The Planning Inspectorate

Appeal Decision

Inquiry Held on 10 April 2018

Site visit made on 10 April 2018

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2018

Appeal Ref: APP/D3315/C/17/3189132
Land at Holbaines Meadow, Sampford Arundel, Wellington, TA21 0LS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Paul Sparks against an enforcement notice issued by Taunton Deane Borough Council.
- The enforcement notice was issued on 3 October 2017.
- The breach of planning control as alleged in the notice is:
  (i) The change of use of the land from agricultural use to B8 storage use by way of unauthorised storage of piles of hardcore, waste from building materials including bricks, paving slabs and general rubble; and,
  (ii) The laying of hardcore on the ground resulting in the provision of a hard surface on the land;
  as shown on the 5 photographs attached to the notice.
- The requirements of the notice are:
  (i) Remove the hardcore and building waste being stored on the land; and,
  (ii) Cease using the land for the storage of hardcore and building waste; and,
  (iii) Remove the area of hard surfacing from the land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), and (d) of the Town and Country Planning Act 1990 as amended.
- **Summary of Decision: Notice varied, appeal dismissed and notice upheld.**

Procedural Matters

1. The appellant conducted his own case and gave evidence on his own behalf. All evidence was given on oath.

The appeal site and relevant planning history

2. The site is a triangular area of land in open countryside bounded by the A38 on its south side and by a narrow lane on its north-west boundary. Vehicular access into the site is from the lane with an agricultural building sited nearby. A track leads up to an area of hardstanding where building waste materials are stored which are piled in mounds up to about 3m in height. Some of the waste has been crushed. There is also a concrete hardstanding, a caravan, a small area of container plants, a number of palettes, waste ceramic sanitary goods and bricks.

3. An area of hardcore/hard surfacing nearest the north corner of the site appears to have been laid some time ago and part of it has had additional crushed building waste spread more recently on top. This area has been extended with

the spreading of hardcore and the storage of building waste on top of existing drainage beds up to about 5m from the line of trees running in a north-easterly direction across the site. To the south of the trees is a field laid to pasture.

4. In March 1988 planning permission was granted for the excavation of OS 2131 and the erection of an agricultural building (32/88/001). The continued siting of a mobile home was conditionally approved in March 1989 (32/88/0010). Permission was granted in March 2014 for security fencing and gates (32/13/007).

5. There have been various refusals including applications for change of use to a retail garden centre; the change of use of the agricultural building to the manufacture and sale of concrete garden products, and subsequently to light industrial use, commercial and horticultural use; the continued siting of a mobile home; the retention of a mobile home for an agricultural worker and part use of the agricultural building for the production of garden architecture. An application for the formation of a new access onto the A38 was dismissed on appeal in September 2017.

The appeal on ground (b)

6. An appeal on this ground is that the breach has not occurred as a matter of fact.

7. It was evident from my site inspection and the photographs submitted by the Council that the alleged breach has taken place as a matter of fact.

8. The appeal on this ground therefore fails.

The appeal on ground (c)

9. An appeal on this ground is that there has not been a breach of planning control.

10. The appellant contends that the site has permission as a wholesale nursery for the production of container grown trees and shrubs. He states that the nursery project was started in the late 1980s when planning permission was not required for this type of development. It was developed in the full knowledge of the planning officer at the time. Drainage paths were completed over 30 years ago, together with a substantial portion of the hardstanding area and a polytunnel. Having started the project, the appellant is seeking to complete what was started and asserts that there are no breaches of planning control as all the stored hardcore on site is for completion of the project. The container plants are required to be drained on a solid base and for the manoeuvring of vehicles.

11. The appellant refers to the planning permission 32/88/001, which he implemented within the 5 years required by condition, and also to permitted development rights, as indicators that the activities currently on site are lawful. However, the permission was for excavation and construction of an agricultural building. The ADAS letter of 19 February 1988[1] provides an agricultural appraisal of the application and comments that if the business develops further, additional requirements such as hardcore, sand or fabric stabilised beds will be needed on which to stand the container grown plants. However,

[1] Appendix A3 of the Stacey Salter's evidence

whilst reference is made to possible future business development, the application drawings[2] do not show any hardcore beds but provide details of the agricultural building, excavation and fill areas, and a tree screen. In view of this I do not consider that the laying of hardcore and/or storage of waste materials fall within the scope of that permission.

12. Although the appellant refers to the hardcore areas being permitted development, he provides no evidence or reference to the relevant Order in support of this claim.

13. Class B, Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)sets out permitted development rights of agricultural development on units of less than 5 hectares. This includes at (e), the provision of a hard surface, and at (f), the deposit of waste, where the development is reasonably necessary for the purposes of agriculture within the unit. For planning purposes agriculture includes horticulture.

14. The appellant states that between 1990 and 2016 there was no work on the site other than general maintenance, largely due to the cost of establishing the horticultural enterprise which required an investment of £25,000 to £30,000. In 1988/89 it was projected that 25-30,000 plants would be required to provide a living. As the containers would be stored on palettes, with each palette holding 20 plants, space for over 1000 palettes would be required. However, in the absence of finance, the appellant sought to diversify his business, such as concrete garden architecture. The appellant stated that the last sale of plants from the site was in 1990/91.

15. Although the appellant states that he is seeking to complete the project started many years ago, it is not his intention to run the business now. He has a prospective tenant who would like to run a horticultural business on the site. However, he does not know whether he would work part or full time and no agreement is in place. If this arrangement falls through the appellant would advertise the availability of the site.

16. The evidence shows that the site has been hardly used as a nursery for about 25 years and there is considerable uncertainty over the future business use of the site which indicates that increasing the hardstanding to the extent so far or as intended by the appellant is not reasonably necessary for the purposes of agriculture. Even had the appellant been able to demonstrate that the works were reasonably necessary for agriculture, further considerations need to be taken into account.

17. The GPDO at B.5 (3) permits development in Class B(f) subject to the following conditions-

    (a) that waste materials are not brought on to the land from elsewhere for deposit unless they are for use in works described in Class B(a), (d) or (e) and are incorporated forthwith into the building or works in question; and

    (b) that the height of the surface of the land will not be materially increased by the deposit.

18. There is a clear delay in the bringing of the waste material onto the site and for it to be crushed and spread on the land. The Council's witness advised that

[2] Appendix A4 of the Stacey Salter's evidence

there were substantial piles of uncrushed material on the site when she visited it in June 2016 and these remained for over a year. I do not regard such a delay in incorporating the materials into a hardstanding as being 'incorporated forthwith'.

19. The appellant has said that the depth of the hardcore spread on the site is between 23–30 cm (9-12 inches). However, this represents a significant amount which has materially increased the height of the surface of the land over a wide area.

20. On the basis of the current GPDO, I conclude therefore that the storage of waste material on the site and the laying of hardcore to create a hard surface do not benefit from permitted development rights. Additionally no planning permission exists and the use of the site and the works carried out are therefore unauthorised.

21. In an appeal on a legal ground the onus of proof rests with the appellant and the standard of proof is the balance of probability. The appellant has not demonstrated that the alleged breach of planning control is lawful and therefore the appeal on ground (c) fails.

The appeal on ground (d)

22. An appeal on this ground is that at the time the enforcement notice was issued, it was too late to take enforcement action.

23. At the site inspection and from the Council's submitted photographs it was evident that part of the site had benefitted from a hard surface for some time and this is distinguishable from the more extensive area of more recently laid hard surface. The appellant states that the original hardstanding was laid in the late 1980s and that this represented about 40% of the extent of the current area of the hard surface/waste storage area. The Council accepts that the notice should have distinguished between the original and extended area of hard surface.

24. The appellant acknowledges that the creation of an extended area of hard surfacing and waste material storage has taken place from 2016 onwards. The appeal on ground (d) fails in respect of the extended area but succeeds in respect of the original hard surfaced area which is identified by the cross-hatched area in the plan attached to this decision. I will vary the notice by amending the requirement in part 5 (iii) of the notice accordingly. I am satisfied that no injustice to the parties would occur as a result.

25. It should be noted that the requirements of the notice at part 5(i) and 5(ii) are retained without amendment.

Conclusions

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

Formal Decision

27. It is directed that the enforcement notice be varied by the replacement of the words in 5 (iii) of the notice with the words " Remove the area of hard surfacing from the land that is outside the area shown cross-hatched on the

plan attached to this notice. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

P N Jarratt

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Nick Hill, Solicitor

He called
Stacey Salter BSc Planning Enforcement Officer

FOR THE APPELLANT:

[redacted]

[redacted]

INTERESTED PERSONS:

None

The Planning Inspectorate

Plan

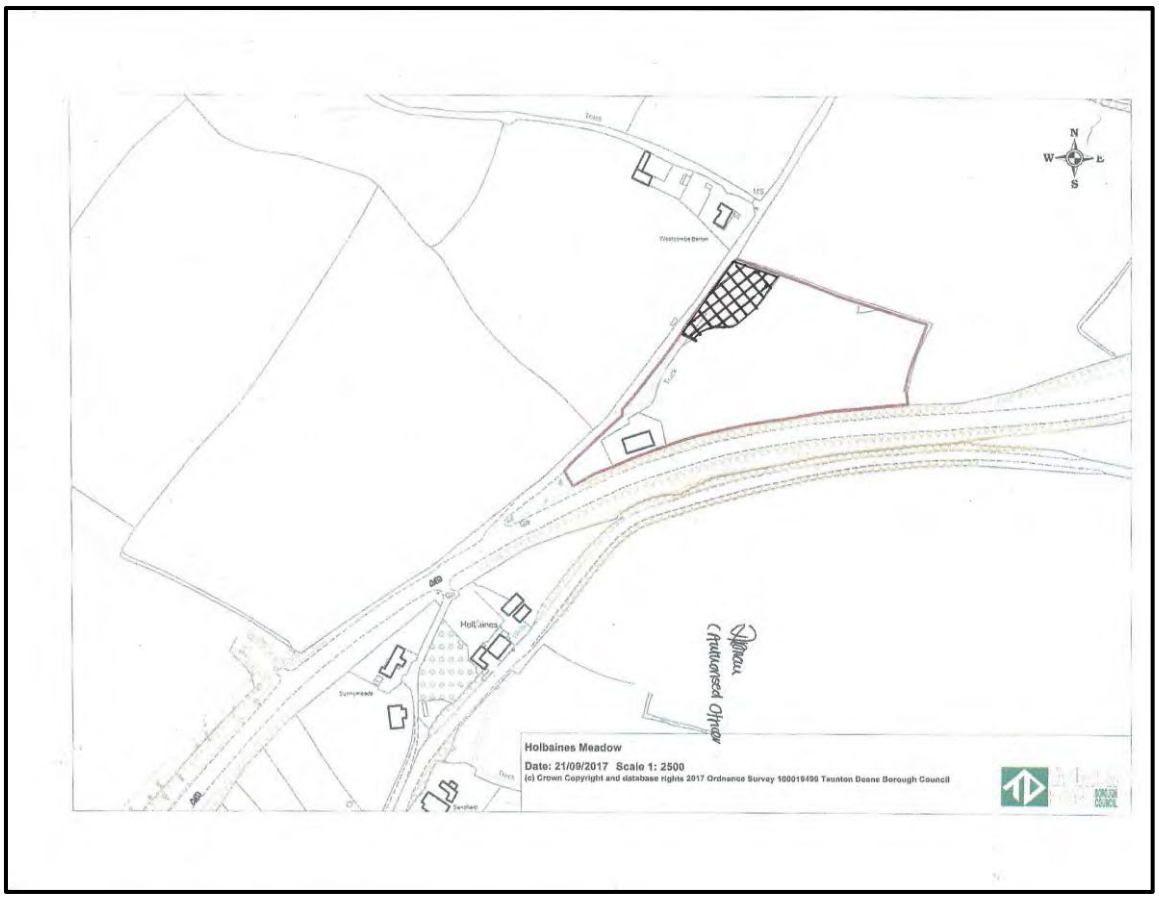
This is the plan referred to in my decision dated:

by P N Jarratt BA DipTP MRTPI

Land at Holbaines Meadow, Sampford Arundel, Wellington, TA21 0LS

Reference: APP/D3315/C/17/3189132

Scale: Do not scale



P N Jarratt

Inspector

Original

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY
TOWN AND COUNTRY PLANNING ACT 1990
(As amended by the Planning and Compensation Act 1991)

ENFORCEMENT NOTICE
ISSUED BY: Taunton Deane Borough Council ("the Council")

1. THIS NOTICE is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this Notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of this Notice and the enclosures to which it refers contain important additional information.

2. THE LAND TO WHICH THE NOTICE RELATES
Land at Holbaines Meadow Sampford Arundel Wellington TA21 0LS shown edged in red on the attached plan.

3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL
Without planning permission,

(i) the change of use of the Land from agricultural use to B8 storage use by way of the unauthorised storage of piles of hardcore, waste from building materials including bricks, paving slabs and general rubble; and

(ii) the laying of hardcore on the ground resulting in the provision of a hard surface on the Land

as shown on the 5 photographs attached to this Notice.

4. REASONS FOR ISSUING THIS NOTICE
It appears to the Council that the above breach of planning control has occurred within the last ten years.

The Land is in open countryside located to the south of the hamlet of Holywell Lake.

The storage of piles of hardcore and building waste and the provision of a hard surface on the Land is detrimental to the visual amenities and landscape character of the rural area within which the Land is located. In addition, the storage of piles of hardcore and building waste and the provision of a hard surface is not reasonable or necessary for the purposes of agriculture use.

This is contrary to Taunton Deane Core Strategy Policies DM1 (General Requirements), DM2 (Development in the Countryside) and CP8 (Environment).

The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections.

5. WHAT YOU ARE REQUIRED TO DO

(i) Remove the hardcore and building waste being stored on the land; and
(ii) Cease using the Land for the storage of hardcore and building waste; and
(iii) Remove the area of hardsurfacing from the Land

6. TIME FOR COMPLIANCE

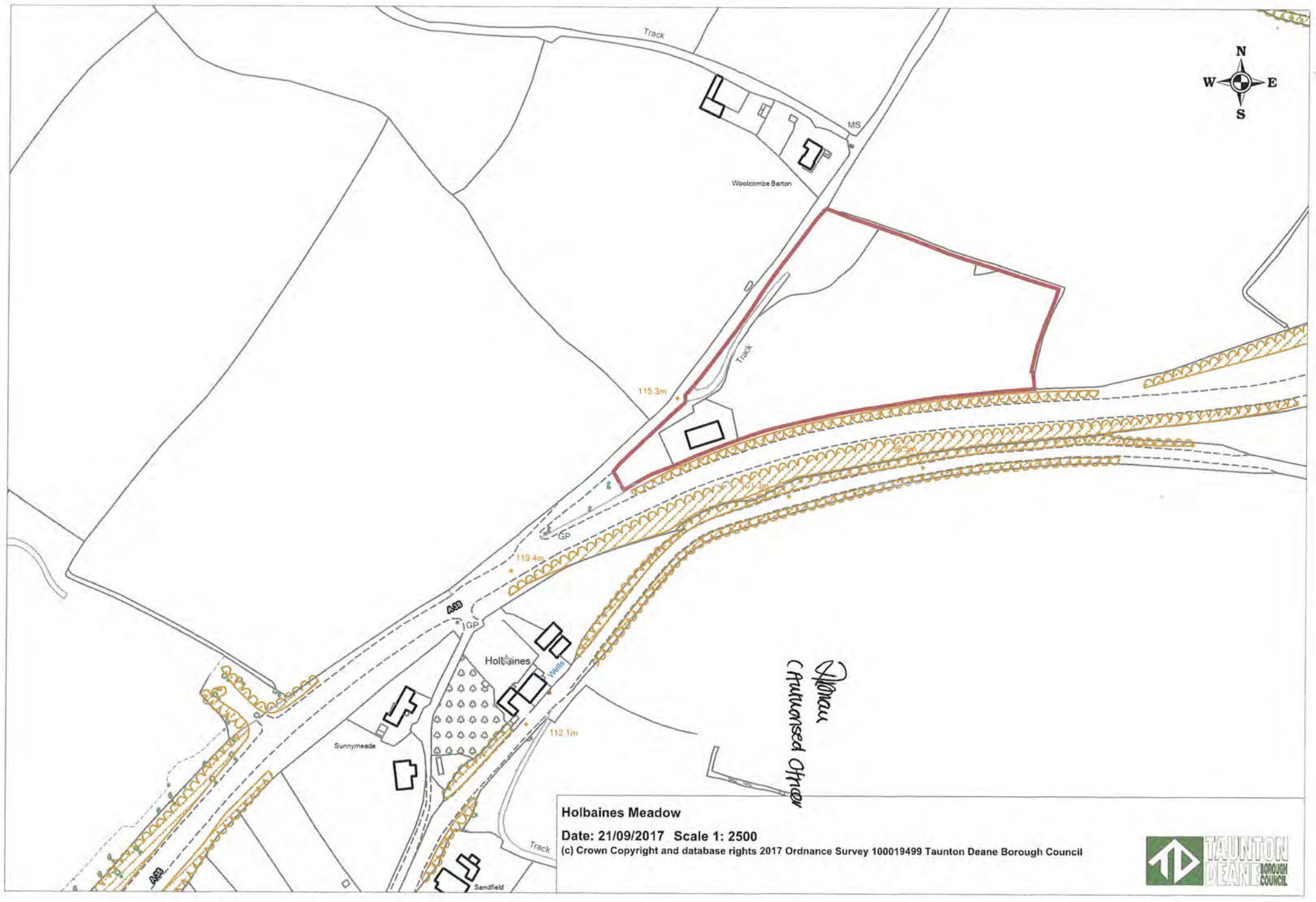
Six (6) months from the date this Notice takes effect

7. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 8 November 2017 unless an appeal is made against it beforehand.

Dated: 3.10.17
Signed: [signature] (Authorised Officer
On behalf of: Taunton Deane Borough Council The Deane House Belvedere Road Taunton Somerset TA1 1HE

Nominated Officer: Stacey Salter
Telephone Number: 01823 356466


Track
MS
Woolcombe Barton
N
W
E
S
Track
115.3m
GP
119.4m
A39
GP
Holbaines
Wells
112.1m
Sunnymeade
Track
A39
Sandfield
Holbaines Meadow
Date: 21/09/2017 Scale 1: 2500
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TAUNTON DEANE BOROUGH COUNCIL


19.06.2017 11:54


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ANNEX
Important - This Communication Affects Your Property
Town and Country Planning Act 1990
(as amended by the Planning and Compensation Act 1991)

Enforcement Notice relating to land at Holbaines Meadow Sampford Arundel Wellington TA21 0LS ("the Land")

This local planning authority, Taunton Deane Borough Council, has issued an Enforcement Notice relating to the Land and I now serve on you a copy of that Notice as you have an interest in the Land. Copies of the Notice are also being served on the parties listed at the end of this letter who, it is understood, also have an interest in the Land.

YOUR RIGHT OF APPEAL

You can appeal against this Notice, but any appeal must be received, or posted in time to be received, by the Planning Inspectorate acting on behalf of the Secretary of State before 8 November 2017. The enclosed information sheet published by the Planning Inspectorate gives details of how to make an appeal -
link to http://www.planningportal.gov.uk/uploads/pins/enfinfosheet.pdf

Under section 174 of the Town and Country Planning Act 1990 (as amended) you may appeal on one or more of the following grounds:-

(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the Notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

(b) that those matters have not occurred;

(c) that those matters (if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the Notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the Enforcement Notice were not served as required by Section 172;

(f) that the steps required by the Notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

(g) that any period specified in the Notice in accordance with section 173(9) falls short of what should reasonably be allowed.

Not all of these grounds may be relevant to you.

If you appeal under Ground (a) of Section 174(2) of the Town and Country Planning Act 1990 this is the equivalent of applying for planning permission for the development alleged in the Notice and you will have to pay a fee of £770.00. You should pay half of the fee (£385.00) to the Taunton Deane Borough Council (made payable to Taunton Deane Borough Council) and the other half of the fee to the Planning Inspectorate (made payable to the Department for Communities and Local Government). Joint appellants need only pay one set of fees.

If you decide to appeal, when you submit it, you should state in writing the ground(s) on which you are appealing against the Enforcement Notice and you should state briefly the facts on which you intend to rely in support of each of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Enforcement Notice, it will take effect on 8 November 2017 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within 6 months starting from 8 November 2017. Failure to comply with an Enforcement Notice which has taken effect can result in prosecution and/or remedial action by the Council.

Parties on whom the Enforcement Notice has been served:-

[redacted]