

committee DEVELOPMENT & REGULATION

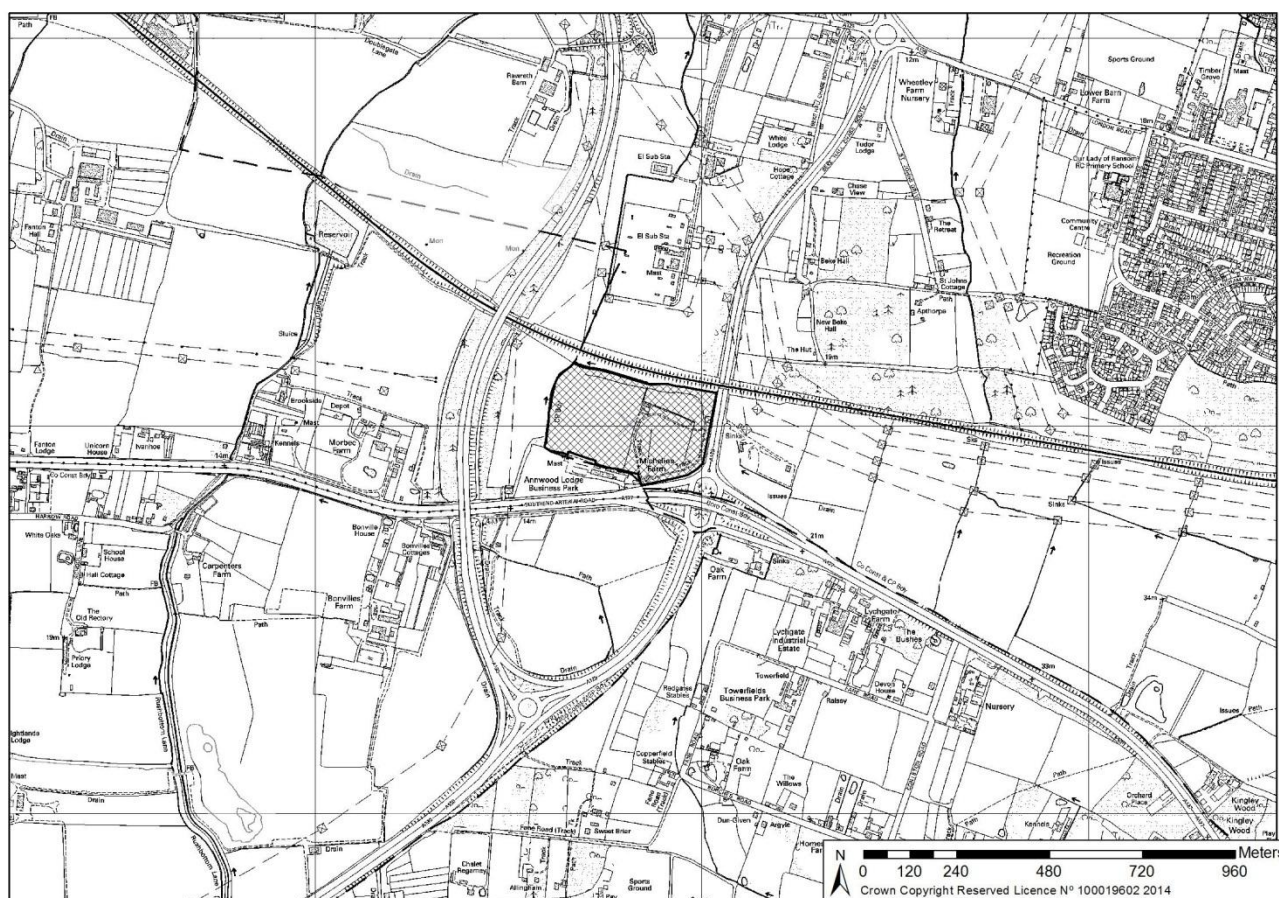
date 25 July 2014

**MINERALS AND WASTE DEVELOPMENT - ENFORCEMENT OF PLANNING CONTROL**  
**Unauthorised Development: A material change of use of the land from agricultural land to land used for the importation, deposition and spreading of waste materials, substantially raising the land levels**

Location: **Land at Michelins Farm, Southend Arterial Road, Rayleigh, Essex SS6 7NG**  
Ref: **ENF/0614**

Report by Director of Operations, Environment and Economy

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## **1. BACKGROUND AND SITE**

The unauthorised importation, deposition and spreading of waste materials has taken place on the land known as Michelins Farm in Rayleigh Essex.

A report was presented to the Committee on the 25 April 2014 providing an update on enforcement matters relating to the above site. At the meeting the committee resolved:

*That subject to Court Order (issued under the Environment Agency's powers) being enforced or complied with, no further action is taken by the County Council as Waste Planning Authority in respect of the breach of the enforcement notice issued in June 2011.*

The land has not been cleared in accordance with the Court Order and accordingly the Environment Agency and Rochford District Council proceeded with a joint prosecution.

The case was heard at Chelmsford Crown Court on 11 July 2014. In considering this case the Judge stated that the original Court Order was issued in January 2013 giving the land owner a substantial amount of time to clear the waste from the land. Some waste had been removed from the land, but it was a small amount and did not deal with the main issue at hand, which was the sheer amount of waste that the land owner had accumulated on his land. It was considered that the requirements set out in the Court Order had not been met and the unauthorised development remained.

## **2. CURRENT POSITION**

The landowner was sentenced to 6 months imprisonment.

Following sentencing the Regulation 44 Court Order was discussed and it was concluded that it was no longer valid having expired on the 1 July 2014 and therefore could not be pursued.

## **3. LEGAL ADVICE**

It was previously advised that if the WPA chose to prosecute for non-compliance with the enforcement notice, the landowner could raise an argument that there is an abuse of process argument as he is being prosecuted for the same 'offence' twice.

1. The prosecutor is also bound by the Code of Conduct for Prosecutors. In bringing prosecutions on behalf of ECC they must satisfy that the test for bringing a prosecution has been reached, primarily whether the prosecution has a realistic prospect of success, and that it is within the public interest for the matter to be prosecuted.

Legal advice concluded that the prospect of success was not sufficient to support a

second prosecution and as the Environment Agency had already commenced proceedings public resource should not be duplicated when the same aim is already being achieved by another agency.

Now that the first prosecution has been effectively dealt with ECC should continue to liaise with the Environment Agency and Rochford District Council in relation to further enforcement action on the landowner's release.

**4. RECOMMENDED**

That no further action is taken by the County Council as Waste Planning Authority in respect of the breach of the enforcement notice issued in June 2011 and that the position is reviewed after January 2015.

**LOCAL MEMBER NOTIFICATION**

ROCHFORD – Rayleigh North  
ROCHFORD – Rayleigh South