

DR/56/13

committee DEVELOPMENT & REGULATION

date 22 November 2013

ENFORCEMENT OF PLANNING CONTROL

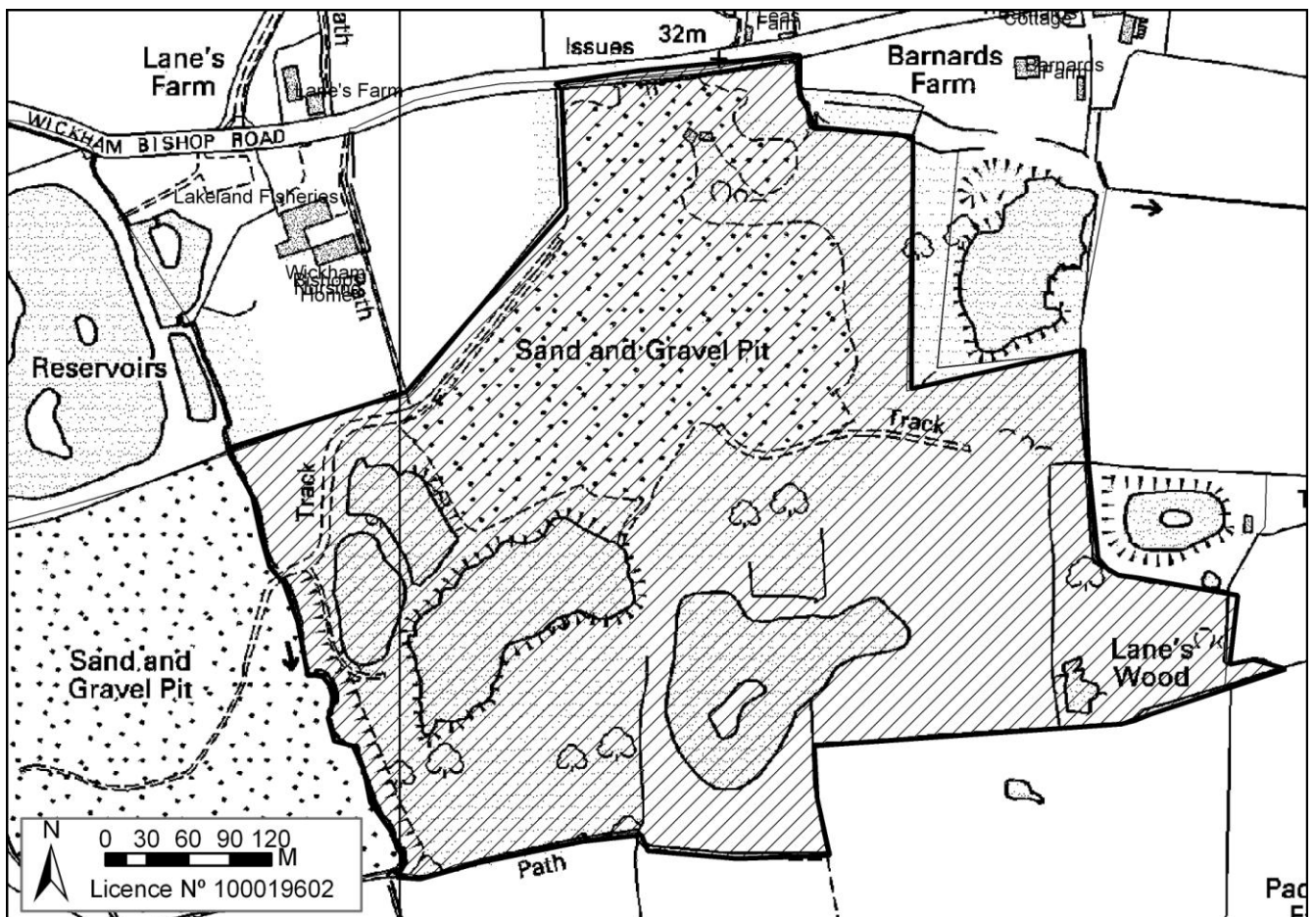
Restoration of mineral workings and non-compliance with planning conditions

Location: at Dannatts Quarry, Hatfield Peverel, Essex

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

Report by Director of Operations, Environment and Economy

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1. BACKGROUND AND SITE

The purpose of the report is to provide the Committee with an update of on-going planning and ownership matters relating to land known as Dannatts Quarry, Hatfield Peverel.

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 ECC in accordance with a planning legal agreement.

Since June 2006, Members have received updates on the delay in restoration and associated enforcement position at the Dannatts Quarry site with particular reference to the restoration of the Barnards Farm part of the site (the 'Country Park land'). There are two constituent parts of the site are the Trevear land, which is now understood to be in the ownership of a company 'Artois International S A ' (incorporated in the British Virgin Islands) and the Country Park land, which is now understood to be owned by 'Berri Panama Inc' (previously owned by B Dannatt Ltd) but is required upon completion of restoration to be transferred to the ownership of the County Council under the terms of the Section 52 Agreement, signed in 1990.

The last update was provided to the Committee in November 2011.

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. Negotiation with the landowner has failed.

A background to the site is set out at Appendix 1.

Enforcement action has been taken to seek compliance with restoration requirements and, although some works were completed, the eastern land remains to be completed in accordance with the approved restoration drawings. This remains the position even after instigating a successful prosecution against the landowner. Dialogue with the landowner and operator has effectively ceased since April 2009. There is an on-going breach of an Enforcement Notice (issued in July 09) as the site has not been fully restored.

The mineral planning authority's objectives (in securing successful restoration of this minerals site to a site capable of being used as a country park and in public ownership) have not been achieved.

In October 2009 the Committee resolved that, subject to the agreement of the relevant Cabinet Member:

1. a land contamination report is commissioned to identify whether any land contamination exists at the site, and;
2. subject to the report revealing that the land does not pose a risk from contamination, formal action is commenced seeking the transfer of the land to the ownership of the County Council in accordance with the terms of the Section 52 Agreement dated 16 January 1990.

Since that date the ECC commissioned an intrusive ground investigation and subsequent monitoring with a final report being presented to the authority in 2013.

The results of land contamination investigations reveal that soil contamination is minimal and that there is limited risk associated with surface and groundwater contamination should the land be made available for use as a country park.

2. CURRENT POSITION

Further legal advice is currently being sought on taking formal action in the courts to enforce the transfer obligation in the section 52 legal agreement with an onward transfer to the parish council and the likely success of any such action.

Consideration is also being given to the evidence ECC would need to produce in court.

It is anticipated that following the receipt of legal advice that a fuller report will be presented to the Committee setting out any recommendation for pursuing further action or otherwise.

3. RECOMMENDED

That a further report be presented at the January 2014 meeting.

LOCAL MEMBER NOTIFICATION

BRAINTREE - Witham Southern.

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 permission was granted in 1990 which brought together a number of older permissions and land areas to regularise ongoing extraction. Two of the conditions required extraction complete 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 Agreement¹ was also completed requiring, amongst other matters that an area identified as a country park in the approved restoration scheme to be transferred to the County Council for a nominal sum.

Extraction and processing of sand and gravel took place broadly in accordance with the 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's Development & Regulation Committee 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. Inert waste continued to be imported until January 2006 when the site was closed.

In May 2006 the D&R Committee authorised enforcement action and in this respect 3 enforcement notices were served, primarily requiring the site to be fully

¹ Section 52 of the 1971 Town and Country Planning Act (now S106 of the 1990 Act) allowed a local planning authority to enter into a legally-binding agreement or planning obligation with a landowner in association with the granting of planning permission.

restored in accordance with the approved restoration plan.

The former quarry is effectively split into 2 parts, the Travear Land to the west (currently owned by Artois Ltd) and the Barnards Farm Land (the County Park Land, highlighted above, and still owned by B Dannatt Ltd.). The water area on site is apparently in use by a fishing club at present.

Over around a 2 year period the 2 respective landowners were given additional time to comply with the notices and in this respect works were carried out to complete the Travear (west) Land to an appropriate standard.

In January 2009 however the County Council prosecuted B Dannatt Ltd for non-compliance with one of the notices, which resulted in a successful conviction and a £5000.00 fine.

In April 2009 a meeting was held with the legal representative of B Dannatt Ltd and officers were given a clear message that B Dannatt Ltd had no monies to carry out additional works and would be reluctant to comply fully with the obligation to hand the land over to the County Council under the terms of the S52 agreement.

In July 2009 a further Enforcement Notice was issued to B Dannatt Ltd, requiring the landowner to complete land restoration in accordance with the approved plan. To date final restoration of the site has not been completed and this notice is now in breach.

In October 2009 the D&R Committee was presented with a number of options to take the matter forward.

The first option was to pursue a prosecution under the new enforcement notice. The court cannot order compliance.

The 2nd option was for the council to carry out direct action and enter the land and complete the final restoration itself with the potential (if the company had funds) to recoup the cost.

The 3rd option was to seek the transfer of the land into the ownership of the County Council, as required under the terms of the S52 agreement. The Council would then control the land for use as a country park, as originally intended, albeit with some final restoration works required.

Counsel's advice was that officers seek to negotiate an outcome. However it is now clear that all attempts to negotiate a solution have failed.

The 4th option was to do nothing further. This was not considered to be a viable option at this stage given the continued injury to amenity being caused by the unrestored site and that it would undermine the public's confidence in the planning system.

The committee accordingly resolved to pursue the 3rd option – seeking the transfer of the land subject to the agreement of the relevant cabinet member.

As referred to earlier, the land (Barnards Farm site) is required to be transferred to the County Council under the terms of the Section 52 Agreement signed in 1990. Substantial parts of this land have been restored and planted or naturally re-vegetated but, as stated, there are also areas where restoration is incomplete or unsatisfactory.

Counsel's initial view is that the clause of the Agreement relating to the transfer of the land to the County Council is sufficiently robust and remains binding on B Dannatt Ltd or their successors in title. However, he considers the provisions relating to the restoration of the site and the condition of the land at handover to be deficient in some respects and not of the sort of detail which would now be included. This means that litigation may or may not provide a satisfactory outcome and will undoubtedly be costly.

There is an additional issue with regard to a right of way granted by B Dannatt Ltd in 1999 to Mr D Nurcombe (proprietor of Danbury Haulage Ltd). This allows vehicular and pedestrian access to the Trevear land across the proposed country park land from Wickham Bishops Road. Counsel's initial view is that, whilst this has been created in breach of the obligations in the agreement, this may prove very difficult to extinguish and that the County Council may have to accept the existence of the right of way, albeit with the option of seeking damages, if appropriate, at a later date. This would affect the layout of a country park and potentially inhibit public use (although it is not certain at this stage whether the County Council would take a direct responsibility in managing the site). It would also limit the practicality of anti-fly tipping measures at the entrance of the site.

ECC property officers have been in discussions with the parish council in relation to potential local ownership and management of the land as a country park in the future to reflect emerging property policy.