

HERTSMERE BOROUGH

REMEDIATION AND RESTORATION OF LAND AT PATCHETTS EQUESTRIAN CENTRE, ALDENHAM, HERTS

Report of the Director of Environment

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1. Purpose of Report

1.1 To inform the Committee of the background of enforcement action and subsequent negotiations to secure land remediation and restoration at Patchetts Equestrian Centre, Aldenham, Hertfordshire and seek a decision thereon.

2. Summary

2.1 Following the grant of planning permission by the County Council in April 1999, landraising, through the importation and deposit of waste to create improved horse paddocks, commenced at Patchetts Equestrian Centre. As a result of unauthorised development (over-tipping) at the site since that time, the County Council has undertaken enforcement action, including the issue of both Enforcement and Stop Notices and prosecution for breach of the same in the Magistrates Court. The contractor responsible for carrying out the works at the site, S J Deegan, (the contractor) was successfully prosecuted in October 2002 for the importation and deposit of waste materials in excess of that permitted under the planning permission. Similar proceedings against the leaseholder of the site, Patchetts Green Ltd, are currently held in abeyance.

2.2 Meanwhile, the County Council and the leaseholder have been attempting to negotiate a settlement in respect of securing an appropriate restoration scheme, without the need for continued litigation. An extant enforcement notice requires the removal of the materials tipped over and above that permitted. In response to this, the leaseholder of the site has offered to spend £350,000 in restitution towards securing the removal of previously tipped material and completion of restoration works at the site. It is likely that the money would be insufficient to remove all of the 'over-tipped' material.

3. Conclusion

3.1 The report concludes that the Director of Environment should be:-

- 1) authorised to accept Patchetts Green Ltd's (the leaseholder) offer to spend £350,000 to secure restoration works at the site subject to Patchetts Green Ltd and the freeholder (Exchange Ltd) first entering into a Section 106 planning agreement to carry out the £350,000 worth of works to achieve proposed target contour levels which will be set out in the agreement;
- 2) if the proposed target contour levels are not available at the time of the committee meeting, then the Director of Environment would consult with the Committee's Chairman and Spokesman before agreeing such contour levels, and;
- 3) following the completion of the proposed remediation works, the Enforcement Notice should be varied to reflect the actual contour levels achieved. This would acknowledge that the County Council's enforcement requirements had been satisfied and be recorded in the District Council's Planning Register.

1. Background information and description of the site

- 1.1 The site forms part of Patchetts Equestrian Centre and occupies an area of 5.5 hectares. It is situated between the M1 motorway and A41 North Western Avenue on the boundary of Aldenham and Bushey, near Watford. The eastern boundary is formed by Public Footpath No.14, while to the west is the Hilton International and Hartspring Cottage. Patchetts Equestrian Centre is a large and popular riding establishment.
- 1.2 For planning purposes the site is divided into two separate areas. For the first area ('Area 1') planning permission was granted by the County Council on 21 January 1999 (reference 0/0382-98) for the re-levelling of existing horse paddocks, provision of balancing pond, noise barrier and tree planting involving the importation and deposit of inert fill, subject to 28 conditions. The second area ('Area 2') concerns land that Hertsmere Borough Council resolved to grant planning permission for an equestrian competition ground, including land levelling, subject to the completion of a Section 106 agreement in November 1997. However, the agreement was never completed and as such planning permission was subsequently refused by Hertsmere in April 2002. Both areas of land have been the subject of enforcement action undertaken by the County Council.
- 1.3 The site (both Areas 1 and 2) was previously used during the spring/summer months as a large paddock for horses. Planning permission reference 0/0382-98 allowed for the importation of 23,450 cubic metres onto Area 1, which was the amount of fill considered to be the minimum required to complete the development. The development commenced in April 1999 and the application estimated that it would take 6 months to complete.
- 1.4 Following site visits, conducted in October 1999 by officers of the County Council, it became apparent that large amounts of unsuitable material had been deposited within Area 1 in breach of the planning permission. Such material included wood, branches, piping, cardboard insulation, paper, clothing, general builders waste (breeze blocks etc) metal reinforcement bars and tyres. Accordingly, an Enforcement Notice and a Stop Notice were subsequently issued and served on 5 November 1999. Prior to service of the Notices a land search was carried out which revealed that a company called 'Exchange Ltd' was the owner of the land. Notices were therefore served on Exchange Ltd, Patchetts Green Ltd as occupiers of the site and S J Deegan, the contractor responsible for carrying out the works. The Notices served on Exchange Ltd were later returned to the County Council marked "addressee not known". The contractor, S J Deegan, subsequently appealed against the Enforcement Notice. In a decision letter dated 27 March 2000, a Planning Inspector appointed by the Secretary of State upheld the Notice, although the period for compliance stated in the Notice was increased to six months. Accordingly, the amended Enforcement Notice required that the unsuitable waste materials should be removed from the site by 27 September 2000. To date this has not been carried out.
- 1.5 To the County Council's knowledge the works on site largely ceased for a period of 12 months from September 2000.

- 1.6 Following a site visit carried out by officers of the County Council in October 2001, it was noted that the height of the tipping on Area 1 had exceeded what was authorised under the planning permission and Area 2 had also been tipped on. Enforcement action was again taken by the County Council by way of Enforcement and Stop Notices issued on 17 October 2001. It was estimated that approximately 100,000 cubic metres (approximately 130,000 tonnes) of excess waste had unlawfully been imported and deposited at the site.
- 1.7 The two Stop Notices and two Enforcement Notices in respect of Areas 1 and 2 were served on S J Deegan, the contractor at the site; on Patchetts Green Ltd; on Exchange Limited, the company registered as the landowner of the site (the freeholder) and on National Westminster Bank Plc, which has a charge on the land. Again, the Notices served on Exchange Ltd were returned to the County Council marked "addressee not known".
- 1.8 The Stop Notices came into effect on 23 October 2001 and required the recipients to cease the importation and deposit of waste materials on both Area 1 and Area 2. The Enforcement Notices covered the same land areas as the Stop Notices and came into effect on 17 November 2001 as no appeal was lodged by any recipient. Amongst other matters, the Enforcement Notices required the cessation of the importation and deposit of waste on the land 5 days after the Notices came into effect.
- 1.9 On 24 January 2002 an officer of the Council visited the site and noted that lorries were continuing to tip materials at the site. Following this visit a surveillance operative was instructed by the County Council to carry out covert surveillance of the site. Evidence was accumulated over a number of days of lorries depositing waste at the site.
- 1.10 The County Council soon after commenced a Magistrates Court prosecution against both S J Deegan and Patchetts Green Ltd. Subsequent to the service of the Enforcement Notices a company search was carried out in respect of Exchange Ltd which revealed that it had been dissolved. Patchetts Green Ltd had stated in the original planning application that it was the owner of the land, therefore, at this time, the County Council considered Patchetts Green Ltd to be the landowner. The case went to trial in October 2002. S J Deegan was successfully prosecuted by the County Council and fined £4,000. However, at Court, Patchetts Green Ltd produced evidence that it was not in fact the landowner as it had been granted a lease by Exchange Ltd (the actual landowner/freeholder). At Court the County Council discovered that Exchange Ltd is a foreign company registered in the British West Indies. The Court agreed to amendment of the summons to reflect this and an adjournment to allow the Patchetts Green Ltd to prepare a defence.
- 1.11 Patchetts Green Ltd commenced judicial review proceedings of the Court's decision to give leave for the summons to be amended.

2. The Current Position

- 2.1 The present position is that both the Magistrates Court proceedings and the judicial review proceeding are stayed whilst Patchetts Green Ltd and the County Council attempt to negotiate a possible solution. Provided a negotiated settlement is reached, both court actions will be withdrawn.
- 2.2 The landform in some parts of the site is three to four metres higher in places than the permitted levels and as a result of this excessive material being deposited on the site, significant damage to amenity has been caused. Notwithstanding the additional disturbance of lorry movements and plant, the site is situated in the Metropolitan Green Belt and the natural open appearance of the land has already been damaged. The planning permission for Area 1 was originally granted on the basis of bringing about a drainage and landscape improvement that could only be facilitated through the importation of a minimal amount of clean material. The landform is currently incongruous with the surrounding landscape. If left in its current state, the types of material tipped will not only hinder the restoration of the land to paddocks, as the drainage will be further impeded, but horses may suffer injury and the poor quality of the material will, in the majority, not support grassland required for horses. The site may also suffer from water logging and differential settlement, which will not enable the land to be returned to a beneficial afteruse. As a result, surface water run off may increase and cause drainage problems on site as well as the possibility of causing flooding and water retention on adjacent land. The types of waste deposited were contrary to the planning permission with the possibility of causing contamination to the land as well as the potential pollution of groundwater.
- 2.3 Officers of the County Council have therefore entered into negotiation with Patchetts Green Ltd, as the leaseholder, who has offered to spend £350,000 towards the site's restoration. Officers of the Council suggested that Patchetts Green Ltd approach Groundwork Hertfordshire who have previous experience of projects of this nature and who are capable of project managing such a restoration scheme.
- 2.4 The proposal is that the Patchetts Green Ltd contract with Groundwork for the proposed restoration of the site. The £350,000 worth of works would be secured by Patchetts Green Ltd and Exchange Ltd as freeholder entering into a Section 106 planning agreement with the County Council, either backed by a bond from a suitable financial institution or deposit of the £350,000 with the County Council.
- 2.5 Despite positive preliminary site investigations to determine the composition of the over tipped material, carried out by a consultant appointed by the County Council, it is not possible to guarantee the type of waste material that may be uncovered at the site and that the works could be completed to meet the proposed target contour levels (which have yet to be agreed) for £350,000.
- 2.6 The issue therefore is whether the County Council should compromise the breach of planning control through accepting a scheme that would:

- at best achieve the proposed target contour levels whilst allowing a significant proportion of the of the previously tipped 'unauthorised' material on site, and;
- at worst fall short of even the proposed target contour levels in the event of Groundwork spending the full £350,000 without achieving them, if, for example, contaminated material was found on site thereby raising the cost of the disposal of such waste.

3. Conclusions

3.1 The site is currently dormant, although with contour levels in excess of the those permitted under the original planning permission. The County Council as waste planning authority has already successfully prosecuted the former contractor of the site, who was primarily responsible for importing and depositing the waste at the site. However this does not assure the remediation of the site. Patchetts Green Ltd through negotiation has offered to spend £350,000 to secure removal from the site of a maximum amount of material for the available funds, as well as secure beneficial site restoration. Should the County Council not reach a negotiated settlement, the only option available would be to continue court proceedings, which may not result in the desired effect of attaining land remediation. Furthermore, the continuation of court proceedings could substantially delay the restoration of the land.

3.2 It is therefore concluded that the Director of Environment should be:-

- 1) authorised to accept Patchetts Green Ltd's (the leaseholder) offer to spend £350,000 to secure restoration works at the site subject to Patchetts Green Ltd and the freeholder (Exchange Ltd) first entering into a Section 106 planning agreement to carry out the £350,000 worth of works to achieve the target contour levels which will be set out in the agreement;
- 2) if the proposed target contour levels are not available at the time of the committee meeting, then the Director of Environment would consult with the Committee's Chairman and Spokesman before agreeing such contour levels, and;
- 3) following the completion of the proposed remediation works, the Enforcement Notice should be varied to reflect the actual contour levels achieved. This would acknowledge that the County Council's enforcement requirements had been satisfied and be recorded in the District Council's Planning Register.

4. Financial Implications

4.1 Enforcement action, including negotiation, should be determined on the basis of public interest, and not on the basis of financial implications for the County Council. However, it is a requirement of the County Council to advise all Committees of the financial implications that may arise from a decision of the Committee. There are unlikely to be additional costs for the County Council. However should unforeseen costs arise it is likely that these can be met from

existing budget provision, particularly given that there would be savings in not pursuing litigation.