

DR/19/17

This report is accompanied by Appendix 2 which is exempt from publication by virtue of paragraph 5 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

committee DEVELOPMENT & REGULATION

date 21 April 2017

ENFORCEMENT OF PLANNING CONTROL

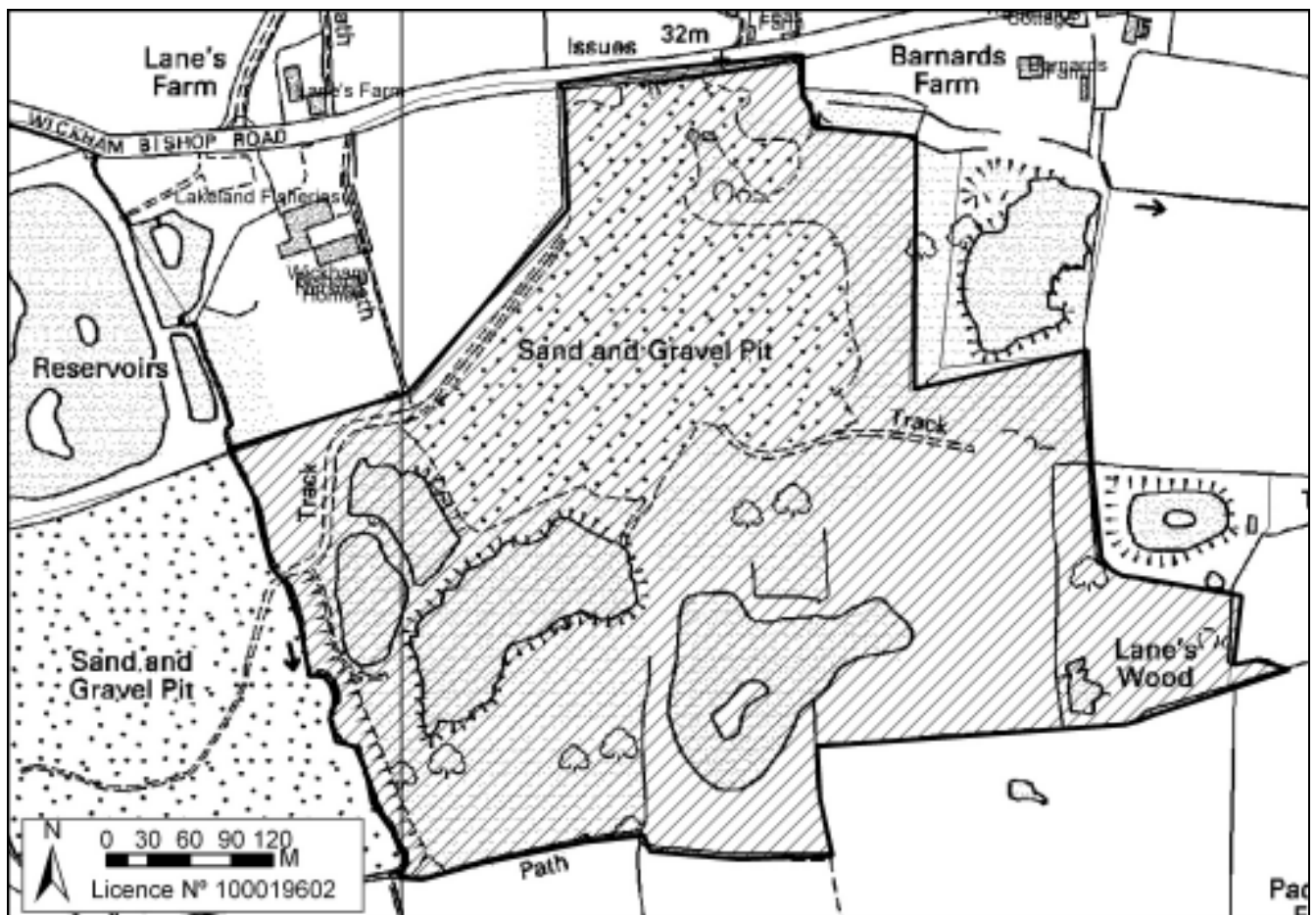
Restoration of mineral workings and non-compliance with planning conditions

Location: **at Dannatts Quarry, Hatfield Peverel.**

Ref: **Ref. 70/421/33/114**

Report by Acting Head of County Planning

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1. PURPOSE OF REPORT

To provide an update on progress in respect of Dannatts Quarry; specifically matters relating to the transfer of the land to the county council for future use as a 'country park' in accordance with a planning legal agreement under section S52 of the (former) Town and Country Planning Act 1971.

As a reminder, the report sets out the background to the case and an update following the previous Committee resolution of 28 February 2014 (report attached as confidential item at Appendix 2) authorising the commencement of formal action to secure the transfer of the land.

Since then legal proceedings have been taken and judgement given on the substantive issue.

2. BACKGROUND AND SUMMARY

The case concerns a former sand and gravel quarry that remains to be fully restored under the conditions imposed by the planning permission and passed into the ownership of Essex County Council (ECC) in accordance with a planning legal agreement concluded at the time the planning permission was granted. The last update was provided to the Committee in June 2016.

There was a delay in restoration of the site and enforcement action was undertaken.

The Barnards Farm site has not been completely restored, nor has the land been transferred to ECC for use as a country park under the terms of the agreement.

There is an on-going breach of an Enforcement Notice (issued in July 2009) as the site has not been fully restored.

3. SITE AND BACKGROUND

The area of land to the east of Hatfield Peverel, between the B1019 Maldon Road and Spring Lane has been the site of extensive sand and gravel extraction during the last 60 years. That part of the area to the south of Wickham Bishops Road, generally known as 'Barnards Farm' or 'Dannatts Quarry', has been the site of extraction since 1948 on the basis of a number of Interim Development Order consents and planning permissions.

More recently planning permission was granted in 1990 which brought together a number of older permissions and land areas to regularise on-going extraction. Two of the conditions required extraction to be completed within 10 years of commencement and restoration to be completed within 11 years. Operations were deemed to have commenced in January 1991.

A section 52 Legal Agreement was also completed requiring, amongst other matters, that an area identified as a country park (edged blue and hatched on the plan in the agreement) be transferred to ECC.

Extraction and processing of sand and gravel took place broadly in accordance with

the approved working schedule necessary to meet the completion date of 16 January 2001, but the importation of inert waste fill fell seriously behind schedule. Consequently a further planning permission was granted in July 2001 and the completion dates were extended to 16 January 2004 and 16 January 2005 respectively.

By January 2004 it had become apparent that the importation of sufficient inert waste fill to complete the restoration of the site had still not been achieved and in February 2004 a planning application was submitted to extend the time limits to 31 July 2005 for the importation of material and 31 December 2005 for the completion of restoration. This application was submitted by Danbury Haulage Ltd.

On 29 July 2005 and despite strong opposition from the local community, the County Council resolved to grant permission subject to the applicant and landowners entering into an Agreement under Section 106 of the Town & Country Planning Act 1990. This Agreement would have updated the obligations imposed by the earlier Section 52 Agreement. The applicant and landowners declined to enter a new Agreement and planning permission was subsequently not granted meaning that importation after 31 July 2005 was not in accordance with extant planning permission. Inert waste continued to be imported until January 2006 when the site was closed.

Enforcement notices were issued in 2006 primarily requiring the site to be fully restored in accordance with the approved restoration plan from 2001.

The former quarry is effectively split into 2 parts, the Travear Land (to the west) and the Country Park land. The water area on site is in use by a fishing club.

In October 2009 the Committee considered a range of enforcement options and resolved to seek the transfer of the land into the ownership of ECC, as required under the terms of the S52 agreement subject to certain provisos.

4. UPDATE

A 'letter before action' was sent to B Dannatt Ltd on 29 January 2016. ECC requested a response by 12 February 2016 and a transfer of the land within 3 months. ECC requested confirmation that the company was taking steps to do so by 12 February 2016 to avoid having to wait to the end of that period. No response was received and accordingly legal proceedings were commenced to take control of the land.

Proceedings were instigated against the company for specific performance of the agreement, damages for the diminution in value of the land due to encumbrances created and failure to complete restoration works in accordance with the agreement as well as the costs of those proceedings.

ECC presented its case at a hearing before Chancery Division of the High Court (transferred from the Commercial Court) on Friday 17 February 2017.

The Defendant did not attend, however ECC was successful as the Order agreed before Justice Snowden (see Appendix 1) was granted, requiring, in summary, that:

1. The Defendant transfer the Land to the ECC in compliance with the S52 Agreement;
2. A judgment for ECC to have damages assessed in relation to the Defendant's breaches of the S52 Agreement.
3. The assessment of damages was adjourned generally but with any application to be made on or before 17th February 2018.
4. ECC's costs to be paid.

The Company was served with the court Order and the date of deemed service was 24 February 2017. The Company had until 24 March 2017 to effect a transfer of the land from it to ECC. To date that has been no response and ECC will now be applying to the court to sign the relevant paperwork to transfer the land to ECC.

CONCLUSION

Subject to the formal transfer of the land being achieved and that ECC seeks recovery of its paid damages and legal costs, this brings this difficult planning case to a successful conclusion.

RECOMMENDED

That:

1. The case is closed from a planning position and no further work is undertaken by ECC as Mineral and Waste Planning Authority in respect of planning enforcement matters in relation to the previous planning permissions and S52 Legal agreement, subject to the formal transfer of the land being achieved.

LOCAL MEMBER NOTIFICATION

BRAINTREE – Witham Southern

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Claim No. CL-2016-000675

Before the Honourable Mr. Justice Snowden sitting on 17th February 2017

BETWEEN:

ESSEX COUNTY COUNCIL

Claimant

and

B. DANNATT LIMITED
(CRN: 00331992)

Defendant

ORDER

Upon hearing Counsel for the Claimant and the Defendant not attending

And upon the Claimant's application dated 9th December 2016

And upon the Court being satisfied that the conditions for Judgment in Default in CPR 12.3(1) are met

IT IS ORDERED THAT:

1. The Defendant shall transfer the Land diagonally hatched on the attached plan (including the entirety of title EX612777, and the unregistered land delineated in yellow) to the Claimant in compliance with its obligations under clause 1(iii) of the Agreement dated 16th January 1990 ("the Agreement"), within 28 days of deemed service of this order upon it at its registered address.
2. Judgment for the Claimant for damages to be assessed in relation to the Defendant's breaches of said Agreement.
3. The assessment of damages is adjourned generally with permission to restore. If no request is made to restore the same prior to 4pm on 17th February 2018, the judgment at paragraph 2 above shall be set aside, and the claim in damages deemed struck out without further order.

4. The Defendant shall pay the Claimant's costs of action to be assessed in detail upon the standard basis, if not agreed.
5. Permission to either party to apply upon notice for further directions.

Dated: 17th February 2017