

**DR/06/21**

**Report to:** DEVELOPMENT & REGULATION (26 March 2021)

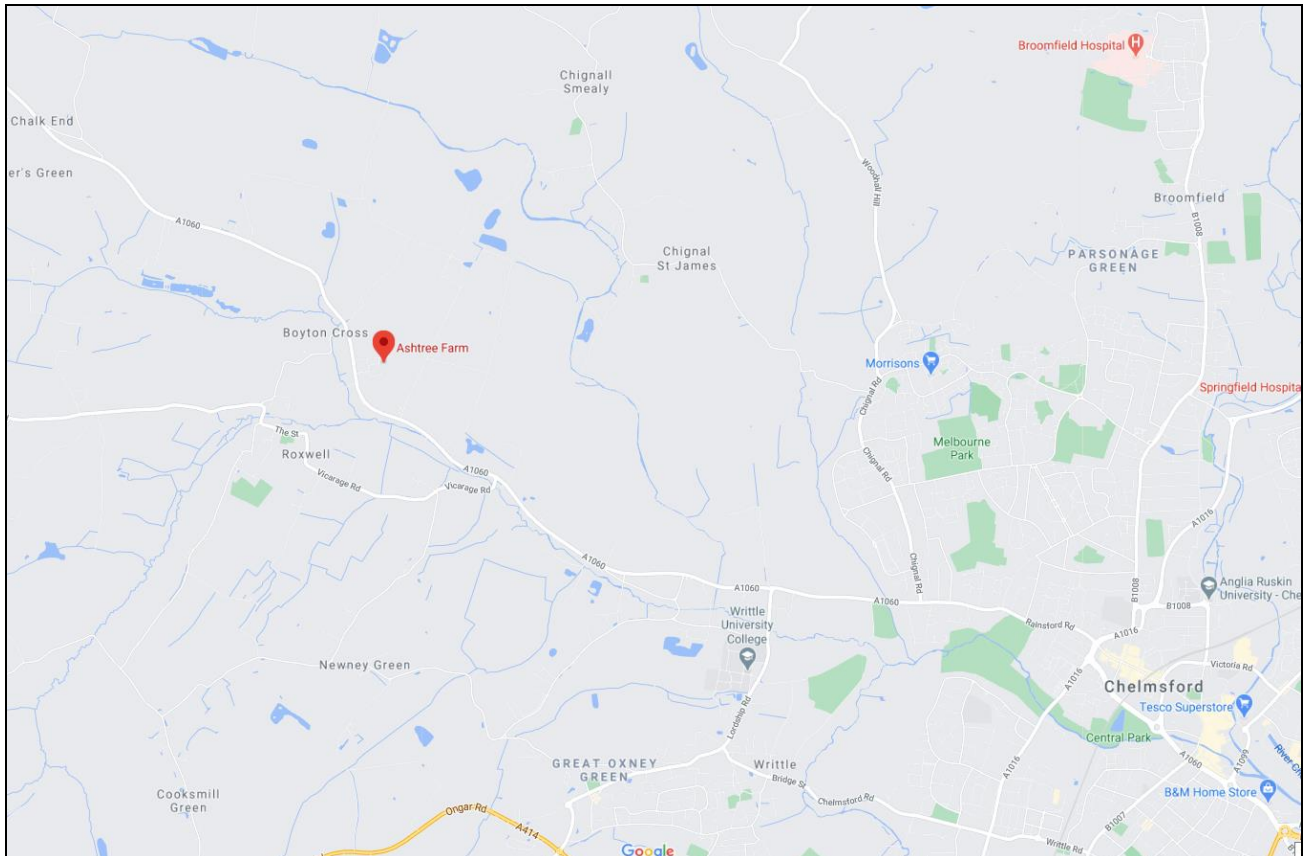
**Proposal:** MINERALS AND WASTE DEVELOPMENT - ENFORCEMENT OF PLANNING CONTROL

Alleged unauthorised material change of use of the land from that of a ground workers contractors yard to a waste management/remediation site (sui generis)

**Location:** Land at Ashtree Farm, Roxwell Road, Boyton Cross, Chelmsford, Essex, CM1 4LP

**Report author:** Chief Planning Officer (County Planning and Major Development)

**Enquiries to:** Richard Greaves Tel: 03330 136817



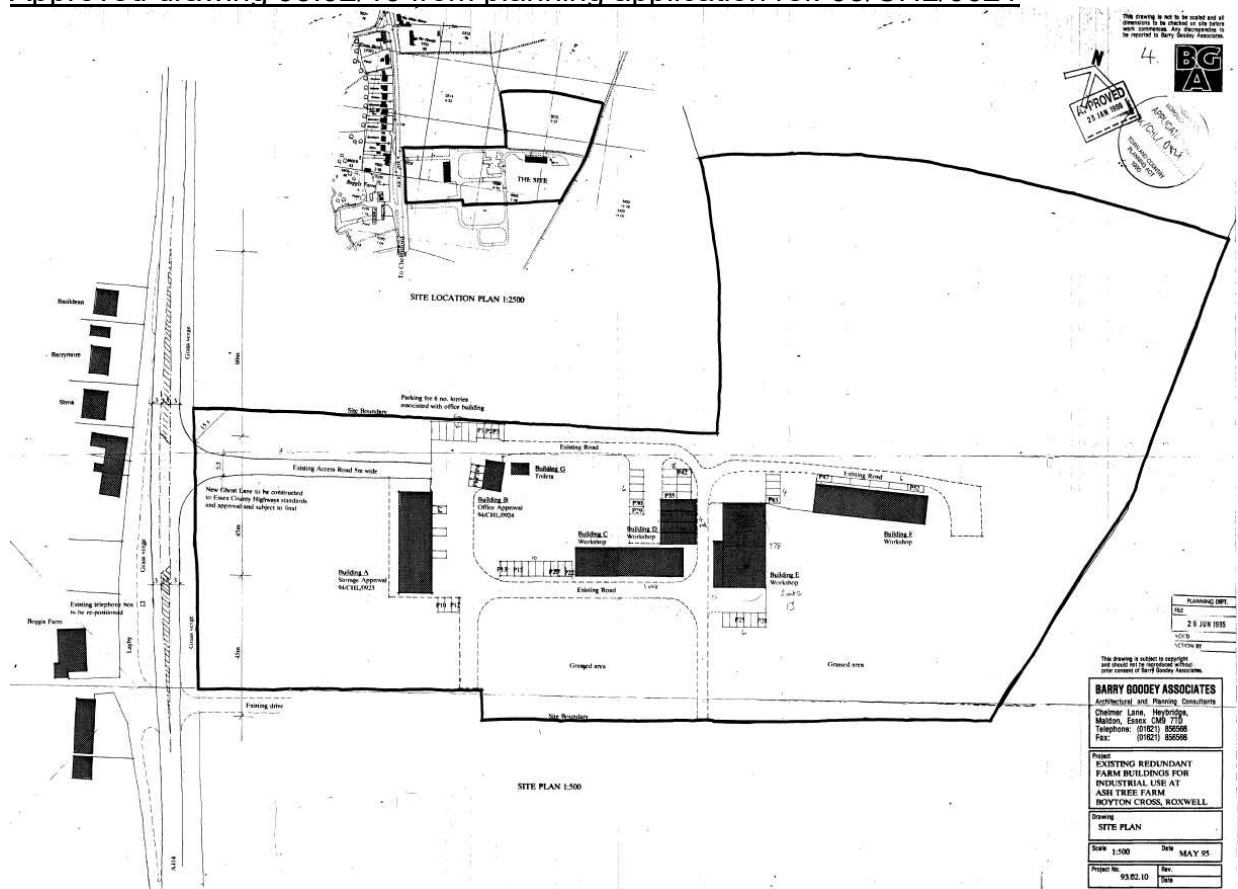
## 1. SITE & PLANNING BACKGROUND

Ashtree Farm is situated within the hamlet of Boyton Cross, approximately 400m north-east of Roxwell village. The site is accessed from the A1060 and is located to the rear of a small industrial estate, with numerous buildings and parcels of land, benefiting from various planning permissions to be used as such.

There are a number of residential properties to the south of the Ashtree Farm complex and Roxwell Road (A1060) is also lined with residential properties at this point. Open farmland surrounds the site to the north and east. There are public footpaths to the north and east/south-east of the site.

The use of Ashtree Farm as an industrial estate was established when planning permission for a 'change of use of existing redundant farm buildings to B2 general industrial use plus parking of 6 no. lorries for existing firm already on site' was granted by Chelmsford City Council (CCC) in 1996 (application ref: 95/CHL/0621). The area to which this application related is shown below. However, it should be noted that the application related solely to existing buildings and a condition specifically prevented industrial activities being undertaken in the open.

Approved drawing 93.02/10 from planning application ref: 95/CHL/0621



Within the previous Chelmsford City Council Local Plan (Core Strategy and Development Control Policies 2008) the site had no formal land-use designation or allocation as part of the proposal/allocation map. Within the new Chelmsford Local Plan (2020), the Ashtree Farm complex is now designated a Rural Employment Area. Although, as can be seen from the below (and the pink line which is the rural employment area) this does not cover all of the land with formed part of the 'red line' boundary of application ref: 95/CHL/0621 shown above.

Extract from the 'Chelmsford Urban Area' policies map which forms part of the Chelmsford Local Plan (2020)

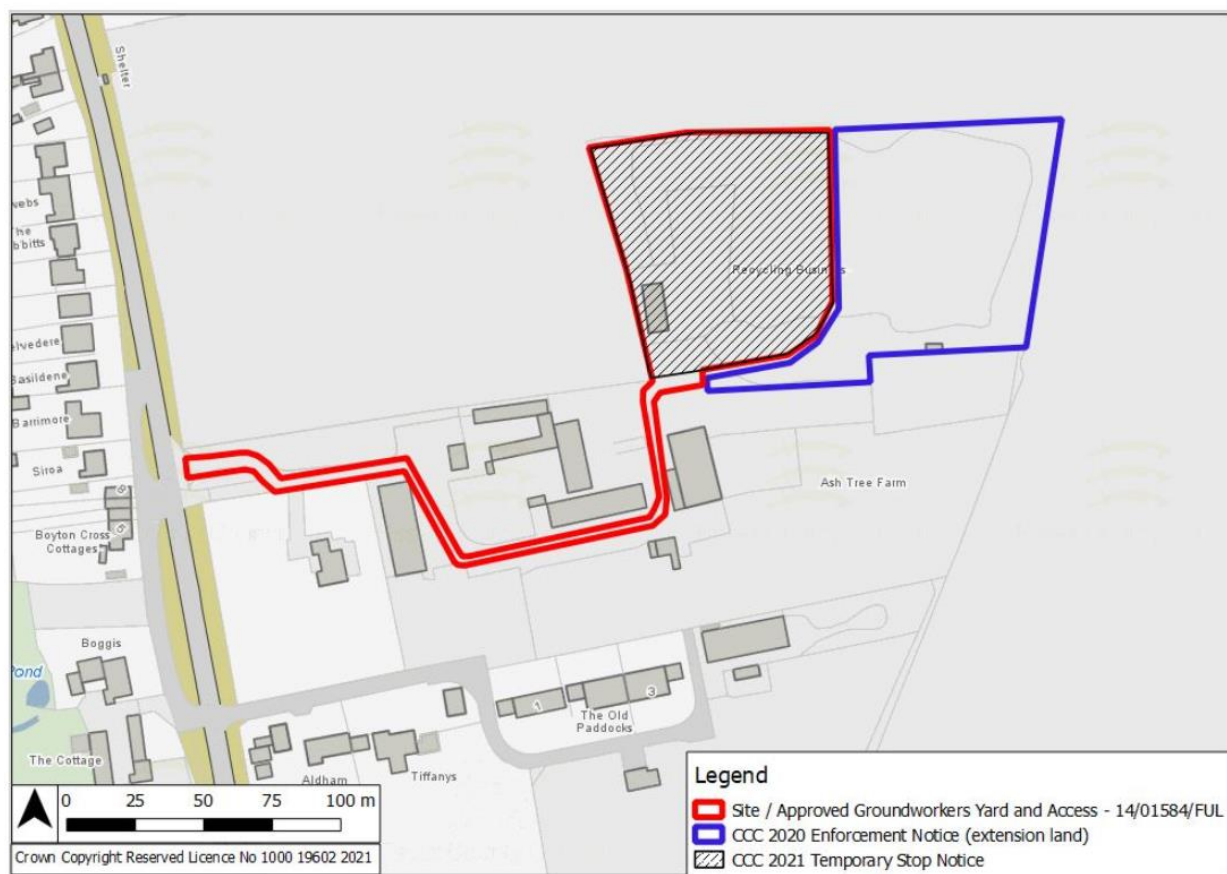


This report relates to the northern part of Ashtree Farm, which did form part of the land covered by application ref: 95/CHL/0621 but, as this area did not contain any buildings, did not benefit from the B2 permission granted by the planning permission granted following that application. A portion of the area does however form part of the Rural Employment Area designation and a separate planning permission for development and use of that portion of the land has, in the interim, been granted by CCC.

As detailed above, this area does benefit from an extant planning permission but the planning history is quite complex with two applications having been refused planning permission by Essex County Council, as Waste Planning Authority (WPA) for a 'waste storage and recycling centre for demolition and construction waste' (refs: ESS/14/12/CHL and ESS/04/13/CHL - see Plan 2 below) before a successful application was made to CCC.

The planning permission which the site benefits from was granted by CCC in 2015 and permits the use of the site as a 'groundworkers' contractors yard' (ref: 14/01584/FUL - land edged red on Plan 1 below). This included the provision of a landscaped earth bund to line the boundaries of the groundworkers' yard. This permission is included at Appendix 1 and shown on the plan below.

#### Plan 1



As background to the application for the ‘groundworkers’ contractors yard’ (ref: 14/01584/FUL) and planning permission granted, it should be noted that, following the refusal of ESS/14/12/CHL, in September 2014 ECC and CCC officers jointly visited the site following complaints about activities occurring on-site.

At that time the occupier was having discussions with CCC and was proposing to submit the application for a “builders yard” (later groundworkers’ yard) on the site. The inspection revealed a significant amount/quantity of ‘waste’ (hardcore, soils and general construction spoil) on site. Although no processing was being carried out at the time of the visit, there was large machinery on site which could have been used in processing. The WPA suggested to the occupier’s agent that the quantities of materials on site suggested that the use at that time appeared to go beyond that of B2 or B8 and it was considered any planning application which might attempt to regularise the use as existing would be a ‘county matter’ and for ECC as WPA to determine.

The occupier’s agent responded confirming he had been instructed to submit an application to CCC to retain the use of the site as a groundworkers’ contractors yard - not as a waste processing facility. The information received by e-mail to ECC officers stated that

*“the company employs 65 people, 55 of whom are engaged daily in laying foundations, drains, car parks, and associated works on development sites in Essex and Cambridge using the company's plant, machinery and vehicles. The remaining 10 people work in the company's office in Chelmsford (not at Ash Tree Farm). The company has four tipper lorries, a site dumper truck, multiple excavators, a site lift truck and numerous other pieces of plant and machinery. The use of the Ash Tree*

*Farm site is for the storage of that plant, machinery and materials associated with the contractors groundworks business. Occasional maintenance of that equipment is also carried out."*

The agent made it clear at this time that the site was intended to be used as a groundworkers' yard – not a waste processing facility - and that an application would be submitted to CCC forthwith.

Following this communication it was agreed between CCC and the WPA that CCC should determine the application. However, the WPA requested to be consulted as it had concerns that any permission should be properly controlled through conditions to ensure that the opportunity/potential did not exist for the site to develop into a generic waste recycling site. The WPA also raised concerns about the subsequent practicability (enforceability) of any conditions and, whilst still uneasy, agreed that CCC should be the determining authority.

The planning application (14/01584/FUL) was thereafter submitted and approved by CCC. ECC (as WPA) was not in fact consulted on the application. The conditions of the permission are at Appendix 1.

The remaining land within north eastern projection of the Ashtree Farm complex, beyond the land which benefits from the planning permission to be used as a groundworkers' yard, is currently subject to ongoing Planning Enforcement action initiated by CCC (shown as a blue line on the above plan). On 20th March 2020 an Enforcement Notice was served by CCC alleging the material change of use of land for the deposit, storage and transfer of waste and other materials. CCC has stated that the use of land is significant, with waste and other materials deposited in a mound nearing 15m in height. This is said to be visible from many public viewpoints and is harmful to the rural character of the area and the environmental quality of the area. It is also said that lorry movements also have an impact on the amenity of the occupiers of nearby residential properties.

The Enforcement Notice was served following an unsuccessful informal agreement between the operator and CCC in which they had agreed terms for the land edged blue to be cleared and remedy the breach.

Prior to CCC serving this Enforcement Notice, CCC did engage with ECC as the WPA with regard to potential enforcement action. ECC officers proactively engaged with CCC during this period. However, the officers of each authority differed as to how the breach, which all acknowledged existed, would be best described as part of any Notice served and which authority in the context of the site's planning history was best placed to lead on any such action. In respect of this, concerns raised by the WPA principally related to the fact that CCC were viewing this as a separate site/use to the existing groundworkers' yard whereas the WPA viewed it as an extension to the existing authorised use. CCC ended communications with the WPA and elected to serve the Enforcement Notice as detailed in the previous paragraph.

An appeal against the Enforcement Notice was lodged with the Planning Inspectorate, although this was purely an appeal against the timeframe for compliance. The Inspector allowed the appeal albeit the timeframe was only extended from 6 to 9 months to remove the material and restore the land. The removal of the material from

this part of the site is likely to lead to additional lorry movements.

On 13 January 2021 an application for residential development across the entire Ashtree Farm complex was refused planning permission by CCC. At the time of writing it is not believed an appeal has been lodged against this decision, although the applicant (landowner) has a period of 6 months to appeal the decision, so an appeal could be lodged before 13 July 2021, with the appeal outcome potentially some considerable time after that.

## **2. PLANNING HISTORY**

Application ref: **95/CHL/0621** – Change of use of existing redundant farm buildings to B2 general industrial use plus parking of 6 no. lorries for existing firm already on site.  
**Approved by CCC 23/01/1996**

Application ref: **ESS/14/12/CHL** - The use of the site as a waste storage and recycling centre for demolition and construction waste. Proposed associated development to include the installation of a weighbridge, office portacabin, various containers and bays for the storage of material, a 2m high perimeter fence and the construction of a new internal access and road. **Refused by ECC 22/05/2012**

Application ref: **ESS/04/13/CHL** - The use of the site as a waste storage and recycling centre for demolition and construction waste. Proposed development to include the installation of a weighbridge, office, various containers and bays for the storage of material, a 2m high perimeter fence and alterations to the internal access road.  
**Refused by ECC 03/04/2013**

Application ref: **14/01584/FUL** - Retain use of land as groundworkers' contractors yard, including the storage of plant materials and machinery. Reposition and retain containers and portable toilet, new diesel tank. Alter existing vehicular access onto Roxwell Road and undertake landscaping works. Two metre high chain link fencing.  
**Approved by CCC 05/02/2015**

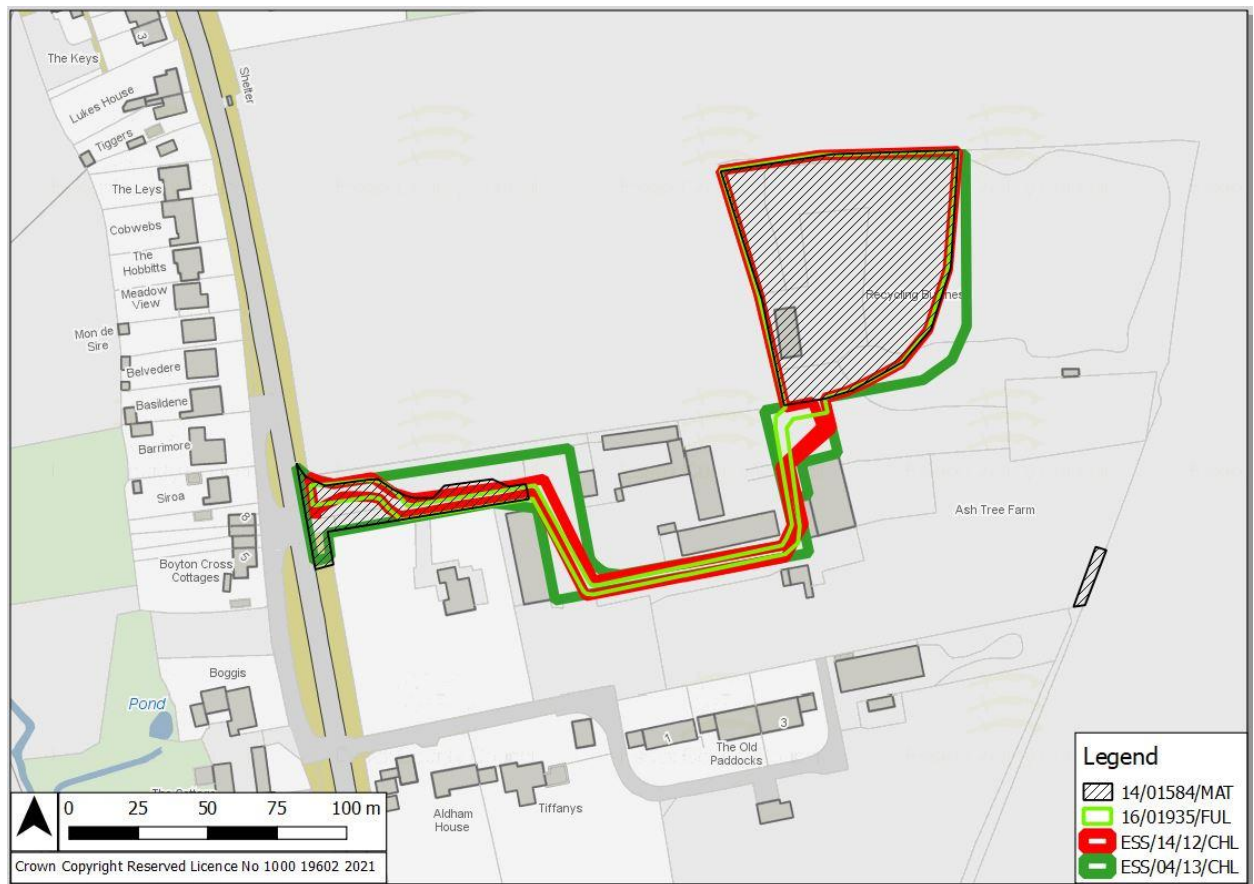
Application ref: **14/01584/MAT** - Variation of conditions 6 and 8 of planning application 14/01584/FUL to extend the time periods for improvements to the access and details of the landscaping of the development. **Approved by CCC 13/11/2015**

Application ref: **16/01935/FUL** - Retrospective application for demountable office, site security office (caravan), paths, hardstanding, fences, gates and 5 No. floodlights.  
**Approved by CCC 16/01935/FUL**

Application ref: **19/02123/OUT** - Outline application (approval sought for Access). Demolition of all existing workshops and commercial buildings, and the removal of hardstanding. Proposed up to 55 new dwellings, alterations to vehicular and pedestrian access. The formation of new estate roads, public footpaths, parking spaces, private amenity areas and public open spaces with children's play area and drainage infrastructure. **Refused by CCC 13/01/2021**

Plan 2





### 3. BACKGROUND TO CURRENT ENFORCEMENT MATTERS

Since CCC granted planning permission for the groundworkers' yard in 2015, ECC as WPA have been aware that there have been some compliance issues. As noted from the planning history, the planning approval was soon varied to allow additional time to make the required improvements to the access and to install/plant the approved landscaping. In 2017 three Breach of Condition Notices were also issued by CCC relating to condition 2 (no goods vehicles shall enter or leave the site outside the hours of 7am and 6pm Monday to Friday and 6am and 1pm on Saturdays), condition 4 (no industrial activities or processing of materials to take place) and condition 10 (landscaping).

Around this time the use of the site also appears to have started to expand eastwards, with the perimeter bund extended to represent more of a stockpile rather than bund. Soon afterwards a gap was formed in the eastern perimeter bund to facilitate access to the extension area and the now enlarged bund/stockpile began to be used as part of the on-going material (waste) management on site. Discussions did take place with CCC about this activity and whether this in isolation represented a county matter. However, it was suggested that was more appropriate for CCC to lead on any such action, given that, at this time, CCC were content that the use of the permitted area remained within the parameters of the approved groundworkers' yard planning permission it had granted and this was effectively being viewed as an extension of the operations permitted.

The operator subsequently failed to remedy the breach through a negotiated scheme of works they had agreed with CCC, which would have seen the offending material

removed from the site by June 2019.

In October 2019, CCC wrote to the WPA stating that following the failure to remove materials (under the negotiated scheme of works) CCC were considering more formal action. The breach of planning control subsequently suggested by CCC to the WPA was the use of the land for the deposit of waste materials. At this time, significantly, discussions related solely to the 'extension' area and CCC did not considering or allege a material change of the existing yard or an intention to include this as part of any action taken. The WPA agreed with CCC that, even though the unauthorised use was a 'waste' related use, CCC was best placed to take enforcement action. However, concerns about the service of a notice alleging solely "a material change of use of the land for the deposit and storage of waste materials" were raised by the WPA. The WPA considering that any notice served may better allege this area is being used as extension to the approved groundworkers yard and the use approved by this permission. Noting that CCC maintain that the groundworkers' yard/permission granted for this is not a waste use permission. It was hoped, in view of the background to this site, that CCC would enter into proactive discussions with the WPA to ensure these concerns were addressed and matters could be progressed successfully should action be taken.

CCC were not persuaded by the WPA's interpretation and elected to serve a Temporary Stop Notice followed by an Enforcement Notice in March 2020 (as referred to earlier on the land edged blue on Plan 1 above) alleging a material change of use of just the extension land, to use for the deposit and storage of waste materials. The Enforcement Notice served, although alleging a waste use, made no mention to the relevant planning policy in the Waste Local Plan (2017), did not include land or an access route linking the extension land area to the Public Highway and furthermore the requirements which were set out in the Enforcement Notice are completely silent on whether and how the material could be processed to facilitate or assist with its removal.

In October 2020, CCC again wrote to the WPA signalling that it continued to receive a high number of complaints regarding ongoing waste related activities at both the groundworkers' yard and the eastern extension parcel of land, the subject of its March 2020 enforcement action. Observations by CCC officers at that time indicated that that the entire site (inclusive of the area granted permission under 14/01584/MAT and that to the north east, the extension area) was consumed with a high volume of waste and unscreened material, with stockpiles of materials to heights in excess of 8 metres across the site.

It was also observed at that time by CCC that the occupants were using a screener and crusher to process waste on site, with the processed material leaving via HGV traffic.

CCC also confirmed that the Environment Agency had granted an Environmental Permit to the occupants to allow for the treatment of waste to produce soil (ref no. WE3100AA/T002).

CCC suggested that this activity went far beyond that for which planning permission 14/01584/MAT granted use of the land for a contractors (groundworkers') yard. CCC further stated that the activity and sheer quantity of material observed fell beyond the



established planning definition of a ground contractors (groundworkers') yard and it therefore appeared to CCC that a waste transfer station is in full operation and that the case should fall to ECC as WPA to resolve through further investigation and enforcement action.

The WPA responded to CCC stating that it had been clear for a while (since 2017) that both the permitted 'groundworkers' yard land' and eastern extension area had been operated as one site with the north eastern part of the site only being accessible via the groundworkers' yard (via the hole/gap in the bund which had been created).

CCC continued to maintain that a material change of use had taken place, notably providing aerial photographs (from 2016, 2018 and 2020) seeking to show how the site had grown over that time and that ECC had declined to take enforcement action.

The WPA responded to CCC confirming its position has always been that, in reality the site has operated as a 'waste site/use', or more precisely an inert waste transfer facility. This was consistent with the position ECC had taken previously in discussions with CCC when advice had been sought in terms of breaches of the groundworkers' yard permission. It was however a fact that CCC had approved this use or the main principle elements of such a use under the banner of a 'groundworkers' yard'. The WPA reaffirmed it had never declined to take enforcement action, but simply sought to suggest that it would be inappropriate for ECC to enforce a permission or permissions that had been issued by CCC and that it was, in those circumstances, more appropriate for CCC to tackle the breaches which have subsequently resulted.

It is also important to note that at no point prior to October 2020 had CCC sought to suggest that they were of the opinion that the groundworks yard was no longer operating as such.

It is understood that CCC has continued to receive local complaints regarding the site and in view of these mounting complaints from residents and ward members, CCC served a Temporary Stop Notice (TSN) in February 2021 preventing the alleged waste use from continuing (land 'diagonally hatched' on Plan 1 above).

A TSN has no right of appeal and it is usual for a TSN to be followed up with an Enforcement Notice and possibly a Stop Notice if the ongoing alleged breach continues. Prosecution can also ensue. At the time of writing this report it is understood that the company/occupier of the site has not recommenced activities, although there is concern from both CCC and the landowner that the company may gain access to the site and recommence an inert waste recycling operation. The TSN expired on 10 March 2021 and CCC has written again to the WPA requesting that ECC take enforcement action to address the alleged unauthorised change of use, albeit without evidence that activities are continuing on site.

Over time communications between ECC (as WPA) and CCC have been protracted with the essential difference being that whereas CCC considers that a change of use has taken place from a groundworkers' yard to an inert waste recycling facility (sui-generis) and, given the ECC's experience and responsibilities as WPA, it rightfully now falls to ECC to take enforcement action to address the alleged breach of planning control and stop the continued harm to local amenity; the WPA's position is that CCC should be responsible for enforcing the permissions it has issued and any breaches of

conditions that have taken place under the permission for the groundworkers' yard (14/01584/FUL), especially conditions preventing the processing of materials and limiting stockpile heights to no more than 5m. It is also the WPA's position that there has always been ambiguity in the permission issued by CCC for the groundworkers' yard and it is not clear cut that a material change of use, especially relating to the character and intensity of use, has actually taken place when the essential nature of the two operations is compared.

Furthermore, whilst the WPA does not necessarily agree with how the breach/use of the extension area has been described by CCC, and CCC have sought to suggest that they would not be willing to withdraw this, the Enforcement Notice is now 'live' and will hopefully deliver the primary objective, which is removing the material which has been unlawfully deposited on the north eastern parcel of land (the blue land on Plan 1, above).

#### **4. ENFORCEMENT PROTOCOL**

Notwithstanding any disagreement between the WPA and CCC, the WPA has been approached by CCC to reconcile an alleged breach of planning control. As with all such complaints, the WPA must follow the defined procedures of the authority's [Local Enforcement and Site Monitoring Plan](#) (the Plan).

As stated in the [Plan](#), where there are breaches of planning control from unauthorised waste development, the County Council has the discretionary power to take enforcement action as appropriate.

This discretionary power is provided for under the Town and Country Planning Act 1990 and the Act does not impose a general duty to ensure compliance with planning control. Because of the discretionary nature of enforcement, there is a need for procedures to be adopted and followed to ensure that the authority's approach is consistent and accountable when deciding what action should be taken.

Planning breaches are normally not criminal offences and no punishment can usually be imposed. However, failure to comply with a formal notice (such as an enforcement or stop notice) makes the person committing the breach liable to prosecution.

A flow chart outlining the general progression of an enforcement investigation is attached in the [Plan](#) (at Appendix 3) however, in summary the WPA should employ a 3 stage approach, namely:

1. Check whether a breach of planning control has taken place;
2. Take no further action if no breach identified, otherwise if a breach identified consider the harm caused by the breach;
3. Make a judgement whether or not planning permission should be sought to remedy the breach (if the harm caused is limited) otherwise consider taking enforcement action if expedient to do so.

Nonetheless, if it is not immediately expedient to take enforcement action i.e. where the harm being caused is limited, pursuing an agreed course of action will normally be the first step to addressing the situation. Where an operator is willing to comply with the recommendations of the investigating officer and the investigating officer is confident that such recommendations are likely to be implemented swiftly, the need for

formal enforcement action may be avoided.

The alleged breach of planning control should therefore be properly considered in accordance with the WPA's approach to enforcement as set out in its [Local Enforcement and Site Monitoring Plan](#).

## 5. APPRAISAL

In accordance with the procedure set out in the Local Enforcement and Site Monitoring Plan the report considers the complaint using the 3 stage approach, as set out above; has a breach of planning control taken place and, if so, the harm caused by the breach and whether planning permission be sought to remedy the breach.

### A. Has a breach of planning control taken place?

As referred to earlier, ECC, as WPA, has on two occasions in the past considered applications and refused planning permission for a waste recycling use at the site. The main reason for refusal on both occasions was that there would be harm to landscape character and quality and amenity contrary to the (former) Essex and Southend Waste Local Plan (2001). Insufficient information to address highway safety and efficiency concerns was also stated as a reason for refusal for application ESS/14/12/CHL, whilst insufficient information noise and contamination reasons were identified for ESS/04/13/CHL.

Both applications at that time were also considered to be inconsistent with the former Chelmsford Borough Council Core Strategy and Development Control Policies (2008) policies including DC2 (Controlling Development in the Countryside beyond the Metropolitan Green Belt).

As stated, the occupier of the site then chose to submit an application to CCC for the use of the site as the 'groundworkers' yard'. It is important to note that at that time (2014) the planning agent, dealing with application, confirmed that the proposed use did not involve a waste processing use and stated to the WPA (which at the time was concerned that the groundworkers' yard application was an alternative means of getting permission for a waste use from CCC, give the previous ECC refusals):

*"that the business of the proprietor is as a groundworks contractor is, I am given to understand, entirely beyond dispute, and so it would fall to the WPA to argue that the company actually operate some other form of business using their machines, and/or that there is the storage of 'any substance or object the holder discards intends to discard or is required to discard' (i.e. waste) on site. Since the materials that are stored on site are, I am advised, intended to be used in the company's business of groundworks contractor I think that you would have some difficulty in making either case.*

The planning statement submitted with that application described the proposal as being materially different to the previous 'waste processing' applications, but the impacts (landscape and vehicular) would be similar to the 'waste' applications previously refused by ECC, for example;

The application is retrospective and seeks planning permission under section 73A<sup>1</sup> to retain the use presently being undertaken in addition to seeking permission for proposed operational development. It is made in the light of application submissions and consultation

responses concerning two refused applications for a proposed construction and demolition waste recycling centre at the application site made in 2012 and 2013 to Essex County Council (ECC application references ESS/14/12/CHL and ESS/04/13/CHL). Although the current use of the land is as a groundworkers yard is a materially different land use, the planning consequences of the activities undertaken are similar in landscape and vehicular impact terms and so the earlier evidence is relevant to this application.

The previous refused 'waste' application (ESS/04/13/CHL), in respect of vehicle movements stated that it was proposed the site would handle around 22,000 tonnes of waste per annum, with all material being sourced from within Essex. It was anticipated that, at most, 80 tonnes of waste would be delivered to the site daily via four 20 tonne vehicles, so in essence material entering the site would result in 8 vehicle movements.

Some salient sections from the planning statement for the groundworkers' yard application confirm what was proposed to be imported / stored on site, including *"materials used....are often stored on the application land"* and *"this storage can be for a matter of days, weeks and or months"*.

The company bids for contracts for construction/development projects throughout Essex and Cambridgeshire and, where successful, undertakes the 'groundworks' associated with those developments. This typically includes the digging of foundations, the laying of foul and surface water drains, and the formation of kerb lines, roadways, accesses and parking areas, including laying block paving and tarmacadam. The scale of the projects varies but as an illustration the company is presently engaged in groundworks for 100 affordable homes in Harold Hill, 20 affordable homes in Cambridge, 16 houses in Harold Hill and 9 units in Danbury. Locally, the company has undertaken groundworks recently in Chelmsford for the Aldi Supermarket group, a Premier Inn hotel, and the Lookers Ford Dealership.

The company has four lorries (1 x low loader, 2 x 33 tonne tippers and 1 x 10 tonne tipper) a number of excavators, a site dumper truck and site fork lift with telescopic arm, and various other pieces of construction plant and equipment. For most of the year, and with the exception of one, the excavators are on site (i.e. away from the Ash Tree Farm site): they are expensive items of plant and must be kept working as much as possible on contracts in order to 'pay for themselves'. The low loader is used to move heavy plant between sites and when not in use is parked at the application site. A single excavator remains for most of the time at the application site to load the company's lorries with construction materials (see below). Over the Christmas holiday period when sites tend to shut down, most of the company's construction equipment returns to site for security reasons.

Materials used in the company's groundworks/construction activities are also often stored on the application land. This can be for a number of reasons. There are often delays in progressing developments such that the ordered aggregate, sand, soil, pipes, inspection chambers etc. cannot be used at the time of delivery or stored at the development site and therefore need to be stored elsewhere until room is available or until it is needed on site. In other circumstances, materials are ordered in bulk to cover a number of sites and to take advantage of discounted purchase rates. On occasion, there are materials left over from one contract and these are stored on the land until needed in relation to another job. This storage can be for a matter of days, weeks and or months, and a single excavator is retained on the application site to load company lorries as described above.

I have discussed the use of an aggregate crusher with the applicant recently. I am advised that on only two occasions a crusher has been used at the site to reduce the particle size of aggregate. A crusher is not retained on the site and permission is not sought for one to be stored or used here. If the LPA consider it necessary a planning condition that prohibits the use of such on the application site can be imposed.

Whilst the word 'waste' has not been mentioned, it is apparent that undefined 'materials' were planned to be delivered to and deposited at the site.

The permission for the groundworkers' yard (14/01584/FUL) approved by CCC within the description of development details 'storage of plant, materials and machinery'. The conditions attached to the permission issued by CCC (Appendix 1) restrict the processing of materials and limit stockpile heights at 5m above datum. Historically when there have been breaches of these conditions CCC have pursued action; the three Breach of Condition Notices issued in 2017 for example.

Additionally, there is no reference within that planning permission specifically restricting 'activities that would be associated with a waste transfer station'. The conditions are completely silent on the type of plant, materials and/or machinery which can be stored on-site – albeit the approved plans do provide some detail as part of the annotations. The WPA would have been able to provide advice on suitable conditions for CCC's use had it been consulted at the time, as it had requested.

By reference to a 'groundworkers' yard' and taking into account the information submitted with the planning application, stockpiles of soil, hardcore and general construction, demolition and excavation waste (from groundworks) do seem to be allowed on site as they would seemingly fall under the banner of 'materials'. No restrictions have been imposed preventing waste from entering and being stored at the site, although the 'processing' of material is prevented through condition.

By the very nature of the activities described in the application, it is clear that the company always intended to deliver 'materials' to the site derived from the company's foundation and construction works off-site and could have been anticipated to do so.

Such foundation and construction works involve digging ground/soils/materials from land and removing them so foundations can be installed or construction work commenced. Such materials are generally categorised as 'inert waste' – or rather construction, demolition and excavation waste (CDE waste). It could be rationally argued that the groundworker's yard was always intended to be the recipient of waste as part of the proposals. CCC didn't seek to investigate or clarify the very nature of such 'materials' when the application was being considered by them. ECC, as WPA, was not consulted, so was not able to advise on this point either.

Although hours of operation are controlled, the planning permission does not restrict the type and number of HGVs delivering and removing material from the site.

CCC and the WPA views continue to differ on this case. CCC has stated that it is implausible that planning permission 14/01584/MAT continues to be lawfully exercised and remains of the view that a material change of use of the land from that of a ground workers contractors yard to a waste management/remediation site (sui generis), appears to have occurred since 2019. The evidence CCC has, both in terms of activities taking place on the site (including the magnitude of such) and witness statement evidence by the occupier of the site (which is understood to have been filed in connection with an alleged trespass claim) points to a use which is different in character. The witness statement states that the company's business is waste management, specifically the collection, recycling and re-selling of inert construction waste, such as soil, rubble, and concrete.

The same witness statement nevertheless suggests that from 2011 to 2019 the yard was occupied, albeit by a company with a different name, for the same purposes.

CCC claim that the nature of the occupier's business has however changed and this points to a change in use. Nonetheless, it is important to refer to the planning permission which is in place to understand whether a change in use has occurred, especially taking the character intensity of use into account.

The planning permission issued by CCC prevents the processing of 'materials' (see Appendix 1 Condition 2) but not the delivery, storage and export of such. As alluded to, there is no distinction made in the permission between 'materials' and 'waste'. It is perfectly reasonable to assume, because there is no restriction, they are one of the same – i.e. 'materials' can be 'waste materials'. The importation and storage of 'waste' materials has, accordingly, not been restricted by the permission.

CCC has stated that the groundworker's yard is a B8 (storage and distribution use), however, the development granted permission by them is to "*Retain use of land as groundworkers' contractors yard, including the storage of plant materials and machinery. Reposition and retain containers and portable toilet, new diesel tank. Alter existing vehicular access onto Roxwell Road and undertake landscaping works. Two metre high chain link fencing.*" This description clearly permits more to take place on site than just 'storage and distribution'. The permission allows development to take place as described.

Photographic evidence, including aerial photographic evidence, has been supplied to the WPA by CCC seeking to demonstrate how the use of the site has increased and become more intensive over the recent years. Officers of the WPA have continued to



visit the site on a regular basis, sometimes accompanied by CCC officers, as well as officers of the Environment Agency.

CCC has argued that there has over time been much more (inert) waste deposited at the site and that screening (processing) is now regularly taking place that a material change of use has taken place.

Notwithstanding that CCC has the power to take enforcement action for a 'county matter'<sup>1</sup>, in this case to address an alleged unauthorised 'waste use', CCC is reluctant to do so; the reason being that ECC as the WPA is the competent authority to do so. Once the 2021 Temporary Stop Notice (TSN) expired, although it is currently not believed the 'waste' use have recommended, CCC has publicly announced that it is now for ECC as WPA to resolve the case through taking enforcement action and that CCC considers expedient for ECC to do so.

Clearly the test of expediency is one for each authority to make for itself, and the WPA on the other hand, continues to have concerns about the ambiguity and lack of clarity of the groundworkers' permission granted by CCC and, whilst it appreciates that harm is being caused locally, especially from HGV movements, there is nothing in the permission that restricts or prevents the importation and storage of (inert waste) materials delivered and removed from the site by any number of HGVs.

The WPA has previously stated to CCC that it has no reason to believe a waste-related use is not taking place at the site. This is important to note. Whilst CCC argue a change of use is taking place that is causing harm and does not benefit from planning permission, the WPA has to date not chosen to take any action because of the ambiguity of the groundworker's yard permission and the lack of control within its conditions. It could, for example, be rightfully argued that the differences between what is permitted and what has taken place on site is largely a matter of (very limited) fact and degree.

Without prejudice to CCC's position, this leaves the WPA in a difficult position. Whilst various statements were issued by the planning agent when the application was put forward, materials (of no defined description) were always proposed to be delivered to, stored at and exported from the site. Furthermore, the WPA is not convinced that the use of machinery and the processing of material in the context of the extant planning permission does give rise to a material change of use and/or is most appropriately remedied under this banner. Nonetheless, if the WPA was to conclude that a breach of planning control or material change of use has taken place, the harm caused by the breach and whether planning permission should be sought to remedy the breach still needs to be considered by the WPA and this analysis, on an assumptive basis is carried out next.

#### THE HARM CAUSED BY THE BREACH AND WHETHER PLANNING PERMISSION BE SOUGHT TO REMEDY THE BREACH

If the WPA agreed with CCC, and accepted that it was expedient to take enforcement action, then, as set out in the [Local Enforcement and Site Monitoring Plan](#):

*"It is not an offence to carry out development without first obtaining any planning*

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<sup>1</sup> Town and Country Planning Act 1990, Schedule 1, para 11, subject to the relevant sub-sections

*permission required for it. Where the assessment indicates it is likely that unconditional planning permission would be granted for development which has already taken place, a retrospective planning application should be submitted (together with the appropriate application fee). It may also be appropriate to consider whether any other body (eg the highway, local planning, environmental health authority or Environment Agency) is better able to take remedial action.*

*While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice will not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought. In such circumstances, a planning contravention notice (under S171C of the Town and Country Planning Act 1990) will be considered to establish what has taken place on the land and persuade the owner or occupier to seek permission for it, if permission is required. The owner or occupier of the land may be told that, without a specific planning permission, they may be at a disadvantage if they subsequently wish to dispose of their interest in the land and has no evidence of any permission having been granted for development comprising an important part of the land use or value."*

What is also pertinent to the case is that the development plan for the area has changed since the groundworker's yard was granted permission in 2015 and the waste applications refused (2012/13). CCC adopted a new Local Plan in 2020 and this plan has allocated the Ashtree Farm complex inclusive of the permitted groundworkers' yard, but not the eastern extension area, as a 'Rural Employment Site' (the land previously being Countryside Land).

As stated in the CCC report accompanying the recent (refused) residential application for the site, *Policy DM4 of the Chelmsford Local Plan states that, within Rural Employment Areas the Council will seek to provide and retain Class B uses or other 'sui generis' uses of a similar employment nature unless it can be demonstrated that there is no reasonable prospect for the site to be used for these purposes.*

*The employment site at Ash Tree Farm is sizeable and well established. It offers an affordable and accessible employment opportunity to businesses and this is vital in supporting the Chelmsford economy.*

Furthermore, a more recent version of the Essex and Southend Waste Local Plan was adopted in 2017 and Policy 6 states, inter-alia, that proposals for new open waste management facilities should be located at or in '*employment areas that are existing or allocated in a Local Plan for general industry (B2) and storage and distribution (B8)*'.

Whilst any planning application for a waste use on the site would be determined on its own merits and in accordance with other policies of the development plan, without prejudice, the employment allocation in CCC's new Local Plan, as well as Policy 6 in the current Waste Local Plan, would suggest that a refusal of planning permission for an 'inert waste recycling facility' on the permitted groundworkers' yard is now not a forgone conclusion. Indeed, such policies now add weight to waste management uses being sited in such locations.

To further add weight to the case that planning permission could potentially be granted

to a waste-related use on site, in 2018 ECC as WPA was asked to provide 'pre-application advice for the *"Part change of use of the existing groundworkers' yard to permit ancillary waste treatment involving the treatment of construction and demolition waste to produce soils, soil substitutes and aggregates. Together with the construction of a noise bund up to 5m high alongside the western perimeter of the site and a noise bund up to 5m surrounding the proposed location of crusher plant"*

The advice was an officer opinion only<sup>2</sup>. It concluded:

*This site has previously been resisted by the WPA for a waste use. It is however accepted that since then the permission granted by CCC for a groundworkers' yard and the proposed designation within the Chelmsford Local Plan (CLP) has to some degree changed the circumstances and reasons why previously the use was deemed inappropriate.*

*That said, this is still not an allocated waste site and it does not form one of the areas of search so policy wise the burden lies with you (the applicant) to demonstrate why this site is coming forward, irrespective of need.*

*Concerns do exist about elements of the proposal (particularly from a landscape and amenity perspective) however as only limited details have been provided it is not necessarily considered that these are insurmountable. That said, for any such application to demonstrate policy compliance, it would be expected that evidence would be provided to show that, whilst more operations would take place on-site, the existing landscape character and quality could be maintained and, overall, there would actually be betterment to local amenity and attractiveness of the employment area designation.*

No planning application has been submitted to the WPA date, however, if enforcement action was to be taken by ECC, there would need to be a realistic case that planning permission would not be granted for the alleged unauthorised use. Any enforcement notice, for example, must reference the relevant development plan policies which the unauthorised development fails to comply with. It is not clear, therefore, that enforcement action would be capable of being reasonably commenced and defended at appeal, especially if a 'ground a' appeal is lodged – i.e. that planning permission should be granted for the unauthorised development alleged in an enforcement notice. Whilst not certain, it is the WPA's view that any such appeal could have a reasonable amount of success.

Finally, whilst strictly not of direct relevance, further complication to the case arises as the landowner still has time to appeal CCC's recent refusal of planning permission for residential development at the site. Whilst it is not known whether an appeal will be lodged, enforcement action could be material to the outcome of any appeal for the housing proposal.

## **CONCLUSION**

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<sup>2</sup> As stated in the advice issued "Council officers, with requests for pre-application discussions, endeavour to provide proactive advice. However, it should be recognised that all planning applications are subject to formal consultation, to enable third parties and statutory consultees to make representations. This process may introduce new material considerations and therefore the right to alter any opinions expressed within this letter, should such material issues come to light, is reserved. Furthermore, any advice given is that of the named officer and does not bind the Council in determining any subsequent planning application that may be submitted"

As required by the ECC's [Local Enforcement and Site Monitoring Plan](#):

*“The investigating officer will make a judgement as to whether it is expedient to take formal enforcement action taking account, in particular, whether the development unacceptably affects public amenity or the existing use of land and it is in the public interest to do so. The taking of enforcement action is discretionary and the local authority may choose to take no action. A recommendation will be made that enforcement action is taken, primarily based on the conflict with planning policy and the harm being caused. Formal enforcement action, in certain circumstances, may well be the only effective way in which to remedy the breach of planning control.”*

Given the ambiguity of the groundworkers' yard planning permission – i.e. that it is not clear that a change of use has actually taken place at the site and the position that development plan policy may now be generally supportive in principle of such development, it is not considered expedient that ECC as WPA takes enforcement action to remedy the alleged breach of planning control. This position is especially relevant given that CCC has suggested ECC could serve a 'Stop Notice'. A Stop Notice<sup>3</sup> (not a Temporary Stop Notice) is capable of appeal as it must accompany an Enforcement Notice and if such a notice was quashed on appeal, ECC would be at risk of paying significant financial compensation.

Whilst it is appreciated that harm is being caused in the locality, especially from HGVs using the site, it is clear from the planning background and permission already issued by CCC that potentially limitless 'materials'<sup>4</sup> were always intended to be imported and removed by HGV. In turn, this does not indicate that the character or intensity has changed to a degree to indicate that a material change of use has taken place.

If 'waste processing' takes place at the site, then CCC has the ability to serve a Breach of Condition Notice to address any harm caused by such an activity. It is not clear why CCC has not taken such action already. Additionally, should stockpile heights exceed 5m, then again CCC has the authority and ability to enforce the planning permission it granted.

The one caveat to the above, is that in this instance the WPA are not necessarily immediately likely to take enforcement action (as the site is not currently active). The WPA also has reservations about the live Enforcement Notice served by CCC which covers the extension area (blue land on Plan 1 above); and, should it be that the WPA considers it appropriate to use its own powers in relation to activities on the site, it may be that the WPA may need to request that CCC withdraw this notice to allow the WPA to appropriately re-issue a more suitable notice, covering a larger planning unit (both the red and blue land in Plan 1 above).

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<sup>3</sup> A stop notice must be issued either with or before the enforcement notice comes into effect. A stop notice cannot be issued without an enforcement notice being issued. The service of a stop notice will take place where the local planning authority considers it expedient to stop an activity before the associated enforcement notice comes into effect. A stop notice would not normally come into effect until 3 days after service unless special considerations are attached indicating that it should come into effect earlier. There is no right of appeal against a stop notice. An appeal against an enforcement notice will hold the requirements of the enforcement notice in abeyance, but the requirements of the stop notice to cease a particular activity remain effective. As a stop notice prevents an activity from continuing, there is a right to claim compensation against the local planning authority if the notice has not been served properly.

<sup>4</sup> Albeit stockpiled no more than 5m

Finally, ECC, as WPA, has remained constructive throughout its conversations with CCC and has always offered to assist and advise where possible. This position has not changed. Officers of the WPA will continue to assist CCC where appropriate.

## **6. RECOMMENDED**

That:

1. Without prejudice to Chelmsford City Council's role as local planning authority, it is not considered expedient for Essex County Council, as Waste Planning Authority, to take enforcement action to remedy any harm being caused by the alleged unauthorised waste use.
2. That the committee continues to be updated should the position change.

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## **BACKGROUND INFORMATION**

1. Planning Application ESS/14/12/CHL - The use of the site as a waste storage and recycling centre for demolition and construction waste. Proposed associated development to include the installation of a weighbridge, office portacabin, various containers and bays for the storage of material, a 2m high perimeter fence and the construction of a new internal access and road.
2. Application ref: ESS/04/13/CHL - The use of the site as a waste storage and recycling centre for demolition and construction waste. Proposed development to include the installation of a weighbridge, office, various containers and bays for the storage of material, a 2m high perimeter fence and alterations to the internal access road.
3. Planning permission ref: 14/01584/FUL and supporting documentation and background correspondence - Retain use of land as groundworkers' contractors yard, including the storage of plant materials and machinery. Reposition and retain containers and portable toilet, new diesel tank. Alter existing vehicular access onto Roxwell Road and undertake landscaping works. Two metre high chain link fencing.

## **LIST OF APPENDICES**

1. Appendix 1 – Planning permission 14/01584/FUL

## **LOCAL MEMBER NOTIFICATION**

Chelmsford - Broomfield and Writtle