

Case No. 11/00143/UDRU

Grid Ref:

Address:

Land at NGR 308125 115944 north of the A38, Maidendown Stage, Burlescombe

Alleged Breach:

Without planning permission, an unauthorised development has commenced on land north of the A38. The development comprises of a change of use of land from a vehicle repair garage on part of the site and land used for lorry parking on the remainder of the land to a mixed use comprising:-

- A highways maintenance depot, which includes the parking, storage and repair of plant and machinery associated with highway maintenance, the storage of materials used for highway construction and maintenance, the parking, maintenance, and repair of vehicles used for carrying out highway maintenance repair and maintenance.
- A fuel storage and distribution depot,
- Caravan storage
- Siting of caravans for residential use and occupation.
- Use of the land for the siting of temporary office buildings.
- Use of the land and buildings for vehicle storage, maintenance and repair

Additionally operational development has taken place within the last four years comprising of

- Importing of material to level the site.
- The erection of a number of steel framed buildings
- The installation of fencing
- The siting of portable structures to provide office accommodation.
- The surfacing of large areas of the site to provide areas for vehicle parking and turning areas.

Recommendation:

That the Legal Services Manager be authorised to take any appropriate legal action including the service of an enforcement notice. In the event of any failure to comply with the notice served, the additional authority to prosecute, take direct action and/or seek a court injunction.

Site Description:

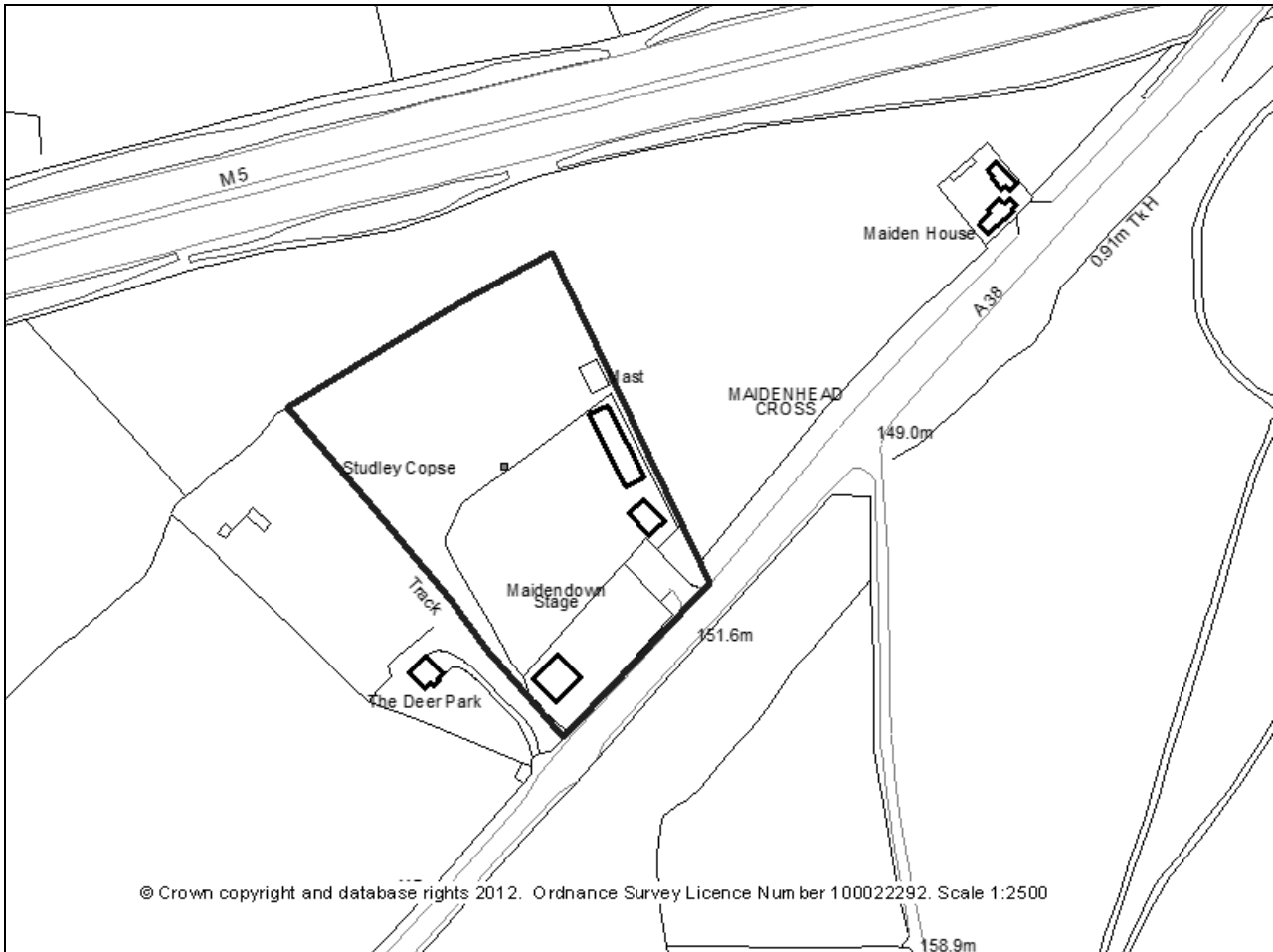
The site is located on the main A38 between Wellington and Waterloo Cross. The site is not within any settlement limit and is in a relatively isolated position in the countryside. One dwelling adjoins the side on its western boundary. The site has had various uses in the past with a semi-derelict garage use on the front of the site (now removed). Until recently and prior to its current occupation the site was in two distinct parcels, land adjoining the A38 was occupied by the semi derelict garage (now removed) while land to the rear and north was vacant but with a history of planning permissions for B1,B2 and B8 development. The site is reasonably well screened on three boundaries by trees and hedgerows. The site is clearly visible from the A38.

The site comprises a recently erected workshop on the front of the site on the site of the former garage together with parking of lorries, plant and machinery. Some materials are also stored on this part of the site. This former garage area is clearly visible from the adjacent A38. A chain link fence forms the boundary with the A38.

Along the rear boundary of the former garage site on the land forming the greater part of this site a series of portal steel framed buildings have been erected, two of which are clad the others are open. The enclosed bays are used for storage of highway equipment and materials and the open

bays are used for vehicle parking and storage. One of the open bay permits access to the main site. On the main site there are some two storey portable office units and car park, building materials mainly used in highway maintenance, repair and civil engineering, a fuel storage depot, more plant, materials and other assorted associated equipment. Additionally there are approximately 10 caravans of varying size some of which are used for human habitation.

Site Plan:



Recent relevant site History:

08/00425/FULL – Erection of 4 Industrial/Warehouse buildings (11 units) (Use classes B1, B2 & B8)

10/01913/FULL – Erection of 2 storey office building with flat, parking, landscaping and secondary access.

11/00753/MFUL – Application to replace extant planning permission 08/00425 (to extend time limit) for Erection of 4 Industrial/Warehouse buildings (11 units) (Use classes B1, B2 & B8)

Development Plan Policies:

Adopted Mid Devon Local Plan (LDF)

DM2 High quality design

DM3 Sustainable design

DM20 Rural employment development

DM31 Planning enforcement

Mid Devon Core Strategy 2007

COR2 Local distinctiveness

COR18 Countryside

Reasons/Material Considerations:

This report is being presented to members again simply to amend the Site Location Plan as the plan attached to the original report omitted an area that fronts the main road and is the location for some of the requirements in the notice. Other than that the report is as presented previously.

Contractors are currently operating from the site carrying out various highway contracts, the site is used for the storage and maintenance of contractor's vehicles and equipment, the storage of some materials, offices which are provided in modular buildings, a fuel distribution depot, and the storage of caravans (approximately 10). Some new prefabricated steel frame buildings have been erected running parallel to the frontage of the site and two of the bays have been clad to provide covered storage areas.

The use of Maidendown Stage site as a highways depot and fuel distribution depot are uses that are classed as 'Sui Generis' (or a class of its own) and as a result the uses are not a class permitted by the planning permission ref; 11/00753/FULL which allows for the use of the site under the use classes B1(Light Industry/Office, Research and Development) ,B2 (General industrial development) and B8 (Storage and Distribution)

Therefore the use of the site as a highway depot, fuel storage depot and caravan storage area are unauthorised changes of use that require planning permission. However, the use, as a Highway Depot/Fuel depot, have similar characteristics to the approved uses in particular B2 and B8. They could therefore potentially be considered as an appropriate uses for this industrial site subject to conditions. The storage of caravans would also potentially be acceptable subject to appropriate conditions.

Officers have met the operator and his agent and discussed the options available to him. The site operator advised it was his intention to submit a planning application to regularise the use. A planning application for the changes of use referred to above would of course have to be considered upon its merits at the time of submission. No such application has been submitted.

The use currently taking place would potentially be considered acceptable subject to the imposition of some appropriate conditions, it would not be acceptable without some conditions being in place. In accordance with National Planning Policy Framework (NPPF) para 207 which states effective enforcement is important as a means of maintaining public confidence in the planning system, it is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control. Enforcement action should only be taken where it is appropriate to do so and in the public interest.

As a result, in this case, the operator was given time to submit a planning application for determination so the full extent of the various uses could be considered and if deemed appropriate permission granted with any necessary conditions imposed to control the use of the site and assimilate the development into its locality.

However, the operator has not submitted a planning application for determination. The Committee are therefore requested to authorise the issue of an enforcement notice which will not seek the removal of the unauthorised uses or buildings but will ensure that the use operate in accordance with the terms of the enforcement notice. In effect a conditional enforcement notice.

Section 173(11), as amended, of the 1990 Act provides for, after full compliance with the requirements of an enforcement notice, the provisions to apply to any remaining uses or activities on the land and to any remaining buildings or works. It deals with the situation where "under-enforcement" has occurred, by providing that planning permission shall be treated as having been granted for the development or the activity, as it is in the state resulting from the owner or occupier having complied with the enforcement notice's requirements.

As the section applies to all the remaining uses or activities on land once the enforcement notice has been complied with, LPAs are advised they should ensure that they identify all the relevant breaches of planning control involving the use of land before they issue an enforcement notice. Where the land is in mixed use, it is important that the notice should allege a change of use to that mixed use, specifying all the component elements in the notice's allegation.

The deemed application for planning permission under section 177(5), arising from any appeal against the notice, which the Secretary of State or a Planning Inspector will need to consider, should properly relate to the mixed use in its entirety, not just to those elements of the use which the LPA may have identified as being in breach of planning control and which are covered by the notice's requirements.

This is because the planning merits of a particular use of land will not necessarily be the same, where that use is only one of a number of uses taking place, as the planning merits of that use where it is the land's sole use. For example, if the other uses were to cease and the single remaining use were to occupy the entire "planning unit", to the exclusion of the others, that change could well constitute, as a matter of fact and degree, a "material" change of use of the planning unit, to which different planning considerations might apply (*Wipperman v Barking LBC* [1965] 17 P&CR 225). Accordingly, if the LPA do not specify all the uses taking place on a planning unit in a mixed use case, the Secretary of State's or an Inspector's appeal decision will correct that notice, to reflect the actual situation on the land as it was when the notice was issued, before dealing with any "deemed planning application" on that basis. In these circumstances, if the LPA have failed to identify any uses of the land which may not already be lawful, and to which planning objections would apply if they were to become lawful, the effect of section 173(11) could be to grant deemed planning permission for those uses if they are specified in the allegation but are not required to cease.

By under enforcing in this manner the Committee are in effect granting planning permission for the activities subject to the provisions of the notice being complied with. If the Committee find the uses taking place on the site unacceptable in planning terms in principle the time to enforce

against those activities is now. By recognising the unauthorised uses on the site by under enforcing it will difficult later to justify further action against those uses if the terms of the enforcement notice recommended are being complied with.

Officers in considering the most appropriate options have been in contact with the Parish Council for the area. The Parish Council do not in principle have objections to some of the activities taking place on the site and have helpfully indicated the areas of concern to them and the issues they would wish to be brought under control if the decision is made to under enforce and serve a conditional enforcement notice.

The issues they have identified are:

1. They would like to see the bays facing the A38 clad to provide screening of activities on the site.
2. They would wish to see the site fenced along the A38 with the road verge kept free of materials from the site.
3. They wish to see the level and intensity of the security lighting addressed so it is less intrusive to areas outside the site.
4. They would like to see the existing boundary hedges and trees protected and maintained.
5. They have concerns over the number of caravans stored and their use.

Your officers consider these are reasonable items to control to help assimilate the use of the site into the locality.

Additionally on the planning permissions that were granted in 2008 and 2011 the industrial units adjacent to the neighbouring residential property were conditioned to B1 use only to safeguard the amenities of that property. Currently the unauthorised units close to the residential property are being used for B8 storage activities. This is acceptable but should be conditioned to remain in B1/B8 use.

Options for action or remedy:

The list of options available is as follows:

Take no action – This would not be appropriate as conditions would need to be imposed on a planning permission to regularise the activities to make them acceptable. Some of the activities are unacceptable and need to cease.

Invite an application to grant consent to regularise the Development – The owner was invited to submit a planning application to regularise the development. No application has been made.

Issue Enforcement Notice to cease certain activities and make others subject to actions being undertaken.

This is the recommended option, the notice proposed will prohibit certain activities identified and in effect allow others subject to compliance with the terms of the enforcement notice. This should also address the concerns of the Parish Council

Reasons for decision:

- The Unauthorised development has been undertaken within the last four years.
- Some of the uses on the site, such as the human habitation of the caravans are unacceptable.
- Some control of the activities on the site need to be imposed.
- The impact on the visual amenities of the locality need to addressed.

Steps required:

1. **Cease using the site for the stationing of caravans for residential accomodation. All caravans on the enforcement site shall not be occupied for residential purposes while on the enforcement site. Disconnect all caravans when on the enforcement site from electricity supplies, water supplies and any drainage systems.**
2. **The number of caravans stored on site shall not exceed 10. All caravans shall be stored in the area marked yellow on the plan attached to this enforcement notice**
3. **A 1.8 metre high close boarded fence shall be erected along the boundary marked A-B on the plan accompanying the enforcement notice.**
4. **Clad the open bays marked orange on the plan facing the A38 in materials to match those marked X and Y on the plan attached to the notice**
5. **Use buildings marked X and Y on the plan accompanying the enforcement notice for B1 (light industrial) and B8 (wholesale and distribution) use only as defined in the Town and Country Planning Act (Use Classes) Order.**

Period for compliance:

- Step 1: Within three months of the notice taking effect.
- Step 2: Within one month of the notice taking effect.
- Step 3: Within two months of the notice taking effect.
- Step 4: Within six months of the notice taking effect.
- Step 5: Within two months of the notice taking effect.