardous road planings and the planning conditions to be carried forward from the site's existing planning permission and those new conditions required to make that acceptable in planning terms. The area set out for the storage of road planings, as shown on the Proposed Site Layout plan, drawing 002 rev 3, is to include for concrete hardstanding, physical wall containment and drainage as per the requirements for the entire site in accordance with Conditions 7 (Solids to watercourses) and 8 (Hardstanding) of the existing site planning permission [51471/003](#).



1.10. The site's environmental permit will control the suitability of the waste material imported to the site. Therefore the proposal is considered in accordance with Policies 8 (Protection of soils) and 10 (Protecting public health, safety and amenity) of the HMWP (2013) with respect to ground and water pollution.

#### Highways impact

- 1.11. Policy 12 (Managing traffic) of the HMWP (2013) requires minerals and waste development to have a safe and suitable access to the highway network and where possible minimise the impact of its generated traffic through the use of alternative methods of transportation. It also requires highway improvements to mitigate any significant adverse effects on highway safety, pedestrian safety, highway capacity and environment and amenity.
- 1.12. The proposal is for 12 HGV daily movements to and from the site outside of the operating hours of the site as set in Condition 5 (Operating times) of Planning Permission [51471/003](#) (0700-1800 Monday to Saturday). These would travel to the A31 via Waterbrook Road and the B3004, Mill Lane. It is proposed that these HGV movements would be included in the existing HGV movement limit, 612 weekly, therefore it is proposed to retain Condition 20 (Vehicle movements) of planning permission 51471/003 with no change.
- 1.13. The Highways Authority's consultation response was for no objection with conditions to retain Condition 20 (Vehicle movements), setting 612 weekly HGV movements, and Condition 21 (Road cleaning) of PP 51471/003.
- 1.14. The consultation response from the Local County Councillor raises concern, and Kingsley Parish Council and a significant number of public representations object, on the grounds of highway capacity, amenity impact and concern of HGVs turning south onto Mill Lane (B3004) and travelling through the village of Kingsley at night.
- 1.15. In order to address the public concern, and ensure that the night-time HGV movements proposed by this application do not have an unacceptable impact on residential properties that lie on the route of vehicles that turn south onto Mill Lane (B3004), it has been agreed with the applicant that in order to permit this proposal, the applicant will enter into a Section 106 legal agreement with Hampshire County Council to define and limit the route of HGVs travelling to and from the site, for the movements associated with this application. This agreement shall require the HGVs to turn north onto Mill Lane (B3004) from Waterbrook Road and then to turn east directly onto the A31.
- 1.16. Therefore, subject to the legal agreement, it is considered that the proposal is in accordance with Policy 12 (Managing traffic) of the HMWP (2013).

## Ecology

- 1.17. Policy 3 (Protection of habitats and species) of the HMWP (2013) sets out a requirement for minerals and waste development to not have a significant adverse effect on, and where possible, should enhance, restore or create designated or important habitats and species. The policy sets out a list of sites, habitats and species which will be protected in accordance with the level of their relative importance. The policy states that development which is likely to have a significant adverse impact upon the identified sites, habitats and species will only be permitted where it is judged that the merits of the development outweigh any likely environmental damage. The policy also sets out a requirement for appropriate mitigation and compensation measures where development would cause harm to biodiversity interests.
- 1.18. The consultation response from County Ecology is for no objection on the basis that the development does not include any lighting. The applicant confirms that the proposal includes for no lighting, other than that on the vehicles, to operate outside of the operating hours set by existing Condition 5 (Operating times).
- 1.19. Therefore, it is considered that the proposed development is in accordance with Policy 3 (Protection of habitats and species) of the HMWP (2013).

## Visual impact, light pollution and landscape

- 1.4. Policy 13 (High-quality design of minerals and waste development) of the HMWP (2013) requires that waste development should not cause an unacceptable adverse visual impact and should maintain and enhance the distinctive character of the landscape and Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013) protects residents from significant adverse visual impact.
- 1.5. Paragraph 7 of the NPPW states that Waste Planning Authority should ensure that waste management facilities in themselves are well-designed, so that they contribute positively to the character and quality of the area in which they are located.
- 1.6. The consultation response from the Environmental Health Officer [EHO] at East Hampshire Borough Council [EHBC] is for no objection and does not raise concern for light pollution and amenity impacts from lighting. County Ecology have no objection based on the site not being lit at night.
- 1.7. A significant number of public representations object on the grounds of the impact from lighting and visual amenity and landscape impact.
- 1.8. The site is located in an elevated position that overlooks and area to the south east of Alton. It has been previously established in existing planning permissions that the WTS is acceptable in planning terms and has sufficient mitigation to its visual impact on its setting. The proposed development

proposes the storage of road planings to the rear of the site. This is proposed to be developed in accordance with all existing conditions of the existing site's Planning Permission [51471/003](#), and so the proposal hereby considered is considered to not have a significant adverse day time visual impact or landscape setting. The proposal includes the use of vehicles at night on the site. This would require lighting.

- 1.9. In the additional information from the applicant, dated 3 May 2018, it is stated by the applicant that no fixed lighting is included in this proposal. Only vehicle lighting is to be used for the operations proposed.
- 1.10. Therefore it is considered the proposal is in accordance with Policy 13 (High-quality design of minerals and waste development). It is also considered the proposal is in accordance with Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013) with respect to light impact.

#### Impact on public amenity and health – noise, dust and odour.

- 1.1. Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013) requires that any development should not cause adverse public health and safety impacts, and unacceptable adverse amenity impacts. Also, any proposal should not cause an unacceptable cumulative impact arising from the interactions between waste developments and other forms of development.
- 1.2. The [National Planning Policy for Waste \(2014\)](#) (NPPW) sets out the Government's ambition to work towards a more sustainable and efficient approach to resource use and management. Policy 5 sets out criteria by which Waste Planning Authorities should assess the suitability of sites for new or enhanced waste management facilities. This includes the criteria that the cumulative impact of existing and proposed waste disposal facilities on the well-being of the local community, including any significant adverse impacts on environmental quality, social cohesion and inclusion or economic potential.
- 1.3. The application includes 2 Noise Assessments; one for the proposed night time activities on the site, and one for the sound generated by night-time HGV movements to and from the site. Both noise assessments are based upon British Standard BS4142:2014, which is recognised by the WPA and the EHO as an acceptable standard to consider the impacts of noise for minerals or waste developments. Both assessments are conservative, based upon overstated values for the noise generated by the activities (refer to the Additional Noise Information document, dated 01.06.18, provided by the applicant as part of the application). They consider potential noise impacts against site measured background noise at identified survey locations and sensitive receptors. These are key residential areas and dwellings. For the site night-time activities noise assessment this was Lynch Hill Cottage on Waterbrook Road, Spitalhatch off Mill Lane, Wilsom Road and Golden Chair Cottage, to the east of the A31. These locations are shown on aerial

photographs in appendices 03 and 04 of the Noise Assessment Report, document 416.07338.00001, dated January 2018. For the night-time HGV movements to and from the site noise assessment, the sensitive receptor considered was Lynch Hill Cottage, located near the entrance of Waterbrook Road, the residential property in greatest proximity to the route of the HGVs. The route and receptor for this assessment is shown on the aerial photograph on page 2 of the SLR Consulting Limited Additional Noise Information letter, dated 03 May 2018. Both assessments considered a scenario when dwellings' windows are open. Both assessments demonstrate that the noise impact from the proposed activities would not cause an adverse noise impact.

- 1.4. The consultation response from the EHO was for no objection following the applicant providing further information in order to demonstrate the robustness of the noise assessments. Alton Town Council and a number of public representations also raise concern about the robustness of the noise information provided in the application in their objections.
- 1.5. The consultation response from the Local County Councillor raises concern over the potential impact of noise, vibration and amenity from the proposed development. The Councillor highlights particular concern for 'the natural night-time acoustic characteristics of Alton's valley setting' to allow 'noise generated on one side of the valley to be easily heard at considerable distance away on the other side.' The site is located upon one side of the valley which is populated by a significant number of dwellings.
- 1.6. The consultation response from EHBC was for objection based upon concerns for the impact of the potential increase in noise disturbance, dust and odours resulting from the intensification in use of the site and extension in working and delivery hours. A significant number of public representations object on the grounds of amenity impact, particularly from out of hours (night-time) site operations and HGV movements due to noise, lighting, air pollution from HGVs and dust.
- 1.7. The applicant has provided the additional information to address the EHO's concerns for the robustness of the noise assessments to the satisfaction of the EHO. It is therefore considered that the application sufficiently demonstrates that no significant adverse noise impact will occur. The proposed addition of road planings to the waste types imported to the site does not have any odour impacts associated with it, and the proposed operation to pour, store and load road planings would not cause any significant dust issue and would be satisfactorily covered by the proposed Dust and Noise Management Plan.
- 1.8. It is therefore considered that the proposed development is in accordance with Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013).

## Dust and Noise Management

- 1.9. The application seeks variation of Condition 11 (Dust and noise management plan) of Planning Permission [51471/003](#) in order to have the submitted Revised Dust and Noise Management Plan, dated 25 January 2018, replace the original Dust and Noise Management Plan by Hutchings and Carter Ltd., dated 20 October 2016. The original Plan was approved by the WPA on 29 September 2016 following submission by the operator for discharge of Condition 11 (article 27 submission).
- 1.10. The revisions proposed are solely to include in the Plan the proposed night time activities hereby considered. The document clearly highlights the revisions proposed and these raise no issues for the WPA or the EHO.
- 1.11. Therefore it is considered that the Revised Dust and Noise Management Plan is in accordance with Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013) and is recommended for approval.

## Conclusions

- 1.12. It is considered that the proposal would be in accordance with the relevant policies of the adopted Hampshire Minerals and Waste Plan (2013), in that it provides a suitable location to support highways works in Hampshire through the transfer of road planings to an existing Waste Transfer Facility located on the Strategic Road Network in a central Hampshire location. It is considered that the proposal's benefits in providing this facility for road planings outweighs the impacts to neighbourhood amenity and the environment within the site's context as part of an existing industrial estate adjacent to a residential area of Alton along the Strategic Road Network.
- 1.13. It is considered that the proposed development for 12 HGV movements per night, when considered with the proposed mitigation, subject to conditions and the completion of the s.106 agreement, has been demonstrated to not cause a significant adverse impact on public amenity, noise or light pollution, or to highway safety or amenity:
- The applicant has provided sufficient demonstration to be considered in accordance with Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013) with respect to noise, lighting, dust and odour;
  - The proposal is considered in accordance with Policy 12 (Managing traffic); subject to the completion of the s.106 agreement to control the route of HGV to and from the site out of the conditioned working hours to prevent night time HGV movements through residential areas;
  - The application is considered in accordance with Policies 3 (Protection of habitats and species) and 10 (Protecting public health, safety and amenity) of the HMWP (2013) with no inclusion of any site lighting as part of the proposed development;
  - The site is on the Strategic Road network, and so in principle, is considered suitable for additional development, such as this, in order to sustainably support Hampshire's provision of waste facilities in

accordance with Policies 17 (Aggregate supply – capacity and source), 18 (Recycled and secondary aggregates development), 25 (Sustainable waste management) and 27 (Capacity for waste management development) of the HMWP (2013).

1.14. It is considered that the variations of conditions of the existing Planning Permission [51471/003](#) the application seeks is in accordance with the adopted Hampshire Minerals and Waste Plan (2013) [HMWP]:

- Variation of Condition 5 (Operating times) to allow for 12 HGV movements to and from the site, of the existing 612 limit stated by Condition 20 (HGV movements), to occur outside the existing operating hours of the site, and therefore, allow for limited night time operations to occur at the site;
- Variation of Condition 11 (Dust and noise management plan) to allow for the approval of a revised Dust and Noise Management Plan for the site; and
- Variation of Condition 18 (Materials permitted) to allow for the addition of road planings to the list of waste types accepted at the site.

**Appendices:**

- Integral Appendix A – Corporate or Legal Information
- Integral Appendix B – Conditions
- Appendix C – Site Location Plan, drawing 001
- Appendix D – Proposed Site Layout Plan, drawing 002 rev 3

Other documents relating to this application, these can be found on the WPA webpage for the case, [51471/006](#):

- Site Location Plan, drawing 01;
- Site layout plan, drawing 002 rev 3;
- Noise Assessment for night-time site activities, dated January 2018;
- Revised Noise and Dust Management Plan, dated January 2018;
- Addition information statement, dated 3 May 2018, confirming lighting for the proposal and need for the development of planing transfer facilities; and
- Further Noise Assessment for night-time HGV movements to and from the site, dated 3 May 2018.

**Links to the Strategic Plan**

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	No
<b>People in Hampshire live safe, healthy and independent lives:</b>	No
<b>People in Hampshire enjoy a rich and diverse environment:</b>	No
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	No
<b>OR</b>	
<b>This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:</b>	
The proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the proposal is an application for planning permission and requires determination by the County Council in its statutory role as the minerals and waste planning authority.	

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

Document

Location

51471/006  
EH156

Hampshire County Council

Unit 7 Waterbrook Estate, Waterbrook Road,  
ALTON GU34 2UD  
(Variation of conditions 5, 11 and 18 of  
planning permission 51471/003 to allow for  
importation of road planings and the night-  
time importation and exportation of waste

## CONDITIONS

### Commencement

1. The development hereby approved shall be implemented in accordance with the approved plans within three year from the date of this permission.

Reason: To comply with Section 91 (as amended) of the Town and Country Planning Act 1990

### Perimeter Bunds

2. The perimeter bunds shall be fully constructed, graded, and top soiled in accordance with the approved plan and cross section details as detailed on Drawings 4998 SK/04 Rev G and 286-02 Rev E (and 286-01 Rev C approved under permission 51471/003) and maintained for the duration of the development.

Reason: In the interests of local amenities in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

### Layout

3. The site shall be set out in accordance with the Layout Plan 4998 SK/04 Rev G and the Proposed Site Layout Plan 002 rev 3. The 1 metre buffer, as shown on drawing 4998 SK/04 Rev G, shall be maintained for the duration of the development.

Reason: To ensure the site is set out in the manner applied for in order to minimise any adverse impacts on local amenities in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals & Waste Plan (2013).

### Site Levels

4. The site ground levels shall not exceed those shown on plan HCC EH156-Ground Levels survey 2016, with the exception of the approved stockpile areas.

Reason: To ensure that appropriate site levels are maintained in the interests of local amenities in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).



## Hours of Working

5. No heavy goods vehicles shall enter or leave the site and no plant or machinery shall be operated except between the following hours: 0700-1800 Monday to Saturday. There shall be no working on Sundays or recognised Public Holidays. This is with the exception of the following hereby permitted:
- No more than 10 HGV movements per day shall enter and leave the site between 1800 and 0700 Monday to Saturday for the delivery of road planings only, as shown on the Proposed Site Layout drawing, 002 rev 3; and
  - No more than 2 HGV movements per day shall enter and leave the site between 1800 and 0700 Monday to Saturday for the delivery and collection of a CDE waste trailer prepared within the site operating hours defined above as shown on the Proposed Site Layout drawing, 002 rev 3.

Reason: In the interests of local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

## Landscape

6. Landscaping for the perimeter of the site (including construction of the perimeter bunds) shall be undertaken in the first planting season following the issue of this permission as detailed on approved planting plan (286-02 Rev E). Any trees or shrubs which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The scheme shall be implemented as approved.

Reason: In the interests of visual amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

## Protection of Water Environment

7. No solid matter shall be deposited so that it passes or is likely to pass into any watercourse.

Reason: To prevent pollution of the water environment in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

8. Areas where waste is stored, handled or transferred shall be underlain by impervious hard-standing with dedicated drainage to foul sewer or sealed tank.

Reason: To prevent pollution of the water environment in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

9. Facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The bund capacity shall give 110% of the total volume for single and hydraulically linked tanks. If there is multiple tankage, the bund capacity shall be 110% of the largest tank or 25% of the total capacity of all tanks, whichever is the greatest. All filling points, vents, gauges and sight glasses and overflow pipes shall be located within the bund. There shall be no outlet connecting the bund to any drain, sewer or watercourse or discharging onto the ground.

Associated pipework shall be located above ground where possible and protected from accidental damage.

Reason: To prevent pollution of the water environment in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

### **Noise, Dust and Odour**

10. All vehicles, plant and machinery operated within the site shall be maintained in accordance with the manufacturers' specification at all times, and shall be fitted with and use effective silencers.

Reason: To minimise noise disturbance from operations at the site in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

11. The site shall be run in accordance with the submitted and approved Dust and Noise Management Plan, dated January 2018, reference 416.073398.00001. The scheme shall be implemented as approved for the duration of the site's operation.

Reason: In the interests of local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

12. All vehicles, operated within the site shall be fitted with white noise type low tonal reversing alarms. Those vehicles operating outside of the operating hours, as set out in Condition 5 (working hours) shall operate in 'night mode' as stated in the Dust and Noise Management Plan, dated January 2018, reference 416.073398.00001. This shall be implemented as approved for the duration of the site's operation.

Reason: In the interests of local amenities in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

13. All lorries entering and leaving the site carrying waste or recycled material shall be fully sheeted.

Reason: In the interests of local amenities in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

### **Lighting**

14. No additional lighting is to be installed as part of the development hereby permitted, including lighting for the road planings bay as stated in the Additional Information from the Applicant document, dated 3 May 2018. No lighting is to be used for out of operating hours, as set in Condition 5 (Working hours), activities on the site other than those attached to HGVs considered necessary for the safe unloading, trailer drop off and pick up and driving of those HGVs.

Reason: In the interests of biodiversity and local amenities in accordance with Policies 3 (Protection of habitats and species) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

### **Buildings and Plant**

15. The covered waste structure shall be maintained in accordance with Plan. No. 4998 SK/05 Rev C (as approved under permission 51471/003).

Reason: In the interests of local amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals & Waste Plan (2013).

## Restriction of Permitted Development Rights

16. Notwithstanding the provisions of Parts 4, 7 and 16 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order):
- (i) fixed plant or machinery, buildings, structures and erections or private ways shall not be erected, extended, installed or replaced at the site without the prior agreement of the Waste Planning Authority in writing;
  - (ii) no telecommunications antenna shall be installed or erected without the prior agreement of the Waste Planning Authority in writing.

Reason: To protect the amenities of the area in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

## Storage

17. Stockpiles of waste and recycled material shall not exceed a maximum level of 5 metres in height above the level of the ground on which the stockpile is located for soil/hardcore processing and screened material and 4 metres in height above the level of the ground on which the stockpile is located for product storage and material storage including wood (as indicated on Drawing No 4998 SK/04 and Drawing no 002 rev 3). Stockpile heights shall be measured from the existing ground levels adjacent to the stockpiles as shown on plan HCC EH156- Ground Levels survey 2016.

Reason: To control any adverse visual impact and to control windborne dust in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals & Waste Plan (2013).

18. Measuring poles marked at 4 metre and 5 metre heights, shall be retained on site near the stockpiles to be used as a reference. Within one month of the date of this permission, the location of these measuring poles shall be submitted to the Waste Planning Authority for approval and maintained for the duration of the development as approved.

Reason: To control any adverse visual impact and to control windborne dust in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals & Waste Plan (2013).

## **Types of Materials**

19. Material imported to the site shall comprise of inert construction and demolition waste (CDE waste). This shall comprise only of clean, uncontaminated soils, rubble, concrete, wood and road planings.

Reason: In the interests of pollution control and the amenities of the area in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

20. There shall be no burning or processing of wood on site.

Reason: In the interests of pollution control and the amenities of the area in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

## **Highways**

21. No more than 612 HGV movements shall take place in any one week (Monday- Sunday). A record of all Heavy Goods Vehicles entering and exiting the site shall be kept on site and shall be made available for inspection by the Waste Planning Authority upon request.

Reason: To ensure that the level of HGV traffic generated by the site does not have a detrimental impact on the local highway network in accordance with Policy 12 (Managing Traffic) of the Hampshire Minerals & Waste Plan (2013).

22. For the duration of the development measures shall be taken to clean vehicles leaving the site to prevent mud and spoil from being deposited on the public highway. No vehicle shall leave the site unless it has been cleaned sufficiently to prevent mud and spoil being carried on to the public highway. In the event that mud and spoil from vehicles leaving the site are deposited on the public highway, measures shall be taken to clean the highway. In any event at the end of each working day the highway shall be cleaned to the satisfaction of the Waste Planning Authority.

Reason: In the interests of highway safety in accordance with Policy 12 (Managing traffic) of the Hampshire Minerals & Waste Plan (2013).

23. The HGV movements hereby permitted outside of the operating hours of 0700-1800, set out by Condition 5 (Working hours), shall enter and leave the site using the agreed routing plan in the Section 106 agreement.

Reason: In the interests of highway safety and public amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 12 (Managing traffic) of the Hampshire Minerals & Waste Plan (2013).

### Plans

24. The development hereby permitted shall be carried out in accordance with the following approved plans: **01 (dated December 2017), 002 rev 3, 4998 SK/04 Rev G, 286-02 Rev E, EH156 Ground Levels Survey 2016, WBE/01, 286-01 Rev C, 4998 SK/05 Rev C.**

Reason: For the avoidance of doubt and in the interests of proper planning.

### Notes to Applicant

1. In determining this planning application, the Waste Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application by liaising with consultees, respondents and the agent and discussing changes to the proposal where considered appropriate or necessary. This approach has been taken positively and proactively in accordance with the requirement in the NPPF, as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.
2. For the purposes of matters relating to this decision Heavy Goods Vehicles (HGVs) are defined as vehicles over 3.5 tonne un-laden.
3. This decision does not purport or convey any approval or consent which may be required under the Building Regulations or any other Acts, including Byelaws, orders or Regulations made under such acts.



LEGEND

 SITE LOCATION



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 www.slrconsulting.com


**WATERBROOK ROAD, ALTON  
 HAMPSHIRE, GU34 2UD**

**S73 PLANNING  
 APPLICATION**

**SITE LOCATION PLAN**

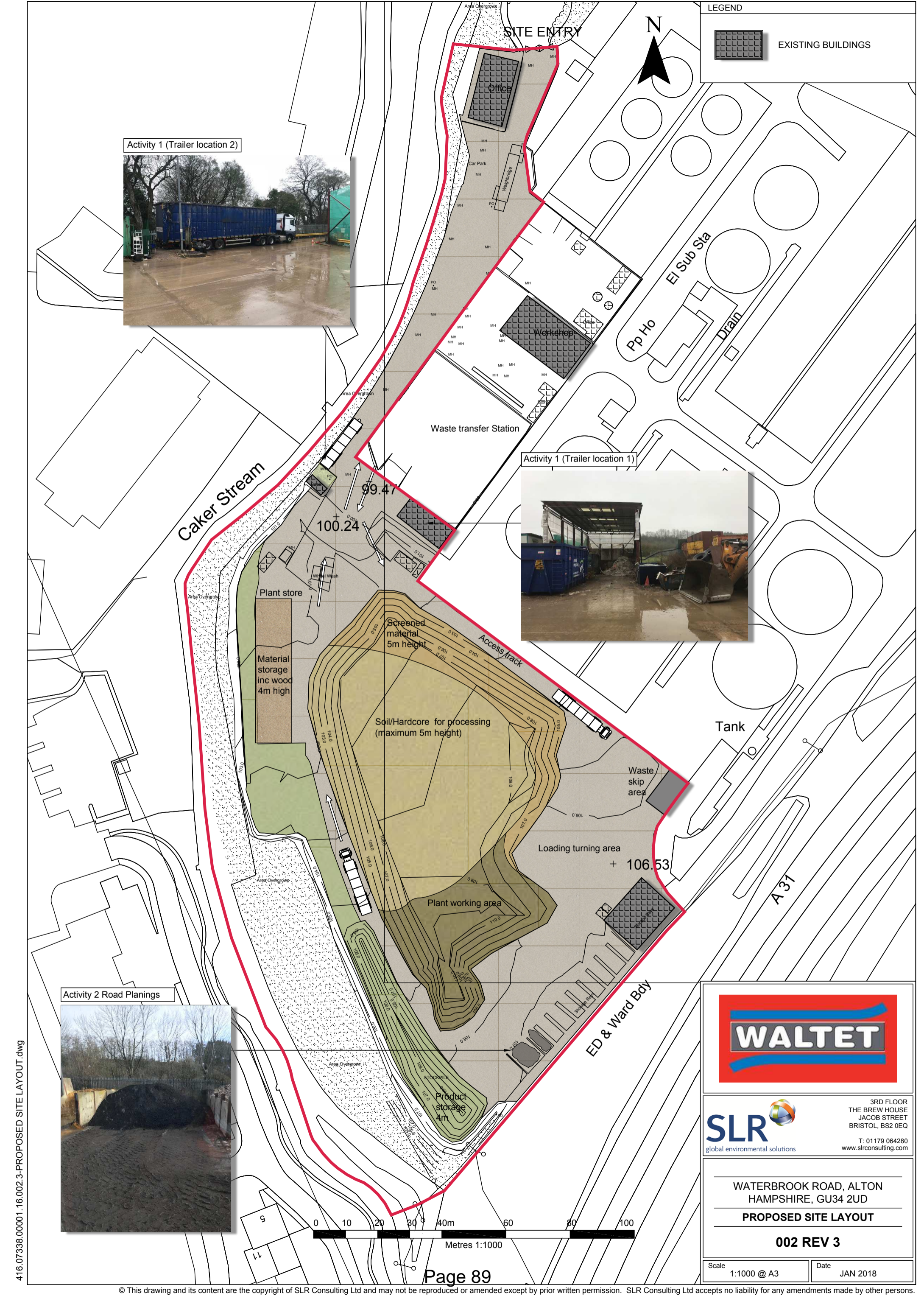
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**LEGEND**

 EXISTING BUILDINGS

Activity 1 (Trailer location 2)





Activity 1 (Trailer location 1)



Activity 2 Road Planings







global environmental solutions

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WATERBROOK ROAD, ALTON  
HAMPSHIRE, GU34 2UD

**PROPOSED SITE LAYOUT**

**002 REV 3**

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## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	25 July 2018
<b>Title:</b>	Protocol for dealing with breaches in planning control relating to development undertaken by the County Council under Regulation 3
<b>Report From:</b>	Head of Strategic Planning

**Contact name:** Lisa Kirby-Hawkes

**Tel:** 01962 845795

**Email:** [lisa.kirby.hawkes@hants.gov.uk](mailto:lisa.kirby.hawkes@hants.gov.uk)

#### 1. Executive Summary

- 1.1 The Protocol for dealing with breaches in planning control relating to Regulation 3 developments sets out Hampshire County Council's approach to planning enforcement for the County Council's own developments. Regulation 3 developments include:
- Schools;
  - Libraries;
  - Museums;
  - Country Parks; and
  - Development on other County Council owned land (e.g. farms).
- 1.2 The County Council has the responsibility for determining all applications for Regulation 3 development that the Council wishes to carry out. The Protocol sets out how the County Council would seek to regulate any breaches of planning control relating to development undertaken by County service providers under Regulation 3 of the [Town and Country Planning General Regulations 1992](#).
- 1.3 When development is granted planning permission, the applicant is obliged to ensure that all planning conditions attached to planning permissions are complied with in full. A Regulation 3 development has exactly the same level of requirement of compliance as planning permission associated with County Matter (minerals or waste) planning permissions. It is expected that the County Council will promote best practice in its own development, be it through Council staff or contractors. It is very important to ensure compliance to minimise the risk of negative impact to Hampshire County Council's reputation. It demonstrates to local communities and other interested parties that the Council follows its own procedures and complies with any permissions granted.
- 1.4 Effective enforcement of Regulation 3 developments is also essential as it ensures public confidence in the planning system. Whilst the enforcement of a breach of planning control relating to a Regulation 3 development is

carried out by the relevant local District or Borough Council, the County Council will still have a role to play.

- 1.5 The Protocol sets out:
  - how breaches of planning control relating to Regulation 3 developments will be addressed and by whom;
  - what action the County Council would take to remedy any breaches; and
  - establishes formal procedures to enable the County Council, both the Regulatory Committee (the Committee) and officers acting under delegated powers, to be consistent and effective in their approach.
- 1.6 Monitoring and enforcement of minerals and waste developments are not covered by the Protocol. A separate [Planning Site Enforcement and Monitoring Plan](#) covers these areas and is already adopted. The Protocol will sit alongside the Plan as well as the [Development Management Charter \(2016\)](#).
- 1.7 The draft Protocol has been circulated to the committee for consideration, to give the opportunity for members to raise any questions or discuss/propose amendments. It is set out in Appendix 1.
- 1.8 Following consideration by the committee, the document will be subject to final formatting and presentation changes before publication on the County Council's Strategic Planning website.

## **2. Recommendation**

- 2.1 That members note the contents of the Protocol for dealing with breaches in planning control relating to development undertaken by the County Council under Regulation 3 and approve the Protocol for publication on the County Council's website.

**Links to the Strategic Plan**

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	No
<b>People in Hampshire live safe, healthy and independent lives:</b>	No
<b>People in Hampshire enjoy a rich and diverse environment:</b>	No
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	No

**OR**

**This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:**

The proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the proposal is an application for planning permission and requires determination by the County Council in its statutory role as the minerals and waste planning authority.

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

Document

Location

None

Hampshire County Council

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## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	25 July 2018
<b>Title:</b>	Monitoring and Enforcement Update
<b>Report From:</b>	Director of Economy, Transport and Environment

**Contact name:** David Smith

**Tel:** 01962 845891

**Email:** david.smith@hants.gov.uk

#### 1. Recommendation

1.1. That the contents of this report are noted.

#### 2. Executive Summary

2.1. This report is to provide information to the Regulatory Committee on the Monitoring and Enforcement work undertaken by Strategic Planning during the period January 2018 – June 2018.

2.2. Officers have been actively ensuring compliance with minerals and waste permissions granted by Hampshire County Council, investigating any complaints received as well as taking enforcement action where it is expedient to do so.

2.3. The report details the number of complaints on authorised and unauthorised sites, and the outcome of negotiations, including, when necessary, enforcement action undertaken.

2.4. The report also details the routine monitoring of chargeable and non-chargeable sites and development control work dealing with Planning Condition (Article 27) applications and Non-Material Amendments.

#### 3. Complaints

3.1. The majority of the complaints received during the period January 2018 – June 2018 refer to unauthorised development (12 sites) and breaches of operational planning conditions on existing mineral and waste sites (14 sites). Planning applications are due on 2 of the sites to remedy the situation, with a further 4 applications being prepared for 4 sites on associated matters. The remainder were enquiries made about general site operations, fly-tipping, odour and waste related development that were dealt with in-house or referred to either the Environment Agency (EA) or Local Planning Authorities as non-County matters.

#### 4. Enforcement Actions

4.1. In the 6 month period to the end of June 2018, there was one Enforcement Notice and one Breach of Condition Notice served, with all other matters either addressed through the planning system or remedied through negotiation.

4.2. The following provides an update on enforcement activities previously reported to the committee.

*Table 1: Update on enforcement activities*

Site	Update
Courtwood Farm, Fordingbridge	Following the withdrawal of planning application ( <a href="#">16/11544</a> ) and continued complaints, a Breach of Condition Notice was drafted. However, a further planning application was submitted ( <a href="#">17/10612</a> ) to address issues on site. This was refused by Committee on 24 January 2018 and enforcement action was authorised. An Enforcement Notice was served on 31 January 2018 requiring the site to operate under conditions 4 (HGV numbers), 7 (operating within the building) and 9 (no outside sorting of waste) of the original permission. The applicant appealed against the Enforcement Notice (and the refusal of the planning application) on the grounds that it should be granted permission, that our requirements are unreasonable and that we have not allowed sufficient time for them to comply with the Notice. We are currently awaiting confirmation from the Planning Inspectorate that the Appeal is valid and notification of the timetable for the Appeal.
Down Barn Farm, Boarhunt Road, Fareham	Planning permission was granted in 2009 for the Use of the site for hardcore /concrete recycling solely for the applicant ( <a href="#">P/09/0396/MW</a> ) Three subsequent applications have been submitted to retrospectively vary several aspects of the operation (the sole use, HGV numbers and layout) ( <a href="#">P/17/1104/CC</a> , <a href="#">P/17/0471/CC</a> and <a href="#">P/16/0299/CC</a> ) but these have all been refused. The applicant has since employed a Planning Consultant to address the reasons for the refusals. In the meantime Officers noted that the site was operating outside of their permitted hours. Consequently, a Breach of Condition Notice has been drafted for service requiring the site to operate only within the hours permitted by the permission.
Newlands Farm, Tanners Lane, Fareham, PO14	A Planning Contravention Notice (PCN) was served to investigate concerns about the importation, storage and treatment of waste. Following discussion the



2HT	<p>landowner expressed a desire to submit an application to regularise the situation, but uncertainty over the timetable for the Stubbington By-Pass (which runs through the site) complicated their plans. Therefore, whilst enquiries about the By-pass timetable were made, the operation ceased, the plant and machinery were removed and the materials started being cleared. This clearance work ceased so an Enforcement Notice was served. A planning application was subsequently submitted (<a href="#">P/17/0664/CC</a>) for a temporary permission, but Highways require the land sooner than expected, so the application was withdrawn and the Enforcement Notice was re-served with a 6 month compliance period. Compliance with the requirements of the Notice is being monitored, with site clearance due for completion by 1 March 2018.</p> <p>Recent reports have indicated that activities may have restarted on the site and this is being investigated for possible prosecution for breach of the Enforcement Notice.</p>
<p>Carousel Dairy (Basingstoke AD Plant), Manor Farm, Farleigh Wallop, Basingstoke</p>	<p>Following complaints and further investigation it was determined that there were breaches of the conditions setting out the hours that lorries could access the site. A Breach of Condition Notice (BCN) was served to cease the activity and prevent future breaches. A Planning application was subsequently submitted (<a href="#">16/00322/CMA</a>) to address the issue and clarify the permitted times and vehicle numbers. This was approved by the committee in July 2016 with an increase in vehicle movements permitted for an initial trial period of one year. Proactive site management and regular Liaison Panel meetings appear to be improving the situation and monitoring of the traffic movements is ongoing using the vehicle number plate recognition system. The application to make the vehicle increases permanent was considered at the September 2017 meeting of the Committee when it was resolved to grant permission for another 1 year period to allow for further monitoring which will be done through continued ANPR monitoring (<a href="#">17/01876/CMA</a>)</p> <p>Monitoring of the ANPR data continues and a further application to make the vehicle increases permanent is expected shortly.</p>
<p>Land to the rear of Peacocks Nursery, Ewshot</p>	<p>Following refusal of a second planning application (<a href="#">16/03156/HCC</a>) enforcement action was authorised by Regulatory Committee on 22 March 2017. An Enforcement Notice was served on 22 April 2017 to come into effect 24 May 2017. This EN was appealed</p>

	<p>(on the grounds that it should be granted planning permission) and the Appeal was heard on 12 December 2017.</p> <p><b>The Decision was received on 16 January 2018 and the Appeal was upheld</b> (Decision Notice included under 'Appeals' tab of application above). Consequently the operation has planning permission for a temporary period of 20 months with 4 months to complete restoration. The Inspector agreed with the County Council that the site was not previously developed land and so was still agricultural land and in the countryside. However, he put more weight on the local need for such developments (given that one of the nearby waste sites has since closed) and so allowed the operation to continue for a temporary period, subject to conditions applying a number of strict limitations that will require monitoring.</p> <p>The schemes required to be submitted for approval have been agreed and the operator is in the process of setting up the site in accordance with the approved plans.</p>
<p>Homestead Farm, Penton Copse, Andover</p>	<p>Following appeals against three Enforcement Notices the enlarged waste handling replacement building and site offices and the extension to the site area now have planning permission. As a result of subsequent site inspections an application was submitted for changes to the layout of the site, relocation of the office building and an extension to the waste handling building. The change to the layout and relocation of the office building were approved, however a further application is required to address the extension of the waste handling building and associated operational matters. This further application is being prepared, although has been delayed due to other enforcement issues on another, nearby site.</p>

4.3. Further information on the full suite of enforcement powers available to the County Council as Minerals and Waste Planning Authority (including powers to service PCNs, BCNs and ENs) are included in the County's Enforcement and Site Monitoring Plan. This can be found on the Strategic Planning website at: <http://documents.hants.gov.uk/planning-strategic/HampshireCountyCouncilPlanningEnforcementandSiteMonitoringPlanJuly2016.pdf>.

4.4. The following table provides information on the joint enforcement activities which have been undertaken with the Environment Agency, the Police and District Planning Authorities.

*Table 2: Update on joint enforcement activities with the Environment Agency, the Police and District Planning Authorities*

<b>Site</b>	<b>Joint working with</b>	<b>Update</b>
Whitehouse Field, Goodworth Clatford	Test Valley Borough Council, Environment Agency, HCC Highways	<p>In late 1990s, planning permission was granted by Test Valley Borough Council (TVBC) for construction of an extension to the existing golf course. This involved the importation and tipping of inert materials as an engineering operation. This work continued for approximately 10 years until the then operator left the site in 2010 and TVBC considered the development completed. Several years later the operator of Homestead Farm bought the land. He claimed that surveys of the site had shown that the development had not been fully completed and stated his intention to restart work. His argument is that the levels survey agreed under the permission is so vague and contradictory that there is potentially up to 6 metres of fill required (approx. 450 000 tonnes of material).</p> <p>The authorities do not accept that this is authorised and have liaised closely to ensure that if and when work does start the appropriate enforcement action can be taken. Following legal advice from Counsel, it has been decided that the best way forward is for TVBC to enforce against any work as a breach of the original permission, with the EA looking to prosecute for tipping without a Permit. HCC Highways are also involved as part of the site access is highway land historically used by locals as a small car park, and the new landowner has been fencing and blocking it off. HCC Highways have therefore taken legal action to secure clearance of the fences and blockades and maintain access.</p>
Selborne Brickworks	Natural England and Police's Wildlife Crime Team	Further reports of digging holes and burying waste adjacent to settlement ponds on the Brickworks site. Investigation found no evidence of tipping or of removal of clay off site so this was not a County Planning matter. However, this area is a known habitat of Great Crested Newts (a protected species). The landowner was prosecuted in the past for similar destruction so knows he cannot undertake such works without approval of Natural

		England (NE). The Police and NE are investigating with a view to a further prosecution.
Importation, storage and burning waste at Trampers Lane, North Boarhunt	Environment Agency (EA)	Gathering of evidence complicated by existence of mobile home park on the site and lack of available witnesses. The landowner pleaded guilty to charges brought by the EA and received a £3,000 fine for the deposit of trommel fines, but investigations into the importation and burning of general skip waste continues.
Importation, storage and burning of waste at Mill View Farm, Old Mill Lane, Denmead	Environment Agency	Part of an investigation by the EA's Crime Investigation Team. The prosecution is continuing.

## 5. Site Monitoring

- 5.1. Chargeable sites – under the [Town and Country Planning \(Fees for Applications and deemed applications\) \(Amendment\) \(England\) Regulations 2006](#) the County Council is able to charge fees for the monitoring of quarries and landfill sites in the County. Fees are charged for a set number of monitoring visits, the number of visits being dependent on the stage of operations at each site; whether operational, in aftercare or inactive. The number of visits is agreed with each operator and is in line with an assessment of each site made by the County Council. Active sites are charged at £397 per visit for between four and eight visits per year. Sites in aftercare are charged at £397 for one visit per year. Inactive sites are charged £132 for one annual visit.
- 5.2. There are 28 active sites, 12 in aftercare and 5 dormant sites liable for chargeable visits. The County Council also undertakes monitoring of 2 active sites for South Downs National Park Authority.
- 5.3. During this period all chargeable visits were undertaken, bringing in approximately £18,500 in fees.
- 5.4. Non-chargeable sites – these include waste processing sites, wastewater and treatment works and metal recyclers. These vary from the large Energy Recovery Facilities (ERF) and Materials Recovery Facilities (MRF) to the smaller scale recycling and transfer facilities and updating existing wastewater treatment works. The larger developments attract much attention in their locality and require regular monitoring to ensure that the local amenity is not impacted, whereas the smaller, built developments require monitoring during construction and implementation, but once up and running need less regular attention and resources dictate these sites only get further visits should complaints be received. Matrix working arrangements have been made with Waste & Resource Management that their officers undertaking

visits to waste sites operating under the County's waste contract also look at planning issues to provide greater coverage.

## **6. Liaison Panels**

6.1. During this period Liaison Panel meetings were held for the following sites:-

- (a) Basingstoke AD Plant, Carousel Dairy, Farleigh Wallop.
- (b) Yokesford Industrial Estate, Michelmersh.
- (c) Lee Lane Recycling Facility, Nursling.
- (d) Humbly Grove Oilfield.
- (e) Chineham ERF.
- (f) Plumley Wood Quarry, Somerley.
- (g) Rookery Farm Recycling Facility, Fareham.
- (h) Four Dell Farm Recycling Facility and Biomass burner, Otterbourne.
- (i) Frith End Sandpit, Kingsley.
- (j) Bushywarren AD Plant, Herriard.
- (k) A303 Recycling Facility, Longparish.
- (l) Roke Manor Quarry, Romsey.
- (m) Mortimer Quarry, Mortimer West End.

6.2. A number of new Liaison Panels are to be set up in the coming months including Forest Lodge Home Farm Quarry, Hythe and Bullington Metal Recycling Facility.

## **7. Development Management**

### **Planning Condition (Article 27) applications:**

- 7.1. Where conditions of new permissions require details to be submitted and approved for the proper implementation and control of the development, Article 27 applications are required. Under the [Town and Country Planning \(Fees for Applications and Deemed Applications, Requests and Site Visits\) \(England\) Regulations 2012](#), a fee per submission is required for the discharge of any details submitted. Following the recent planning fee increase this will now be £116 per submission.
- 7.2. During the period, Article 27 applications were received and approved or are being determined for 7 planning permissions, totalling £1,103.
- 7.3. Following adoption of the Protocol for Dealing with Breaches in Planning Control relating to Development Undertaken by the County Council under Regulation 3 of the Town and Country Planning General Regulations 1992, future enforcement updates will also include information on Article 27 applications for County Council developments as well as any breaches of planning control.

### **Non-Material Amendments (NMAs):**

- 7.4. Non-Material Amendments (NMAs) are minor changes to the operation of authorised sites that can be agreed by an application for non-material amendment if the change has no substantial impact on the local amenity.

Such an application requires a fee, but does not involve general consultation and determination by Committee.

7.5. Over the period two NMAs were submitted:

- Integra South West Energy Recovery Facility, Oceanic Way, Marchwood Industrial Park, Marchwood - Installation of 'tuned mass dampers' on the stacks;
- Roke Manor Quarry, Old Salisbury Lane, Shootash Romsey - Changes to the layout and phasing.

## **8. Future enforcement updates**

8.1. Following the adoption of the Protocol for Dealing with Breaches in Planning Control relating to Development Undertaken by the County Council under Regulation 3 of the [Town and Country Planning General Regulations 1992](#), future enforcement updates will also include information on any Article 27 applications as well as any breaches of planning control for regulation 3 developments.

**CORPORATE OR LEGAL INFORMATION:****Links to the Strategic Plan**

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	yes
<b>People in Hampshire live safe, healthy and independent lives:</b>	yes
<b>People in Hampshire enjoy a rich and diverse environment:</b>	yes
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	yes

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None

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# Protocol for Dealing with Breaches in Planning Control relating to Development Undertaken by the County Council under Regulation 3 of the Town and Country Planning General Regulations 1992



*Draft*

*Version 1: May 2018*

## 1.1 Introduction

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This protocol sets out the Hampshire County Council's (HCC) approach to planning enforcement of County Council developments. It sets out how the County Council would seek to regulate any breaches of planning control relating to development undertaken by County service providers under Regulation 3 of the [Town and Country Planning General Regulations 1992](#).

The County Council has the responsibility for determining all applications for Regulation 3 development that the County Council wishes to carry out. Regulation 3 developments may include:

- Schools;
- Libraries;
- Museums;
- Country Parks; and
- Development on other County Council owned land (e.g. farms).

A Regulation 3 development has exactly the same level of requirement of compliance as planning permission issued by the County Council for minerals or waste development or indeed by any other planning authority.

It is expected that the County Council will promote best practice in its own development, be it through County Council staff or contractors. Where development is granted planning permission, the applicant is obliged to ensure that all planning conditions are complied with in full. It is very important to ensure compliance to minimise the risk of negative impact to Hampshire County Council's reputation. Applicants should comply with permissions granted as it helps to demonstrate to local communities and other interested parties that the County Council follows its own procedures and complied with permissions granted.

Effective enforcement of Regulation 3 developments is also essential as it ensures public confidence in the planning system. Whilst the enforcement of a breach of planning control relating to a Regulation 3 development is carried out by the relevant local District or Borough Council, the County Council will still have a role to play in helping to address any breaches.

This protocol sets out what the role of the County Council is in relation to enforcement for Regulation 3 developments. The Protocol sets out:

- how breaches of planning control relating to Regulation 3 developments will be addressed and by whom;
- what action the County Council would take action to address any breaches; and
- establishes formal procedures to enable the County Council, both the Regulatory Committee (the Committee) and officers acting under delegated powers, to be consistent and effective in their approach.

Monitoring and enforcement of minerals and waste developments are not covered by this protocol. This is covered by a separate [Planning Site Enforcement and Monitoring Plan](#). The protocol also sits alongside the [Development Management Charter \(2016\)](#).

## 1.2 Whose responsibility is it to ensure Regulation 3 planning permissions are complied with?

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When planning permission is granted, it is the applicant's responsibility to ensure that all conditions associated with a planning permission are complied with.

## 1.3 What is a breach of planning control?

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Breaches of planning control are likely to be brought to the attention of the County Council either by routine site inspections for other development at the site or following a complaint from a member of the public or other third party.

The **three types of breach** that may be likely to occur during development are:

- I. **Breach of conditions attached to an extant planning permission;**
- II. **The carrying out of development where there is no planning permission and such a planning permission is unlikely to be granted; and**
- III. **The carrying out of development where there is no planning permission but permission is likely to be granted retrospectively.**

Breaches of planning control may include:

- I. **Unauthorised development;**
- II. **Unauthorised erection of a structure;**
- III. **Development not in accordance with the approved plans of the planning permission;**
- IV. **Material change of use of a building or land;**
- V. **Failure to comply with the conditions attached to a planning permission; and**
- VI. **Failure to properly maintain land so that it affects the amenity of the area.**

Relevant Government guidance is found in the [National Planning Policy Framework \(NPPF\)](#) (2012) which came into effect in March 2012. This states that:

*“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local Planning Authorities should consider publishing a Local Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”*

It is the applicant's responsibility to ensure there is not a breach of planning control. [National Planning Practice Guidance](#) gives details about what is a breach of planning control:

*A breach of planning control is defined in [section 171A of the Town and Country Planning Act 1990](#) as:*

- *the carrying out of development without the required planning permission; or*
- *failing to comply with any condition or limitation subject to which planning permission has been granted.*

*Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), constitutes a breach of planning control against which enforcement action may be taken.*

Paragraph: [001 PPG Planning enforcement](#) – overview

The [Town and Country Planning Act 1990](#) imposes a general but not mandatory duty to ensure compliance with planning control. Accordingly, because there is an element of discretion as to whether or not it might be expedient to take appropriate action, there is a need for procedures to be adopted and followed to ensure that the County Councils approach is consistent and effective when deciding what action should be taken.

Examples of a breach of planning control are:

- Commencing on site without planning permission having yet been granted;
- Failing to comply by a condition of a planning permission;
- Having a development with planning permission that has lapsed due to exceeding a condition with a timescale giving temporary permission; and
- Failing to discharge a condition requiring submission and approval of information via an Article 27 application.

## 1.4 How to report a breach of planning control

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You can contact the Strategic Planning team by:



01962 845891 or 01962 846746



Strategic Planning, Economy, Transport & Environment  
Department, Hampshire County Council, Elizabeth II Court West  
1, The Castle, Winchester, Hampshire, SO23 8UD



[planning@hants.gov.uk](mailto:planning@hants.gov.uk)

Before making a complaint it is helpful to have as much information as possible, such as:

- **Description of the possible breach;**
- **Date the activity started (is it continuing?);**
- **Site address;**
- **Name and any details of the site owner or those involved (including vehicle registration numbers if possible); and**
- **Name, address and telephone number or email of the complainant.**

### Confidentiality

All complaints received by the County Council will be dealt with in the **strictest confidence** and details of the person reporting will not be made known without their agreement. The **nature of the alleged breach is not confidential**. It is important to note that if the complaint progressed into a court of law you may be requested to provide evidence.

**Anonymous reports** will not be investigated unless they relate to a matter of public safety or serious environmental damage or harm to amenity.

## 1.5 Who is responsible for enforcement for Regulation 3 developments?

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The County Council is only authorised in law to take enforcement action against development which is considered a 'county matter' - for minerals and waste development.

Paragraph 11 of Schedule 1 of the [Town and Country Planning Act 1990](#) clarifies that although the County Council can enforce against mineral and waste developments granted by the authority, all other enforcement powers fall to the District planning authority (i.e. the relevant District or Borough Council).

In the event that a complaint is received by the County Council about a County Council development, County Council planning officers will attempt to liaise and resolve any issues which the applicant before the need for enforcement measures to be undertaken by the District or Borough Council (see [section 1.6](#)).

## 1.6 What will happen if the County Council receives a complaint about a Regulation 3 development?

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### Procedure

The procedure applied to **dealing with complaints** about Regulation 3 developments is set out in Figure 1.

### Registering

A record of the complaint will be added to the County Council's planning database upon receipt once it has been ascertained that the complaint relates to a permission granted by the Council for a Regulation 3 development.

### Site Monitoring and Gathering of Information

In instances where there are breaches of planning control associated with a Regulation 3 development, the County Council will try and resolve the issue in discussion with the applicant.

Officers acting for the County Council as planning authority may need to do initial investigation of any breaches of planning control which relate to developments permitted by the County Council once informed about them.

In such instances, County Council officers and contractors working with or for the County Council shall enable site inspections to take place and assist in providing any necessary information.

Figure 1:

## Procedure for dealing with complaints



## Right to enter land

All officers, or other persons duly authorised in writing by the County Council, may at any reasonable hour enter any land to ascertain whether there has been a breach of planning control in accordance with the [Town and Country Planning Act 1990](#). Any person that wilfully obstructs an authorised person in carrying out these duties is committing an offence, punishable on summary conviction to a fine not exceeding level 3 on the standard scale.

## Who will be kept informed?

If no breach of planning control is found by officers, the complainant will be informed accordingly.

Breaches of planning control will be brought to the attention of the Regulatory Committee as part of a quarterly enforcement update (see [section 1.7](#)).

## What happens if the County Council cannot resolve the complaint?

As the County Council cannot instigate enforcement action on its own development, in the event that a breach is identified and not addressed appropriately by the applicant, the complaint can be referred to the relevant District / Borough Council for investigation. This approach may be employed for serious breaches of planning control as a last resort and considered on a case by case basis.

The investigation enforcement procedures of the relevant District / Borough Council will then apply. The issue on whether it is expedient to take enforcement action will be determined by the District / Borough Council and not the County Council.

## 1.7 Informing the Regulatory Committee of enforcement activities

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Where there has been a breach of planning control on a County Council development site, the matter will be reported to the next available and suitable committee (on the request of the chairman) or at least a four monthly basis.

## 1.8 Review of this Protocol

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This Protocol will be reviewed every two years. The next review is due in May 2020.