

Report

Planning Committee

Date: 1 February 2023

Subject **Green Lane, Peterstone - Enforcement Notice and Stop Notice**

Purpose To advise Members of Planning Committee of a decision taken in accordance with the Standing Orders, in consultation with the Chair of Planning Committee, minuted by Democratic Services, to issue an Enforcement Notice and accompanying Stop Notice on land at Green Lane, Peterstone without being reported for decision to the Planning Committee.

Author **Head of Regeneration and Economic Development**

Ward Marshfield

Reason for Urgency

Unauthorised works were progressing on the site resulting in the land being stripped of topsoil to form bunds adjacent to protected reens and there was evidence of residential occupation on the site. The situation on site was fast moving and as the site is located within Flood Zone 3 of the Flood Maps for Planning (where residential use would not be allowed as matter of principle given the highly vulnerable nature of the use), this presented a risk to life and property in the event of a significant storm. Allied to this, the bunds were formed of loose material and are located within a Site of Special Scientific Interest (SSSI) (UK level designation) and adverse weather and rain could result in the bunds polluting the adjacent waterway that make up the SSSI. These threats were immediate and could have been exacerbated if further works were undertaken or the residential use intensified. It was therefore considered necessary to cease works immediately due to the location of the site in a SSSI (Site of Special Scientific Interest) and Flood Zone 3.

Summary Action taken included authorisation to serve an Enforcement Notice with regards to the unauthorised works, which comes into effect 28 days post issue, and the applicant would have a right of appeal against this Notice. Therefore, it was also considered necessary to issue a Stop Notice at the same time to prohibit any further works with immediate effect.

This item is being reported to the Governance and Audit Committee on Thursday 26th January 2023 in line with the requirements of the Standing Orders. The report submitted to that Committee is contained below.

Proposal **Note the formal minute, decision and justification to issue an urgent Enforcement Notice and Stop Notice in accordance with Standing Orders.**

Action by **Head of Regeneration and Economic Development in conjunction with Chair of Planning Committee – minuted by Democratic Services.**

Timetable Immediate effect

This report was prepared after consultation with:

- Cllr Mark Spencer (Chair of Planning Committee)
- Joanne Evans (Senior Solicitor)
- Anne Jenkins (Governance Team Leader)
- Pamela Tasker (Governance Officer)
- Andrew Ferguson (Planning and Development Manager)
- Stephen Williams (West Area Development Manager)

Minute of Meeting - Friday 2 December 2022

Venue: Remote Meeting via Teams

The Chair of the Planning Committee met with officers above and discussed the application for an enforcement notice and accompanying stop notice for land at Green Lane, Peterstone, Wentlooge.

Reasons for Urgency:

Being used for residential accommodation.

Two key issues, site within flood zone 3 and danger to life in event of a storm and issue with the bunds further polluting the SSSI (Site of Special Scientific Importance). Allied to this, there are highway safety issues, and the site is within a green belt therefore expedient action to be taken immediately.

Due to the urgency of the stop notice and in consultation with the Chair of the Planning Committee, it was agreed to bring serving the enforcement notice forward, in advance of the Planning Committee on 7 December.

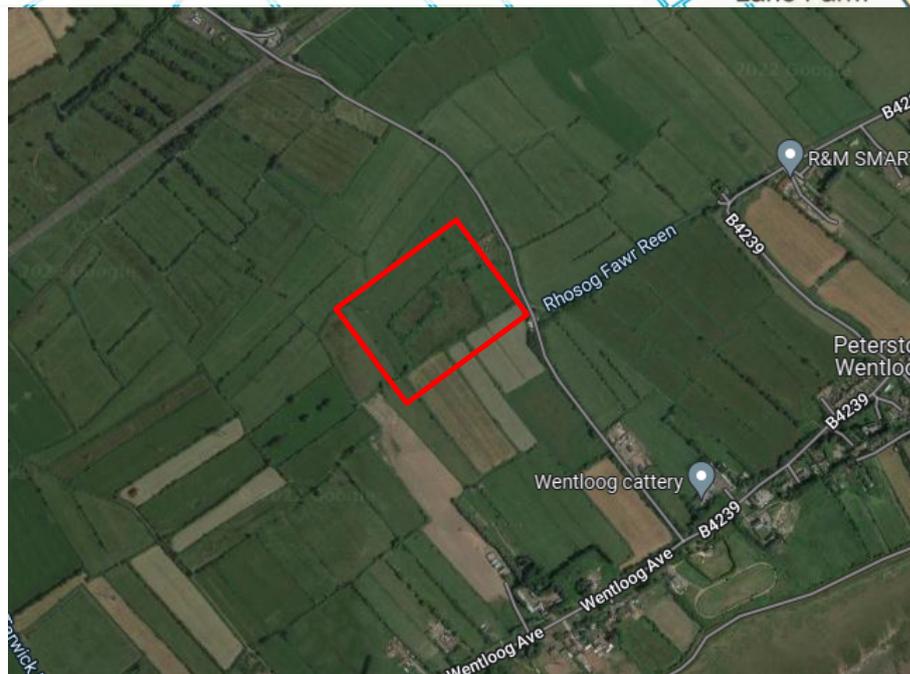
A Decision was therefore taken by the Chair of the Planning Committee to issue the enforcement notice and stop notice with immediate effect.

No: 1 E22/0000 Ward: MARSHFIELD

SITING OF A RESIDENTIAL TOURING CARAVAN, CREATION OF A RESIDENTIAL STRUCTURE, ERECTION OF WORKSHOP/STORAGE STRUCTURE, LAYING OF A HARDSTANDING AND BUND WITHOUT PLANNING PERMISSION – GREEN LANE, PETERSTONE, WENTLOOGE, CARDIFF, CF3 2TS

1.0 Breach of Planning Control

1.1 Siting of a residential touring caravan, creation of a residential structure, erection of workshop/storage structure, laying of a hardstanding and bund at Green Lane, Peterstone and the associated access.



2.0 Assessment

- 2.1 It has been brought to Officers' attention that a yard enclosed by a bund, which is in places approximately 2 metres high, is being created at the above location. Encompassing c. 2.17 ha. The site in question is located within the countryside and Green Belt as designated in the Newport Local Development Plan 2011-2026 (Adopted January 2015 (LDP)). It is also approximately 80 metres from the boundary with Cardiff, who were consulted on this matter and supportive of this proposed course of action. The site layout is depicted below at Figure 1.
- 2.2 As can be seen, the bund runs along the eastern boundary of the site and the virtually the entire length of the southern boundary, approximately 250 m in total. An area of c. 0.66 hectares has been stripped of the top c. 300mm of topsoil, which has been subsequently extended further, and this material then utilised to construct the bund. Hardcore is being tipped into this area to create a hardstanding, which will ultimately be extensive if the development of the site continues. Also present on site is a residential touring caravan, workshop/storage structure and a new structure that appears to be a dwelling under construction.
- 2.3 The Gravesham test (Gravesham BC v Secretary of State for the Environment and Another (1983)) has been applied and it is considered that the building does not currently offer all the facilities required for day-to day private domestic existence and is therefore not a dwellinghouse. However, a bed was present, a shower is being installed and a toilet was outside. Inside the structure was a log burner and TV, which would facilitate the residential occupancy. This building was connected to a photovoltaic array, with back up battery, and a generator.

Figure 1: Annotated site layout – looking West.



- 2.4 Camouflage netting has been employed on both the residential structure and residential caravan, as such, the normal 4/10 year immunity timeframe may not apply, as under the common law an individual cannot benefit from their wrongdoing. This was developed further in *Welwyn Hatfield Council v Secretary of State*, where the “public policy argument” overrode the four year rule. In this case, Lord Manse (Paragraph 54) stated that “...the four-year statutory periods must have been conceived as periods during which a planning

authority would normally be expected to discover an unlawful building operation or use and after which the general interest in proper planning control would yield and the status quo prevail ...”

2.4 Main Issues

The main issues in this case are considered to be:

1. Does the development, both the mixed use of the site and building with residential aspects, constitute an appropriate form of development in the Green Belt?
2. General development principles, design and sustainability;
3. Flood risk considerations;
4. The impact of the development on highway safety;
5. Impact on ecology;
6. Foul sewerage; and
7. Human rights

2.5 Green Belt Policy

Planning Policy Wales (Edition 11, February 2021, para 3.65) is clear that the most important attributes of Green Belts are their permanence and openness. To maintain the openness of such an area, development within a Green Belt must be strictly controlled with a general presumption against development, which is inappropriate in relation to the purposes of the designation. PPW lists the development which may be appropriate and includes:

- mineral extraction;
- renewable and low carbon energy generation;
- engineering operations; and
- local transport infrastructure.

As this development does not fall within the above list, it is unacceptable (para. 3.77). Furthermore, the development does not maintain the openness of the Green Belt and is in conflict with the designation. LDP Policy **SP6** reflects this position insofar as it deals specifically with maintaining the openness of the Green Belt and states that within this area, development which prejudices the open nature of the land will not be permitted. The proposal would prejudice the open nature of the land.

- 2.6 In terms of the effect of development on the character and appearance of an area, the following LDP policies are relevant:

SP5 aims to protect the countryside for its own sake and restrict new development to uses appropriate within the countryside, which must also respect the landscape character and biodiversity of an area.

CE4 seeks to protect, conserve and restore landscapes on the appropriate register. In this particular case, the Gwent Levels are included on the Cadw/ICOMOS 'Register of Landscapes of Outstanding Historic Interest in Wales'. The site also falls within a Special Landscape Area (Wentlooge Levels), in accordance with PPW (para. 6.3.12).

SP8 requires development to contribute positively to an area by virtue of its design and the materials utilised.

GP6 seeks good quality design in new development and requires proposals to be sensitive to the unique qualities of the site and respond positively to the character of the area.

In short, this development is incongruous in this location for the following reasons:

- due to its large scale;

- design, due to the presence of the bunds, caravan and various structures in this flat landscape;
- development does not serve an agricultural use or is a use that necessitates a rural location ; and
- has removed the characteristic field grips (drainage system of the area).

2.7 **General development principles, design and sustainability**

2.8 Policy **GP1** aims to ensure the sustainable development agenda by requiring that development can withstand predicted changes in local climate and reduce the risk of flooding on site. Given the developments location in Zone C1 / Zone 3 and the fact that it is single storey indicates strongly that this cannot be achieved. The residential caravan would also be very vulnerable development should a flood event occur and is classed as highly vulnerable development. Policy GP1 states development should be designed to minimise energy consumption and given that the dwelling is essentially a timber structure this is also unlikely to be achieved. Additionally, policy **H2** states that residential development should be built to high standards of environmental and sustainable design.

2.9 In terms of general amenity of the occupants, policy **GP2** aims to provide adequate amenity for occupiers, the nature of the development has meant that the amenity of occupants has been severely compromised. For example, the SW facing windows have camouflage netting over them and the toilet is essentially a hole in the ground.

3.0 Good quality design is sought by virtue of policy GP6 and its associated fundamental design principles. These include: sensitivity to the context of the site; preserve and enhance the character of the locality; and sustainability. As the structure with residential features is essentially a timber structure in a field it contrasts markedly with the surrounding countryside.

3.1 Policy **SP1**, which addresses sustainability in the LDP, requires that development be energy efficient, reduces car usage and minimises the risk of flooding, amongst other elements. As previously observed, the use of the site is unlikely to be efficient in terms of energy usage. The presence of the development in a rural location some distance from public transport links and in flood zone C1 is also counter to policy SP1.

3.2 **Flood Risk**

This location forms part of a low-lying coastal area and falls within flood risk zone (C1), as defined by Development Advice Maps, therefore compliance with Technical Advice Note 15 is required. In terms of TAN 15, the development's end use is unknown, but can only be justified if it can be demonstrated that it satisfies the test at part 6.2 of the TAN:

- i. Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or,
 - ii. Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region;
- and,
- iii. It concurs with the aims of PPW and meets the definition of previously developed land (PPW fig 2.1); and,
 - iv. The potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria contained in sections 5 and 7 and appendix 1 found to be acceptable.

Given that the development fails to satisfy either of the first two parts of the test, in that it is not part of regeneration initiative or part of an employment objective, it is unacceptable. As such, one does not need to proceed to the second part of the test. Notwithstanding this, the land would not meet the definition of previously developed land either.

- 3.3 The consequences of flooding have not been considered and have not been found to be manageable. It should not be necessary to go onto a technical assessment. However, as there is a greater resolution on the Flood Map for Planning (FMP) than is on the Development Advice Map (DAM) it was determined that it would be appropriate to assess the development against this modelling. As previously noted, the development is in C1, where a 0.5% (1 in 200 year) and 0.1% (1 in 1000 year) annual probability tidal flood exists.
- 3.4 As can be seen in the excerpts of the FPM below (see Figures 2 and 3), the majority of the site falls within Zone 3 for either sea or river flooding under the FPM assessment, which are defined below:

Rivers – Flood Zone 3

Areas with more than 1% (1 in 100) chance of flooding from rivers in a given year, including the effects of climate change.

Figures 2 and 3: Excerpts from the FPM of the area.





Sea – Flood Zone 3

Areas with more than 0.5% (1 in 200) chance of flooding from the sea in a given year, including the effects of climate change.

Rivers – Flood Zone 2

Areas with 0.1% to 1% (1 in 1000 to 1 in 100) chance of flooding from rivers in a given year, including the effects of climate change.

Should a flood event occur, the FMP indicates that the unmade lane from the site would also be flooded, as would Green Lane in the location of the junction with the unmade road, which would therefore preclude safe egress from the site. The creation of the hardstanding, including associated bund, is therefore considered contrary to Policy **SP3** of the LDP. National Planning Policy is clear that highly vulnerable development (such as residential uses) should not be permitted in areas at risk of flooding.

3.5 Highway issues

In terms of the vehicular access on to Green Lane from the site, Green Lane is a single-track road with a reën either side of it. There are few passing places here and drivers are mainly reliant upon access points over the reëns, into the adjacent fields, as informal passing places. Green Lane is covered by the national speed limit, i.e., 60 mph. An adequate visibility-splay to the north is unachievable due to the layout of the road and the presence of a compound. The owner of the site in question has no control over the adjacent boundaries, as the site is effectively landlocked. This road is also unsuitable for the larger vehicles necessary to facilitate the construction.

Policy **GP4** of the LDP refers specifically to highways and accessibility and seeks to ensure that development would not be detrimental to highway or pedestrian safety.

3.6 Ecology

The site is located within the Gwent Levels- Rumney and Peterstone Site of Special Scientific Interest (SSSI), designated for the important habitat provided by the reën system for aquatic plants and invertebrates. The special interests of the SSSI are dependent on

the water quality, water quantity and continued management of the drainage system. Any activity which has an adverse effect on these will have an adverse impact on the wildlife for which the area was notified as a SSSI. Policy **GP5** requires that such development will not have an unacceptable impact on water quality.

- 3.7 As the bund enclosing the site is adjoining the reens and comprises of unconsolidated material, high rainfall events will wash material into the reen system therefore adversely affecting the water quality of the reen network. A soakaway toilet has also been constructed adjacent to one of the reens, which could contaminate the adjacent reen. Additionally, Policy **SP9** seeks the conservation, enhancement and management of recognised sites within the natural environment, which this development fails to do, as described above.
- 3.8 An NRW officer visited the site on 11/08/22 (in response to NRW incident ref. WIRS 2205698) and observed the following:

A large area of the field had had the turf/topsoil removed. Soil was piled in a long mound alongside the field ditch bordering the eastern edge of the field. The mound was immediately next to the ditch and soil had entered the water.

The entry of soil in to the ditch constitutes an offence under Regulation 12 (1) (b) and 38 (1) (a) of the Environmental Permitting (England and Wales) Regulations 2016: To cause or knowingly permit a water discharge activity without the benefit of a permit.

Aerial photographs of the site show that prior to the topsoil being stripped, the field was permanent pasture and had traditional 'grips'. This grassland habitat looked semi-unimproved and likely a remanent of traditional marshy/hay meadow and vital habitat that supports the SSSI Shril Carder Bee feature. The stripping of turf and top soil has lead to reduction in extent of this habitat. Reduction in habitats and species is likely to in turn reduce their resilience to climate change.

Field grips are a rapidly disappearing technique to aid drainage of a field. They are a historic feature of the landscape and key to the SSSI features, providing valuable variety of habitats within the same one field. These slight and fragile earthworks are vulnerable in other fields that are under-drained and ploughed. Once damaged or removed they are very difficult to restore.

3.9 Foul Sewerage

Policy **GP3** of the LDP refers to service infrastructure and identifies that in areas served by the public foul sewer development will not be permitted with connections to private facilities unless there are exceptional circumstances that prevent connection to the public sewer. Circular 008/2018 – “*Planning requirement in respect of the use of private sewerage in new development, incorporating septic tanks and small treatment plants*”, provides additional information on this.

- 4.0 Foul sewage is currently being disposed of to a hole in the ground. No information has been provided to demonstrate that a connection to the public foul sewer is not achievable. However, there is no evidence of a sewer run in this locale either.

4.1 Human Rights

The rights of the occupiers of the site under the Human Rights Act 1998 have been considered. Article 8 identifies that everyone has the right to respect for his private and family life, his home and his correspondence. It goes on to say that there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or

crime, for the protection of health or morals, or for the protections of the rights and freedoms of others.

- 4.2 In terms of Human Rights, it is not considered that the matters in relation to this enforcement case amount to exceptional matters that would overcome the significant concerns relating to the inappropriate development in the Green Belt, on a Site of Special Scientific Importance and within a C1 Flood Zone (Flood Zone 3 on FMfP). Therefore, it is considered proportionate that an Enforcement Notice and Stop Notice be issued given the significant harm that would arise and implications of continued use. Whilst issuing an enforcement notice will result in an interference with Article 8 of the European Convention on Human Rights for all affected residents, this must be weighed against the public interest. An Enforcement Notice and Stop Notice would effectively mitigate the risks identified to property, human health, biodiversity and the countryside.

5.0 Other Considerations

5.1 *Crime and Disorder Act 1998*

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this breach of condition. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed enforcement action.

5.2 Equality Act 2010

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

- 5.3 Having due regard to advancing equality involves:
- removing or minimising disadvantages suffered by people due to their protected characteristics;
 - taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
 - encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
- 5.4 The above duty has been given due consideration in the determination of this application. It is considered that enforcement action in this case will not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person.

6.0 Options Considered/Available

- 6.1 The Council has powers under Section 172 of the Town and Country Planning Act 1990 to issue an Enforcement Notice requiring steps to be taken to remedy this breach of planning control. Failure to comply with the requirements of an Enforcement Notice is a criminal offence, against which prosecution proceedings may be taken at the Magistrates' Court. The maximum penalty for this offence is currently a fine of £20,000 or, upon conviction on indictment, an unlimited fine.
- 6.2 Due to the right to appeal against an Enforcement Notice, there is potential for a delay of a significant number of months before the Notice takes effect (with PEDW facing a current backlog). Until the determination of the appeal the tipping and residential use could continue without an offence being committed and without further enforcement action being taken. Due to the immediate and irreparable harm that could be caused by continued tipping and storage of waste during this period, along with potential risk to life, the Council may wish to exercise its powers under Section 183 of the Town & Country Planning Act 1990 to issue a

Stop Notice; whilst not precluding other bodies, such as NRW, taking action under other legislation. This Notice would prevent further works until the Enforcement Notice comes into effect. Non-compliance with a Stop Notice is a criminal offence with the same penalty as an Enforcement Notice.

- 6.3 Welsh Office Circular 24/97, Enforcing Planning control: Legislative Provisions And Procedural Requirement, states:

There is no right of appeal to the Secretary of State against the prohibition in a stop notice. The merits of the LPAs decision to serve a stop notice cannot be examined in the course of an appeal, under section 174, against the related enforcement notice. The validity of a stop notice, and the propriety of the LPA's decision to issue a notice, may be challenged by seeking leave of the High Court to apply for judicial review, in accordance with the Rules of the Supreme Court; but probably not by way of defence to a prosecution brought by the LPA under section 187 if the notice is valid on its face, by analogy with the judgement of the Court of Appeal (Criminal Division) in R v Wicks [1995] 93 LGR 377.

- 6.4 It should be noted that compensation is payable by the Local Planning Authority for any loss or damage the claimant has suffered as a result of the Stop Notice if those activities specified in the Notice do not represent a breach of planning control. In this instance, officers are satisfied that a breach of planning control has occurred, and that any claim for compensation would not be justified.
- 6.5 Alternatively, if it is considered that the tipping of hardcore and the creation of hardstandings do not have an unacceptable impact on the rural character, landscape importance, Green Belt, drainage ability of the reens system or nature conservation, impact on neighbours, highway safety or that the impact caused is not sufficiently bad as to warrant formal enforcement action, it can resolve to take no further action.

7.0 **Costs/Benefits**

Before issuing a Stop Notice, a cost/benefit analysis is required.

Costs:

- Increased risk of flooding and associated damage to property/ risk to life.
 - Damage to SSSI.
 - Risk of an accident due to the substandard access on to Green Lane.
 - The costs to the developer of the Authority serving the Notice are unknown.
- However, there is a risk of compensation sought against Newport City Council if the development does not represent a breach of planning control.

Benefits:

- Further tipping and associated works will cease.
- Environmental costs of further contamination, due to the further extension of the bunds, of the reens during an appeal period are reduced.
- Prosecution proceedings can be sought immediately if further work takes place.
- The harm to the appearance and condition of the land will not continue to worsen.

Overall, it is considered that the benefits of issuing a Stop Notice outweigh the costs.

8.0 **Preferred Choice and Reasons**

- 8.1 In this instance it is considered that the development causes significant harm to the Green Belt and the site is clearly visible from the Wales Coast Path directly to the south of the site. The development contravenes policies CE4, GP1, GP2, GP3, GP4, GP5, GP6, H2, SP1, SP3, SP5, SP6, SP8 and SP9 of the Newport Local Development Plan. In addition, there is potential for these operations to continue while an appeal is lodged against an Enforcement Notice, which would result in immediate and irreparable damage to the SSSI.

- 8.2 Should enforcement action not be taken, after ten years (once substantially complete), as it facilitates a change of use, the development will become immune from any further enforcement action and it will not be possible to mitigate any harm caused. Should a dwelling be constructed the immunity period for it is 4 years.
- 8.3 It is therefore recommended that enforcement action be taken in this case and that an Enforcement Notice **and** Stop Notice be issued under Sections 172 and 183 of the Town & Country Planning Act 1990 respectively requiring:

Stop Notice point A and Enforcement Notice A to G.

- A) Cease the residential use of the site, the removal of topsoil and tipping to create a hardstanding and the burning of waste.
- B) Remove all the imported hardcore, rubbish and waste from the site.
- C) The bund along the site's boundary shall be spread evenly over the site, so as to recreate the former ground level (subject to E) below).
- D) Remove all fencing, gates and conifers installed in association with the unauthorised development.
- E) The site's grip system shall be reinstated, as per the attached Lidar data. The grips shall be no more than a 'spades depth' down (0.3- 0.5m). Removed material will be evenly spread on adjacent areas.
- F) Remove all trackways and hardstanding that have been created within the site.
- G) All caravans, unauthorised structures, plant and non-agricultural items shall be removed from the site.

- 8.4 Should the development continue unabated that this report will act as authorisation to pursue an injunction in the county court, as per the Town and Country Planning Act 1990:

187B Injunctions restraining breaches of planning control.

(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.

if so required.

9.0 Recommendation

- 9.1 That the Head of Law and Standards be authorised to issue a Stop and Enforcement Notice under Section 183 and 172, respectively, of the Town and Country Planning Act 1990 (as amended) requiring the above.
- 9.2 As noted above, if the development continues following the issue of an enforcement Notice and a Stop Notice, to pursue an injunction under Section 187B of the Town and Country Planning Act 1990 (as amended).

Compliance Period:

- (1) Cessation of the residential use of the caravan, tipping of hardcore, burning of waste, stripping of topsoil and creation of hardstandings 24 hours (Stop Notice).
- (2) Points (B) to (G) one month.