



Appeal Decisions

Inquiry Held on 13-16 and 20-23 April 2021

Site visit made on 12 April 2021

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 May 2021

Appeal A: APP/D1265/C/20/3244610

Guppy's Yard, East Moors Lane, St Leonards, Ringwood, BH24 2SB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Simon Guppy against an enforcement notice issued by Dorset Council.
 - The enforcement notice was issued on 17 December 2019.
 - The breach of planning control as alleged in the notice is within Area A shown edged blue on the attached Plan 1, without planning permission, the change of use of land to use for the importation, deposit, processing and recycling of waste materials including construction and demolition wastes. Within Area B shown edged pink on the attached Plan 1, without planning permission, the change of use of land to use for the importation, deposit, processing, storage and recycling of waste materials including construction and demolition wastes and ancillary parking of vehicles. Within Area C and Area D shown edged green on the attached Plan 1, without planning permission, the construction of screening bunds in connection with the unauthorised use of Areas A and B.
 - The requirements of the notice are (i) permanently cease the importation, deposit, processing and recycling of waste materials in Area A and Area B; (ii) permanently cease the use of Area B for the storage of waste materials and recycled materials and for the parking of vehicles; (iii) remove from Area B all waste materials, recycled aggregates and any vehicles and other materials associated with the processing, storage or recycling of materials; (iv) remove from Area B any structures, machinery, plant and equipment associated with the land uses listed in (i), (ii) and (iii); (v) remove from the site the screening bunds located within Area C and Area D so as to leave the level of the land within the footprint of each bund at the level it was prior to the construction of the bunds.
 - The period for compliance with the requirements is Item (i) on the day this notice takes effect. Items (ii), (iii), (iv) and (v) 4 months from when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - Similar appeals have been made by Stephen Guppy (3244613), Mrs Eileen Guppy (3244614), Ricky Vincent (3244621), Paul Millar (3244615), Ms M Pain (3244636), Zac Kerin (3244626) and Mark Burden (3244622).
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Appeal B: APP/D1265/X/20/3260162

Guppy's Yard, East Moors Lane, St Leonards, Ringwood, BH24 2SB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr S Guppy against Dorset Council.
- The application (Reference 3/19/1630/CLE) is dated 1 August 2019.

- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the construction of a hardstanding area across the area shown edged and hatched in green on the attached plan (1980s) and the area edged and hatched in red (2001).
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Appeal C: APP/D1265/X/20/3260188

Guppy's Yard, East Moors Lane, St Leonards, Ringwood, BH24 2SB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr S Guppy against Dorset Council.
 - The application (Reference 3/19/2267/CLE) is dated 20 December 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the use of land for a period in excess of 10 years for the storage of scrap together with the breaking and distribution of waste metal.
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Decisions

Appeal A - 3244610 and all associated appeals – 3244613, 3244614, 3244621, 3244615, 3244636, 3244626, 3244622.

1. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B - 3260162

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing operation which is considered to be lawful.

Appeal C - 3260188

3. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

Background to the Appeals

4. Guppy's Yard is an area of land lying to the north of the A31 dual carriageway in a strip of open land that forms the shallow valley of the Moors river which runs north-south between the settlements of West Moors and St Leonard's. The yard is accessed from the A31 by a tarmacked track that also leads to a camping and caravan site that adjoins the yard to the north. The Moors river is an SSSI.
5. The Guppys own a large area of land which is mostly fields or woodland but in the centre is Guppy's Yard, the main area of their operations, a large area of hardstanding that forms the shape of a bent arm. The shoulder and upper arm forms a metal recycling yard that occupies the northern part of the land closest to St Leonards; the forearm in the centre, is where inert waste recycling is currently taking place and to the west a fist shaped area is occupied by various

businesses such as compost bagging, scaffolding and storage of containers, telegraph poles etc. The entrance to the yard is in the upper west corner (by the thumb of the fist) and an access track runs along the northern edge of the arm all the way up to the metal recycling yard. To the north of the track is a large field which may have had inert waste tipped on part of it from time to time.

6. The lawful use of the whole area of land owned by the Guppys is agricultural, but in 1993 an LDC was granted for open storage on three distinct parts of the yard. The shoulder and upper arm which now forms the metal recycling area is one section, secondly, a small part of the forearm currently used for inert waste recycling and thirdly the 'western triangle' which is most, but not all, of the fist shaped area. The inert waste recycling was undertaken from 2011 by a separate company called Dorset Soils and Aggregates (DSA), who left the site in 2020 to be replaced by Three Cross Recycling (TCR), who were represented at the Inquiry.
7. This decision deals with three appeals. Appeal C is an LDC for the metals recycling area (MRA), appeal B is an LDC for the hardstanding that forms the backbone of Guppy's Yard and appeal A is against the enforcement notice. This notice identifies four parcels of land A, B, C and D that together make up the forearm part of the yard. Area A is the same as the open storage area identified in the 1993 LDC mentioned above, area B falls into two sections, the northern section covers the rest of the hardstanding in this forearm part of the yard adjacent to area A, the southern section is adjacent to the northern and is disputed hardstanding. C is a large bund that envelops area B to the south and D is a smaller bund that forms the northern boundary of the enforcement notice site, standing off the hardstanding and screening the northern B and some of the adjacent area A.
8. Considerable agreement was reached between the parties over the LDCs, so that both can be issued. The dispute was limited to exactly what they should cover. I shall deal with these first, as they inform the background to the enforcement notice appeal.

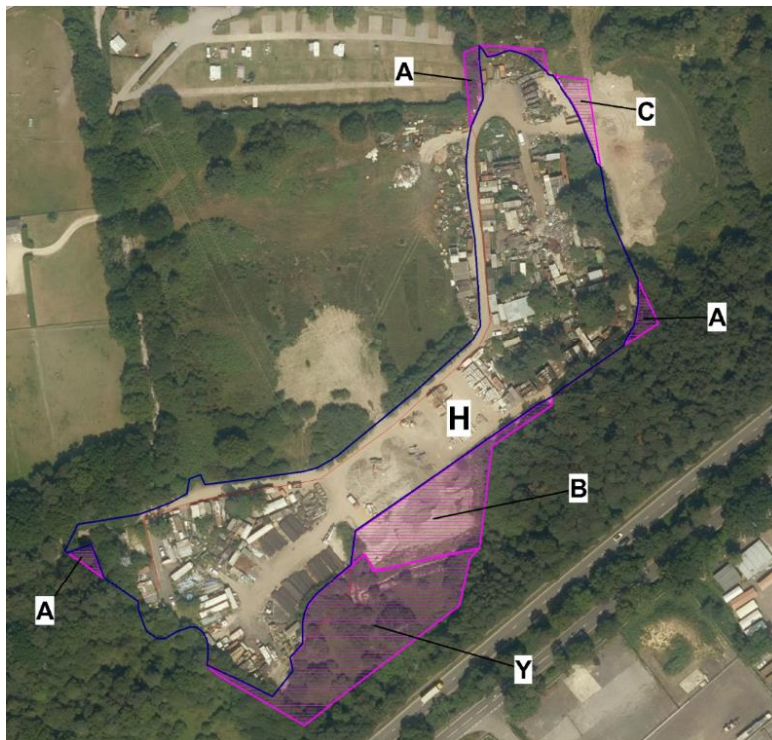
Appeal C – 3260188 Metals Recycling

9. It was agreed before and during the Inquiry that a substantial part of the shoulder and upper arm part of Guppy's Yard has been used for metals recycling. The Council's plan they wished to attach to the LDC shows a blue area surrounded by a red area. The blue area is where the recycling has taken place and the red area is a surrounding wall of containers, stacked three high, that creates the MRA. There is no dispute about the wall of containers, nor that the blue area accurately defines where metal recycling has taken place. However, the appellant also argues a small area to the north and a larger area to the south has also been used for the storage of scrap metals, ancillary to the recycling activity and a larger area to the north plus a track down the western side has been used for access, parking and turning of vehicles associated with the metals recycling.
10. It was agreed the appellant would accept the Council's plan, on the understanding it did not preclude them from making a further LDC application for the disputed areas mentioned above, nor that it suggested they accepted in any way the plan represented the limit of their activities on the land. On this basis I shall attach the Council's plan to the LDC.

11. The second area of dispute was the list of limitations contained in the first schedule of the LDC. The appellant was concerned these appeared to be conditions that would restrict the future use of the land. Notwithstanding that this fear was unfounded as whatever they may look like, conditions cannot be attached to an LDC, the Council agreed to describe them as "characteristics", which seems acceptable to me.
12. Of those characteristics, only the last one (e) was in dispute. This was "*the maximum amount of scrap metal stored at the site at any one time is 1000 tonnes*". Again the appellant feared this would be used to enforce a limit of 1000 tonnes. However, the characteristics simply describe the activities that have been found lawful. In this case, there was no dispute the storage of metals had not exceeded 1000 tons, therefore that was the amount of lawful storage. If storage should exceed 1000 tons it would up to the Council to determine if that was no longer lawful but required planning permission. In this case it would require planning permission if it amounted to a material change of use by way of intensification. How the 1000 tons is described would not change that. I shall therefore issue the LDC as redrafted by the Council and discussed on the penultimate day of the Inquiry.

Appeal B – 3260162 Hardstanding

13. A plan has been produced showing the area of hardstanding that was applied for and annotated to show those areas in dispute. I reproduce it below for ease of identification.



14. Area H is the main section of hardstanding and is agreed to be lawful. Area B is the same as the southern B of the enforcement notice, and it along with areas A, C and Y are in dispute. At the Inquiry the appellant accepted that the northernmost A (adjacent to the campsite) was not hardstanding, as it had become overgrown with a hedge and other shrubs and bushes, while part of the easternmost A (the small triangle on the eastern corner of the MRA) was partly not hardstanding where a tree had grown through. The rest of that area

A and the other areas were still disputed. For these purposes the hardstanding would be lawful if they had been constructed more than 4 years before the date of the LDC application, that is on or before 1 August 2015.

15. Firstly I need to consider what comprises a hardstanding. There is no definition of one, it is a matter of judgement for the decision maker, but it was agreed that a hardstanding is an engineering operation. The parties had differing views on a suitable definition. The Council's was that it had to have been created as a hardstanding, for a specific purpose and it had to have been engineered in some way, most likely by providing an engineered surface. The appellant thought it was simply a layer of hard material laid on the ground and subsequently used as a hardstanding.
16. In my view a hardstanding cannot arise by accident, there must be some purposeful act of creation but beyond that it is a matter of fact and degree. For example if a concrete finished surface was laid over a hardcore base then that would undoubtedly be a hardstanding. It would remain a hardstanding even if it began to deteriorate through lack of use and would only cease to be a hardstanding if it disappeared sufficiently to suggest either it no longer existed, or it had been abandoned. On the other hand, if some rubble was spread on the land as part of a waste deposition activity that would not be hardstanding. If it was subsequently deliberately driven over and compacted so that it could be used as a hardstanding, then that would have been an act of creation (or to put it another way an engineering operation) and it would become a hardstanding. However, it would then be subject to the same issues of disappearance and abandonment, only it would be easier for the hardstanding to disappear if it hadn't been finished and concreted in the first place. So it is clear that I don't agree with the appellants' view that because the council accept H is lawful it follows everything else laid down at the same time as H must also be lawful.
17. In this case the first appearance of hard materials on the site was in the 1980s when the Yeoman's waste was spread on the land. An aerial photo from 1986 shows the extent of the waste which has been spread out to more or less form the western triangle, most of the central area and part of the MRA. It also extended south into areas B and Y and up to the base of a large pylon that is a useful landmark on the edge of Y. The Guppys maintain that although they were young at the time their dad was consistently recycling this material but there is no other evidence for this. In 1983 the Council were concerned about the spreading of waste and Mr Guppy senior convinced them it was just raising the land for agricultural purposes. At the Inquiry an attempt was made to suggest this was all a big mistake, the Yeomans waste had always been intended as hardstanding. However later aerial photos in 1988 show what look like trees or bushes in area B and nearly all of H and Y outside of the western triangle is greened over. Simon Guppy suggested the bushes were piles of waste, but it is clear to me from their shape, shadows and similarity to other undisputed bushes that they were not piles of waste. From 1997 onwards several aerial photographs show the large area of the waste in B and Y to be overgrown. By 2002 the Wimpey waste had been overlain on the site which covered a slightly small area than H. It is this action the Council accept formed a hardstanding and this is supported by the various statutory declarations of people who were there at the time.

18. The Guppys maintain they consistently used the whole of the area of the Yeoman's waste as hardstanding, it was just that it quickly greens over in between. I do not find this convincing. In none of the aerial photographs are the disputed areas anything other than green. In 1997 a small cluster of bags or possibly piles of what look like aggregate are clustered on the green area of B and I've no doubt that vehicles may have from time to time driven over this land, it had a pretty deep covering of hardcore all over it, and occasionally used it to store materials, but that occasional use does not make it a hardstanding. The initial process would have been the spreading of waste and nothing seems to have happened to create a hardstanding – certainly not in any of the areas under dispute, until 2002.
19. By 2005 the area of hardstanding has grown slightly from its origin in 2002 to essentially cover all the undisputed area H. In my view this forms the basis for considering the true extent of the hardstanding. Around the edges of what is clearly hardstanding are small piles of materials that give the edges a ragged look, but these do not extend the area H more than a couple of metres in any direction. Again I find it easy to believe the Guppys' evidence that their Dad and also later on they would dump aggregates and other wastes anywhere over the site. The land where it was overgrown was firm (as it was made up of Yeoman's waste) so was used to store piles of materials. But this is only very much on the edges of area H and does not seem to have extended onto the bulk of the B or Y areas. The 2005 aerial photograph shows the rest of the land to be in various shades of green and brown, as one would expect in a dry spring. The heathland vegetation that is typical to this area is generally this colour. On some photographs there are clear forays north and south of area H where tipping of waste is clearly visible. Such an area is visible in the 2005 aerial photograph at the join between the central section and the western triangle in the northern field. But this is clearly distinguishable from the surrounding vegetation. I have no doubt the odd specks of brown within the surrounding green are just different types of plants, not random spoil heaps as it was suggested at the Inquiry.
20. In 2006 little has changed except area Y has become more luxuriantly overgrown and there is the same nibbling away along the southern edge of H/B with small piles of waste materials. In 2007 there is an example of the clear spreading of more waste into the top portion of B, but elsewhere on B and Y there are bushes and plants in flower, clearly visible, and a drain that has been dug on the boundary between B and Y vegetated on both sides. By 2009 the hardstanding has crept back to its original H as the vegetation reclaims the unused land. The Guppy's pointed to the waste material as evidence the land was being used for storage, and the marks were where materials had been scraped up to be sold off, revealing the hardstanding beneath. It is equally possible that it was just evidence of waste being dumped off the edge of the hardstanding onto the waste land beyond. Given my conclusions later on the lack of inert waste recycling going on at this time I consider that on the balance of probabilities it was the latter not the former.
21. In 2009 area Y is becoming quite thickly grown over with bushes and this is the same as 2010 and 2012. In the latter year distinct shadows are cast by the bushes growing in B and Y. By April 2014 the situation has changed markedly. Now area B is filled with piles of waste materials and several vehicles are parked on the edge of B. This is when DSA began to construct the southern bund and from then on there is no dispute that B has been turned into a

hardstanding. However, the state of Y never changes. It was suggested that the original Yeoman's waste beneath the now thick vegetation of Y acts as a support to the southern bund that circles the edge of B, but this was no more than uninformed speculation, and at best could affect only a small area adjacent to the bund.

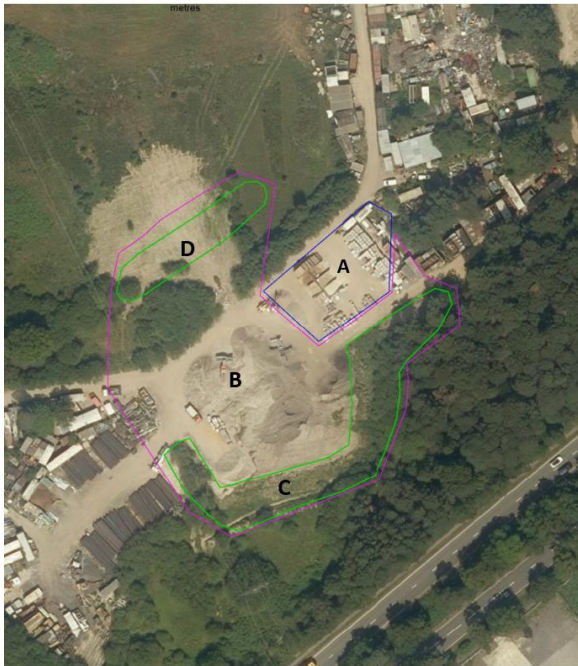
22. On my site visit I saw that Y was indeed thickly overgrown and almost impassable on foot with trees and ditches filled with water, all lying on top of several metres of Yeoman's waste. The bunds, that were more recent and a more hostile environment for plants, were also overgrown. The appellants' suggested the thick deposition of waste was a difficult place for plants to grow and the green seen on the photographs was moss, or at best thin grass, which was easily scraped off by continual use. But the ecological evidence was that the heathland plants would quickly colonise this sort of ground and return it to nature, something that I saw on my site visit and the aerial photographs suggests there was very little use at all of areas B and Y after 2002 until 2014.
23. Drawing this all together I consider there is no evidence that area Y was ever hardstanding. The evidence for B suggests that from time to time it was used for the deposition of waste, and the edges were used for storing waste materials but nothing to suggest the Council's boundary line is substantially wrong.
24. As for the other areas, applying the same principles, in 2005 area C was outside a clear line of hardstanding to its west. Eastern A lies under thick tree cover and western A, which is beyond the telecoms mast compound at the very edge of the site by the access road is also overgrown with trees. There is no change in 2006, 2007, 2009, 2010, 2012 or 2014. In 2017 a large area of waste has been tipped over C and judging by the piles of materials sitting on the land this process still seemed to be underway. Thus it was not until 2017, within the 4 years, that C was created. There is no evidence for the eastern A, and as I saw it was overgrown under the shade of the trees that had grown through parts of it and around its edge. The aerals consistently show it to be covered in trees as well. The western A, I saw was made up ground, presumably from the original Yeoman's waste tipping, but was thoroughly overgrown, and indeed did not seem to be easily accessible lying beyond the fenced off telecom mast compound. Again this is consistently shown to be overgrown with trees in the aerial photographs.

Conclusions

25. I have no doubt from the evidence provided that large amounts of waste have been spread over the land in question, and that the people who gave evidence to that fact were sincere in their view that it was a hardstanding. However, some of the interpretations of aerial photographs verged on the fanciful and in my view nearly all the disputed areas were quickly overgrown and, apart from the edges of B, seldom if ever used. I do not think dumping piles of waste on the land creates a hardstanding, and so I have no reason to doubt the Council's defined area H as the actual hardstanding on the site. I shall issue an LDC accordingly.

Appeal A – 3244610 the Enforcement Notice

26. As noted above this appeal concerns the central area of the hardstanding which the Council have labelled A, B, C and D. The aerial photograph below, taken in 2017, shows these areas in the context of the wider site.



27. Area A is one of the lawful storage areas as defined in the 1993 LDC, C is the southern bund, D is the northern bund and B is the rest of the site bounded by the purple line.

The Appeal on Ground (e)

28. The notice was served on a variety of people, all of whom have appealed except for Mr Munnings. The appellant argues that Mr Munnings has no interest in the land. Although he is well known to the appellants as he has acted as their professional advisor for many years, and did so at this appeal, beyond that he has no interest in the land and should not have been served. The Council accept this is true and are happy for me to note this here. It would have been better if he had not been included, but nothing flows from this error, and his name on the notice does not invalidate the notice in any way or suggest the notice was "*not properly served on everyone with an interest in the land*" which is the purpose of ground (e).
29. The Council have discretion to determine who is materially affected by the notice, and it is difficult to see how they can be criticised for exercising that too widely in the case of the other people served. In closings the appellants case was narrowed to four individuals who they say should not have been served with the notice. All of them appealed and all of them have an interest in the red line site identified on the plan attached on the notice. There has been no contravention of s172(2) and no prejudice to any of the parties. The appeal on ground (e) fails.

The appeals on Grounds (b) and (c)

30. No real arguments were made that the matters alleged had not happened. As is often the case the issues were better considered as ground (c) matters, that

although occurring they did have planning permission. The appeal on ground (b) therefore fails.

31. Although it was never formally withdrawn, the appellants did resile from ground (c) during the course of the Inquiry. Their argument that the recycling activity was ancillary to the lawful storage use was sensibly not pursued, clearly recycling is not ancillary to storage and it is difficult to imagine a scenario where it ever would be. Storage can be ancillary to recycling but that is a different matter. In any event, the appellants' own evidence is that recycling was being carried on as a primary activity.
32. The bunds were also not ancillary to the lawful storage use. I shall deal later with the argument they were linked to the recycling activity, but that does not affect the ground (c). The appeal on ground (c) fails.

The Appeal on Ground (d)

33. This ground is that the matters alleged are immune from enforcement due to the passage of time. For the recycling allegation affecting A and B that is 10 years, which starts 17 December 2009. The bunds are an engineering operation for which the four year rule applies. There is no dispute that bund D does not benefit from this, but the appellant argues bund C was constructed before 17 December 2015. A separate issue, if this succeeds is whether bund C was part and parcel of the activities on A and B, and so, if they are found to be unlawful, bund C could still be required to be removed. The appellants do not dispute this as a matter of law, but do argue that bund C was not built primarily as part and parcel of any inert waste recycling activity on A and B.

The allegation

34. The allegation for area A is the "*change of use of land to use for the importation, deposit, processing and recycling of waste materials including construction and demolition wastes*". It is the same for B with the addition of ancillary parking and for C and D it is the construction of bunds in connection with A and B.
35. It is the allegation for A and B that is important, as the appellants maintain they have been carrying on mixed metal and inert waste recycling across all of A and B (as well as elsewhere on the land) for in excess of 10 years. Because the notice refers to waste materials generally, they only need to show that there was waste recycling of some sort during that period to succeed on ground (d). The Council argue the primary thrust of the notice is against the inert waste recycling, hence the notice says "*including construction and demolition wastes*". Any recycling has to "include" inert wastes to be caught by the allegation.
36. I agree with this. It is not an accusation against recycling in general, but specifically against inert wastes. I accept that inert waste recycling, as a matter of course, also involves general recycling as many loads of inert waste contain mixed materials that need sorting and recycling. Thus a specific allegation of only inert waste would be vulnerable to a ground (b), that mixed recycling was the actual use. I think it would have been better to have said something like "predominantly construction and demolition wastes", but I consider that on balance, the allegation is clear that for any recycling activities to be caught they have to include inert waste recycling.

The history of the use of the land

37. In 1999 there was an appeal into an LDC and several enforcement notices, one of which alleged a change of use to storage over the site as a whole but excluding the 1993 lawful storage areas. An inquiry was held and the Inspector carried out a site visit. On that visit he noticed there was a lot of storage of miscellaneous items on the site but, interestingly there is no mention of any recycling activity or any inert waste. Considerable evidence was taken at the inquiry, including oral testimony from Mr Guppy Senior and Stephen Guppy. Several relevant issues arise from this, firstly, the use of the land in 1984 was predominantly agricultural. The Guppy's tried to deny this but the 1999 Inspector preferred the decision of a previous appeal Inspector in 1984 who had been convinced that was the case then. After that there was gradual increase in storage, using the 1993 LDC areas. The rest of the land was lawfully agricultural but was largely dormant or had a nil use. Since then (up to late 1999), there had been intermittent storage uses over what we now call area H, but nothing to suggest they were such as to become lawful. The outcome of the appeals was that the lawful use of the land as a whole remained agriculture, with storage confined to the 1993 LDC areas.
38. At the Inquiry the Guppys suggested these findings were inaccurate as evidenced by the aerial photographs. However, these photographs really only show a scatter of scrap, vehicles and containers with no actual evidence of recycling going on. I find it difficult to believe that there was constant and active recycling across the whole site, as suggested to this inquiry, but no-one (including Stephen Guppy who gave evidence at both Inquiries) mentioned it in 1999 and the Inspector (and the various council officers who had visited the site beforehand) failed to see any evidence of it on the ground.
39. In my view the starting point in 2000 is as described in the Inspector's decision letter¹, that the land (generally the area H hardstanding) was used for storage. I think this must call into doubt the oral evidence I heard that there was an active metals recycling business going on since the 1980s. I have no doubt there was some periodic recycling of metals, all over the land and possibly also inert waste, but whether this amounted to a material change of use is another matter.

The photographic evidence

40. The aerial photographs show a consistent pattern of lots of activity in area A, which is not surprising as this was a lawful storage area, and also in the MRA and western triangle, but the appeal site is limited to areas A and B. In 2002 area B is empty except for a single parked lorry. It's difficult to see what's happening in A, but it seems the western half (next to B) has been turned into a sort of yard, the rest is just piled with random materials. In 2004 there is much more going on in the northern part of B (which sits on the hardstanding H), with parked cars or vans, and some containers and possibly large lorry bodies. There is definitely a yard in A although it seems to be empty with containers forming its eastern wall up against the miscellaneous storage in the rest of A.
41. In 2005 the situation is similar, but by now it is clear the southern part of the yard in A is formed by stacked containers, used, according to the evidence, for

¹ T/APP/U1240/C/98/1011206-8/P6 (and other appeals) inquiry September 1999, decision issued January 2000

storage. Lorry bodies, containers and materials are squashed up into part of B and there are several vehicles one of which is a slew². The Guppys explained this was to enable them to cut up large bodies of metal or concrete. In 2006 the situation on A is the same, but the northern part of B has less lorry bodies and containers, and more piles of smaller items, plus the slew. This is all clearly shown in the 2007 aerial, where a bulldozer is also visible as are a number of cotton reels. These are large reels of copper wire and were brought to the site for the wire to be recycled. The definition of the photo is excellent and the long shadows help to show they all seem to be empty.

42. Stepping back to April 2006 an enforcement officer visited the site and took photographs all around the wider area of H. These show the cotton reels and we can only see one side-on and it is empty. But this is notable for the grassy mound between the cotton reels and the pylon. This, according to the Guppys was a pile of soil that had been brought onto the site as part of the inert waste recycling process and had greened over. Its really difficult to see what this is, other than a green stripe behind the cotton reels, but it is not visible in the June 2006 nor the August 2007 aerial photographs and neither it nor the cotton reels were there in May 2005. Whatever it was it was therefore gone in a few months but it is not evidence of any recycling activity. It could just have been stored there. The rest of the photographs show no inert waste recycling going on apart perhaps from some small piles of what could be bark in an area that looks like the far north of the land.
43. In 2009 the site has been tidied up, most of B is empty apart from storage of cotton reels (which may well be full) up against the yard in A, itself full of scrap metal. In 2010 the situation is similar except the cotton reels have gone and there are a few skips of scrap metal in B. We have now entered the 10 year period, but what is clear to me, is that so far there is no photographic evidence of any inert waste recycling going on at all, nor are the crushers and grading machines that are used for such recycling visible. I accept the snapshot limitations of aerial photographs but this does not sit well with the oral evidence that this activity was constant. Certainly in later photographs, when it clearly was constant there is no doubt it is visible. At best we have some small piles of aggregates round the edges of the hardstanding at different parts of the land that could simply be being stored, be used to top up the hardstanding itself or being spread as waste.
44. It is difficult to make out anything specific in the 2012 aerial photograph, other than little seems to be happening that was not in 2010. In April 2014 there is a significant change. Now the northern part of B is covered in what looks like scrap metal and the remains of the burnt out slew (more of which later). The yard in A has lost its definition and the area behind the yard has become overgrown with bushes, with some scrap still scattered about. In fact the whole northern area of B and A looks like a dumping ground for scrap. The southern area of B has become largely filled with piles of aggregate. The reason for this becomes clear in the July 2014 aerial photograph when southern B has been cleared a bund has been constructed around the edge and inert waste recycling is visibly being carried out in the centre of it. The eastern part of A is still being used for storage, in amongst the trees but the yard has

² I understand that technically slew refers to the ability to turn the cab of an excavator through 360deg, and is associated with larger excavators as opposed to a backhoe which sits behind the cab (often of a tractor) and is less manoeuvrable and generally smaller.

been cleared and is almost empty, while the piles of scrap in northern B are also reduced as if it was in the process of being cleared as well.

45. This would seem to have been the case as in 2017 the whole of A and B have been cleared, the trees have gone and the area is being used to store neatly bagged aggregates and, according to the oral evidence, stone and marble brought onto the site waiting for sale. The only part of the yard in A to survive is a row of storage bays that are now filled with aggregates or soils. They many have always formed the rear of the yard, and been filled with scrap metal, but it is far from clear. Nevertheless, they have now been extended and stand in the open. The centre of B is being used for inert waste recycling and B has been enlarged by moving the bund westwards.
46. Little of note changes in 2018, 2019 or 2020 except that construction on bund D begins in 2018 and B, in the form of a car park, begins to extend north of track to the new bund. In all the photographs from July 2014 onwards the large machines for crushing and separating the inert waste are clearly visible, undertaking just such an operation, and surrounded by piles of soil and aggregates either waiting to be or having been processed.
47. The photographic evidence tells a story of large amounts of scrap metal storage going on in A and the northern part of B for most of the period from 2002 onwards. From time to time, dumps of inert waste can be seen which later have disappeared. Sometimes the inert waste strays onto the southern part of B, but mostly it is either on or adjacent to the hardstanding H (that is the northern part of B). This activity waxes and wanes depending on market conditions and what the Guppys are up to. They have a separate yard in Corfe Mullen and it seems they also developed the dedicated MRA in the north of Guppy's Yard. All of this changes in April 2014 when extensive piles of aggregate are dumped in southern B which by June of 2014 has been cleared, bunded and a major inert waste recycling operation is in place. This continues to the present day. The Guppy's gradually cleared northern B and A of scrap metal and the inert waste recycling extended into these areas too. There is no photographic evidence of any inert waste recycling going on at all until June 2014. There are plenty of piles of aggregates scattered about but they just seemed to be stored.

Evidence from witnesses

48. The oral evidence gives a somewhat different picture. I have already said the Guppys maintain they were recycling metal and inert waste all over the land from the beginning. They built the storage bays in A for both inert waste and metals. Although the metal recycling has become concentrated in the MRA, they still use the open space in B from time to time to deal with large items that need cutting up before transferring the pieces to the MRA. This is largely supported by the other witnesses both at the inquiry and in their statutory declarations. However, any evidence of inert waste recycling prior to 2011 is sketchy and anecdotal.
49. In 2011 DSA moved into the yard, although they were known to the Guppys beforehand. It seemed they had some sort of lease of at least the areas A, B and C. They began a dedicated inert waste recycling operation. Although it was remarked by Darren Leonard that at first it was mainly bagged materials and later expanded into the full recycling process. This makes sense as the first obvious photographic evidence of any inert waste recycling is 2014.

50. If inert waste recycling began in earnest in 2011, then that is too late for the ground (d) appeal, however, I have considerable doubt that this was the case. I can well understand that people have difficulty remembering what year something happened without being able to reference it to other events that are datable. Statutory declarations were provided by the Guppys and others concerning the creation of bund C. One result of these statutory declarations was to link bund C to the various problems of theft and arson. According to Mr Tester, the local policeman at the time, the thefts were a regular problem when he first went to the site in 2009. Simon Guppy suggested the main theft issue was 2007 to 2010 and the arson attack was in 2013. All the statutory declarations declared the bund was built in 2010 and Simon and Stephen Guppy, Milner Hogan (a family friend), Paul Miller (of DSA), Paul Rider (an employee), Tony Tester and Zak Kerin (who runs another business on the yard) are clear the Guppys began the bund in 2010 and it was completed shortly after by DSA. The Guppys and Paul Miller all state it was a condition of DSA moving onto the site.
51. Unfortunately they were all wrong and a number of the statutory declarations were rewritten to explain they had mistaken 2010 for 2014 when the bund was actually built. This is clearly shown in the aerial photographs, although Simon Guppy did suggest the early small bund was possibly visible on a 2010 aerial but I cannot agree, it clearly shows flat ground around the edge of B. I find it hard to believe these matters which were all so clearly linked together in people's minds were all just mistakes. It is quite likely DSA did build the bund when they arrived, but that was in 2014, although everyone is adamant they did arrive in 2011. Whatever the truth of the matter I am inclined to agree with the Council's barrister that the recollections of the witnesses should be treated with a degree of scepticism.
52. Mr Munnings the appellants' planning witness has also known the site since 2006. His oral evidence was that the intensity of inert waste recycling was unchanged throughout the period in question, but this was clearly a mistake and in answer to my questions he suggested the recycling popped up here and there in different places and in examination in chief he described the inert waste recycling as an on-off process to explain why it didn't seem to show up in any of the photographs.
53. This partial resiling from the 'unchanged intensity' argument was due to two separate pieces of evidence. In 2019 the Council issued a PCN and the covering e-mail from Mr Munnings (dated May 2019) referred to events back in 2008 and a site visit that took place with Council officers then. That was to do with storage exceeding the 1993 LDC areas and Mr Munnings says it is obvious from the video of the site visit that in 2008 storage and other uses were taking place outside the lawful storage areas. "Perhaps the most notable of the uses outside of the agreed areas were the bagging of compost...and the breakers' yard...". No mention is made of any inert waste or metals recycling going on in 2008 despite the evidence to this Inquiry that it was continuous. Mr Munnings explained that he was well aware inert waste recycling was going on in 2008, he just forgot to mention it when he wrote the email in 2019. This seems unlikely to me as by 2019 DSA's recycling activities were in full swing and the whole point of the PCN was to investigate the possibility of unlawful recycling.
54. Secondly, the answers to the PCN state that inert waste recycling did not begin until 2011 when DSA arrived on site. The PCN was signed by Stephen Guppy

and he suggested when the PCN asked 'when did inert waste recycling begin' they thought it meant when did DSA arrive. I can half believe that, but if inert waste recycling had been part of their business for 20 years already its hard to believe the answer of January 2011 was not deliberate obfuscation. However, Mr Munnings would have been well aware of what activities were going on and what was lawful and what wasn't. He advised on the PCN and explained that – again- he simply forgot the Guppys' apparent inert waste recycling activities as it was easy to overlook it. The only way to give the witnesses the benefit of the doubt is to take those answers at face value and assume the inert waste recycling activities taking place on site prior to 2011 were indeed easy to overlook as they were intermittent and inconsequential.

55. The only other witness was Ms Marriott from the Environment Agency. She visited the site in 2006, 2013 and 2018. The first visit was to do with scrap storage, and photographs survive from then showing what looks like the now MRA. The 2013 visit was in response to the arson attack, and the main concern was fuel contamination from the burnt out slew. In 2018 she visited to speak to DSA about excessive inert waste recycling. The first two visits are of most interest and neither were to do with inert waste recycling, but on neither visit did she recall seeing any inert waste processing going on. It was suggested she wasn't looking for any, which is true, but she stated that had she seen any, she would have brought it up with the Guppys as there were no permits for such activity on the site. In 2006 she would have travelled right past areas A and B to reach the MRA and in 2013 the fire was in the middle of B. I find it difficult to believe that if there had been any significant inert waste activity going on she would not have seen it, especially as it is her job to pursue and advise on environmental crime.

Conclusions on ground (d)

56. Pulling this altogether, I conclude there may well have been some inert waste recycling going on from time to time across area B and the western triangle, but that it was intermittent and verged on the de minimis. Metal recycling has certainly been consistently practiced in A, but whether much has gone on in northern B, or whether that was mainly used for storage is harder to say. It seems more likely that it was overspill storage for A, with the occasional use for cutting up larger items until 2014, when DSA took over.
57. Whether DSA arrived on site in 2011 or later is not important as nothing identifiable seems to have happened until 2014 when they built the southern bund and began a significant inert waste processing activity. Consequently, the ground (d) appeal fails as the matters alleged have not been taking place for 10 years prior to the issue of the notice.

The planning unit

58. A separate but related issue is the identification of the planning unit. Ordinarily one would identify the planning unit first and then determine if a material change of use had happened. In this case that would be difficult without first analysing all the evidence as I have above. Also the notice alleges the material change of use to have taken place on a specific part of the site but because of the way it was drafted the appellant's case was to show there had been general recycling across the wider area all along. As concluded above, I do not believe the evidence suggests this is the case, so the ground (d) fails, even when looking at the evidence in a way most beneficial to the appellant.

59. In fact the Council argue that a new planning unit was formed by the advent of DSA and certainly by 2017 although the Guppys have maintained that the whole yard is a single planning unit in a mixed use. The Inspector in 1999 found the 1993 LDC storage areas also formed a separate planning unit. At that time he found nothing else was going on but storage in and around those areas. Since then I think the yard as a whole has been through a number of iterations. It may well have developed into a mixed use with metal recycling, storage and various other operations in the western triangle, but it was accepted the LDC for the MRA has created a separate planning unit at the northern end of the site. This new planning unit was clearly formed when the MRA was defined by the container wall erected around it sometime before DSA arrived.
60. In 2011 the rest of the yard carried on as before, but in my view by 2017 areas A and B had been completely cleared of metal recycling and metal storage and given over to the inert waste recycling activity with ancillary storage. This was defined by the new bund so the south, the line of containers marking the far edge of A to the east, the track to the north and the pylon line to the west. There was a single activity being undertaken by a single operator in a defined area which was entirely different in character to what had gone before and to the rest of the yard. This to me marks the creation of a new planning unit involving a material change of use. There may have been some occasional use by the Guppys of the open space for cutting up large metal objects prior to moving them to the MRA but that does not affect the overall use of the new planning unit.
61. The planning unit was further extended when the northern bund (D) was built, involving a further material change of use of that land to inert waste recycling. Both material changes of use started the clock again and is another reason why the ground (d) cannot succeed. The fact that the enforcement notice included the whole of the Guppys' land within the red line does not affect my consideration of the planning unit issue, as the red line area need not be confined to a single planning unit or relate to a specific planning unit at all.

Bund C

62. The final issue is whether bund C is caught up in the failure of the ground (d). A bund was substantially complete in 2014, as is clear from the aerial photographs but it is not wholly in the same place as the final bund that is on site today. The 2017 aerial photograph clearly shows the western return end of the bund beneath the line of the pylons, but it is several metres to the east in 2014. There was an attempt to suggest the bund in the 2014 photograph was in fact a pile of material pushed up against the edge of the actual bund that was somehow not visible, but in the same place as the 2017 bund. This was a heroic but futile attempt to reinterpret the photograph which clearly shows the bund with flat ground beyond. By 2017 the outer southern edge had been straightened and the western return pushed back to its current position and it is likely the whole bund was taller, although this is hard to see in an aerial photograph, but it was my impression on site that it was more massive than that shown in 2014.
63. When this operation took place is uncertain, if it was after December 2015 then the bund is not immune from enforcement by the passage of time. However, I do not need to reach a conclusion on that as I agree with the Council that it

was, in any event, built as part and parcel of the DSA operations. Given that it was not begun until after April 2014 then it cannot be linked with the acts of vandalism or theft that were taking place largely up to 2010. It is true there was an act of arson the year before, but it is difficult to see how a bund would deter arsonists. In any event Mr Miller of DSA said in his statutory declaration, that Mr Guppy wanted him to *"restrict our operations to the agreed area, so it made sense for us to create bunds around the outer edge of our permitted site. It also made sense for this to be constructed as a landscaping or visual bund, so that there is a visual barrier between our activities and the main A31..."*. Given all the false memories surrounding the bund's creation this is one that makes sense and fits the facts, such as they are. Certainly the attempt to link the bund to the thefts has collapsed following the change of testimony for its creation from 2010 to 2014. Similarly the suggestion the bund could be considered just to be waste that is piled up and so (by implication) not an engineering operation at all is not supported by any evidence, but to the contrary, it is clear it was a deliberate act, the only dispute is when and why that act took place.

64. In my view bund C was first built by DSA in 2014 and later substantially remodelled. It was built in order to screen their activities from the main road, particularly the expensive crusher and grading machines and to define their area of occupation. It was thus part and parcel of the material change of use and can be required to be removed along with the cessation of the use.

The Appeal on Ground (a)

65. The site lies in the green belt and within 500m of a SSSI. Given my decisions on the LDCs, Guppy's Yard will have a lawful MRA occupying the northern part of the site and a lawful hardstanding underlying areas A and northern B as well as the western triangle. The various uses on the western triangle are unlawful except where they comprise storage and fall within the 1993 LDC triangle (which is about 2/3rds of the area). Area A of the enforcement notice is more complex as the appellants rely on this as a lawful storage use as part of their fallback position. However, I have concluded there was the creation of a new planning unit with a new use of inert waste recycling by 2017. If the notice is upheld this unit will be extinguished and the use as alleged cease. The right to revert to the previous lawful use in s57(4) does not provide for the resumption of a past lawful use when there has been one or more intervening unlawful uses between that and the current unlawful use. The land may then have a nil use. In this case it is clear that the storage use on A was lost when there was an unlawful material change of use to metals recycling, as evidenced at this Inquiry. That in turn was lost when there was a further material change of use to the uses alleged in the notice and the creation of a new planning unit. Area A will thus have a nil use. However, this situation was not raised at the Inquiry and so for the sake of fairness I shall assume an unrestricted storage use can recommence on area A if the notice is upheld.

The green belt

66. The waste recycling activity is a use of the land, while the two bunds are an engineering operation. Paragraph 145 of the NPPF deals with new buildings and neither are buildings so that paragraph is irrelevant. Paragraph 146 lists certain other forms of development that are not inappropriate and this includes engineering operations and material changes of use of the land. Both would be

not inappropriate if they preserved the openness of the green belt and did not conflict with the purposes of including land within it. It was not suggested the latter was an issue in this case so the main issue is whether the bunds and the recycling use preserve the openness of the green belt.

67. The first question is what is the openness being preserved. If the notice is upheld the direct effects of the bunds and the recycling use will be removed from this central section of the yard. However, the storage use will continue on area A and the hardstanding underlying northern B will remain, providing access and turning to A. In terms of the quantum of spatial harm the bunds, especially the southern bund C, are huge and have a clear impact on openness. The recycling use also spreads all across A and B, with mounds of aggregates and soil, crushing and sorting machinery, as well as lorries coming and going. The proposed planning permission would have a condition limiting lorry movements to 40 a day on average and 50 day maximum on any one day so there will be a considerable presence of large vehicles on the site. Taken all together the recycling site and its bunds have a significant impact in terms of urban sprawl as they consolidate the use of the central section of the yard and create what appears to the casual observer to be a large industrial activity. There is clear harm to spatial openness.
68. The use of A for storage, in the manner it was used in the past, as an overspill for the MRA (assuming the use does not spread out unlawfully onto area B), would have a relatively minor impact on spatial openness compared to the existing use and bunds. Indeed, if it were used (as it was in the years before 2014) as a metals recycling area in conjunction with the MRA, it would still be contained within a relatively small area compared to the enforcement notice site as a whole.
69. The appellants argue that the storage use is unconstrained, which is true. They therefore could store containers on it, stacked up to 8 high, which would be over 20m in height. This would have a dramatic impact on the visual quality of the green belt, but on spatial openness it would cover no more land than the much more low-level metals storage use. I am also not convinced this is very likely scenario. Shipping containers can only be stacked as high as the individual containers weight limits allow and then only if safe. All the containers I saw appeared to be at the end of their life, which is not surprising in a scrap metal yard. The Guppys are scrap metal merchants, as they said in their evidence, they do not run a container business and if they did that could well not be lawful on area A. There is no real reason to assume they would do anything other on A than they have in the past.
70. Even allowing for some container stacking the spatial openness of the green belt is harmed by the current use and bunds. As to the visual element of openness there has been some confusion about the role of the bunds. It is true they screen the activities on areas A and B, but those activities are unlawful and will cease. It cannot be said (as the appellant suggested in closings) that the bunds are not prominent enough to compromise visual openness and actually reinforce openness by screening the activities in A and B. They clearly do compromise visual openness by their very existence and the value of their screening role would be greatly reduced if the unlawful activities on A and B were to cease. In cross-examination the Council's landscape witness accepted the bunds had no impact on the visual aspect of the openness of the green belt, but that was not what he said in examination in chief, where

they had a minor adverse impact. I think he was confusing visual openness with visual quality, which was after all his speciality. The visual aspect of openness is not how attractive the site is but whether there is harm to the sense of openness visually (that is what would openness look like) as opposed to the more theoretical concept of spatial openness.

71. To put it another way, the southern boundary of the site is partially screened by trees. If the use was to go but the bunds remain, views through the trees and across the open hardstanding of B are blocked by the large bund C. This harms openness both visually and spatially. The storage on A would also harm openness spatially but as it would be hidden by the bunds would not harm the visual aspect of openness. If the bunds were to go as well, the visual harm of A would be opened up, but that would be more than counter-balanced by the reduction in visual harm caused by the removal of the bunds and the opening up of area B. The hardstanding of B on its own causes very little harm to the green belt openness, it is its use in association with the waste recycling activities on B that causes most harm. So on balance, and taking into account the fallback position, there is both spatial and visual harm caused the by unlawful use and the bunds³. Both the use and the engineering operations are inappropriate development. Inappropriate development is by definition harmful and should not be approved except in very special circumstances.

Landscape and ecology

72. The area sits within the heath/forest mosaic landscape character type. It is part of the wider Poole Basin, an extensive area of former heathland on acidic and impoverished soils with swathes of woodland and an empty, wild character. Guppys Yard does not have an empty wild character, but as noted above does have impoverished soils, and it is probably this very character trait that has allowed the large areas of waste that have been tipped around the land to be quickly recolonised and returned to heathland.
73. The appellants have provided an outline mitigation scheme should planning permission be granted which would include extending the screening of the bunds with tall hedgebanks and ditches completely screening the hardstanding with additional tree and shrub planting on the wider boundaries of the Guppys' land with the caravan site. This is all on land within their control and could be achieved by condition. If the inert materials recycling were to be granted planning permission this screening would certainly be beneficial and I note it more or less excludes area Y of the hardstanding, which would be part of the surrounding vegetated landscape. It would also partly screen the stacked containers around the MRA, which would be beneficial. In addition, however, it would also have the effect of appearing to legitimise the use of the hardstanding as a whole, in particular the western triangle, as the screening hides the bundle of uses in that area, the status of most of which are uncertain at present. Nevertheless, it represents an improvement over the current situation.
74. However, as the appellants' witness agreed it would not actually achieve any of the objectives of the LCA⁴ to maintain the heathland habitat and reverse its fragmentation. The ecology and landscape are intimately connected in this

³ However, even if I were to accept the appellants' argument there was no visual harm, that is only one aspect of openness and the finding of spatial harm is sufficient to render the use and the bunds inappropriate.

⁴ Dorset Landscape Character Assessment (2009)

case as in a relatively small site there is little room for genuine landscape improvements (setting aside for the moment the removal of the bunds) beyond the restoration of the heath landscape and this depends on the ecology of the site. The appellants ecological survey assumed the yard would remain and that all ecological value to the hardstanding, taken at its widest extent, was nil. The value of this report seemed to me to be compromised by the underlying assumptions that the whole area of disturbance was actually hardstanding and this meant that various uses would go on over that area that were inimical to the native flora and fauna. It seemed to be assumed that all was lost on the yard, but mitigation could be provided around the edges and in the wider land owned by the Guppys which could be secured only if planning permission were granted and conditions attached. The enforcement notice could do no more than return the land to its previous condition.

75. However, the Council's ecological evidence was that if left alone that part of the land covered by inert waste quickly reverts to acid grassland and their ecologist was clear that doing nothing was a good option, given the location of the land within this specific LCA. In other words a restoration plan was not necessary to achieve a positive ecological outcome. If the hardstanding shrank to the area H and the uses were reduced to storage on A then that would be a positive outcome for the underlying ecology of acid grassland which supports the heathland LCA.
76. The appellants argued that removing the bunds, especially bund C would open up views into the site and so harm its character and appearance. I agree with this statement so far as it goes, but much of the harm is predicated on the extreme fallback position I have already considered to be unlikely. The storage of scrap metals in A on its own would not be that visually harmful. The bunds are themselves harmful to the LCA, they are an alien intrusion into what should otherwise be open heathland and their removal would have positive benefits in opening up the site and clearing a large area of southern B to be recolonised. On balance therefore removing the bunds would be beneficial to the landscape and ecology of the site.
77. In conclusion there are two competing bundles of benefits and harms. Given my views on the extent of the hardstanding then allowing the appeal would extinguish any landscape/ecological benefit to southern B but could introduce screening to the wider yard area and a positive bio-diversity plan for the land around the yard. These benefits would not be available if the notice were upheld as nothing positive could be required. However, what this bio-diversity plan would include was uncertain and I sympathised with the Council's view that as the appellant had the wrong starting point it was difficult to be confident what the end point would be and that no proper detailed ecological surveys had been carried out. The positive benefits of the suggested conditions were therefore vague and uncertain.
78. The Council's view that doing nothing is a good outcome has more certainty. The removal of the bunds, gradual natural restoration of southern B and reduction in activity on the appeal site overall would all have a small but definitely positive effect on ecology and so would help improve the landscape. The appellant had also provided no information on the impact on fauna, such as bats, badgers, reptiles and ground nesting birds. These may be possible to be dealt with by conditions but it is difficult to be certain.

79. Overall therefore I consider there would be a small but definite negative effect if I allowed the appeal. The screening improvements would be real but the biodiversity advantages are more uncertain, whereas upholding the notice would bring about more likely improvements to ecology and so to the designated LCA. Allowing the appeal would therefore be contrary to DM5 of the minerals strategy which allows minerals development only where biodiversity is not harmed or is mitigated; and would not support the objectives of the LCA.
80. There were other issues of dust, lighting and noise. I shall deal with noise separately below, but dust and lighting can be dealt with by conditions and so are not harmful.

Hydrology

81. The hydrological evidence is more clear cut. The Moors river SSSI is the receptor and the land around the site drains towards the SSSI. Care needs to be taken to ensure there is no harmful run-off to the SSSI. The MRA seems to be operated in conformity with the EAs requirements, but not so the inert waste recycling, where DSA and now TCR continue to fail to get the proper permits. However, that said there have been no reports of any pollution incidents from the yard. The appellants' hydrological advisor identified that soil recycling was a very low risk and that suspended solids from the inert waste was the main potential problem. Soils are more likely to be contaminated than hardcore and that contamination can wash off in rain into watercourses leading directly to the river, or to the aquifer from where it would percolate eventually to the river. The latter would take many years, the former could be a day.
82. The Council were concerned that little detailed investigation had been carried out and that as the SSSI was particularly sensitive to water-borne pollution the precautionary principle should be applied. They argued the potential for pollution was sufficient to withhold planning permission until more detailed studies can be undertaken. However, the appellants' evidence that this was a low risk and could be dealt with by conditions was not effectively challenged. I do not consider there would be any hydrological harm that could not be dealt with by a suitably worded condition.

Waste recycling and the need for the site

83. A substantial part of the appellants' case was the need for waste recycling facilities in the area. This argument had three elements, firstly there was a current shortfall in inert waste recycling capacity, secondly there would be a growing demand for even more capacity in the future and thirdly the appeal site was particularly well positioned to serve the areas producing much of this waste.
84. The Council's waste plan has been through the statutory process, was found to be sound and adopted in December 2019. It is therefore recent and up to date. It is possible, for even a recently adopted plan, to be rendered out of date in one or more of its aspects if there are significant changes to the figures on which it is based, but the closer to its adoption it is, the more significant and certain those changes would have to be. A recently adopted plan cannot be set aside lightly.

85. In this case the plan sets out at Table 8 the projected inert waste arisings compared to permitted capacity. By 2023 a 300,000⁵ tonne per annum (tpa) excess capacity would have turned into a 250,000tpa shortfall. This shortfall would grow thereafter reaching 400,000tpa in 2028 and 550,000tpa in 2033. On this basis the appellants argue there is a clear shortfall that the 80,000tpa capacity of the recycling facility at the site can help to fill.
86. The Council point out that the waste and minerals strategy need to be read together. The minerals strategy has policy RE1 which sets out site specific requirements for new recycling facilities and, more importantly, the Minerals Sites Plan (adopted at the same time as the waste strategy) has policy MS4 which allocates a site at White's Pit for aggregate recycling. This site has a capacity of 250,000tpa and was granted planning permission in 2020. The result of this is the plan has a surplus capacity until 2023, when there is a shortfall of only 24,000tpa, which grows to 320,000tpa by 2033.
87. This shortfall is caused by several existing sites, which have time limited permissions running out in 2022-23. The figures bear this out as capacity is reduced from over 900,000tpa in 2020 to 680,000tpa in 2023. It remains steady at 680,000tpa thereafter, whereas arisings are projected to grow at 3.1%pa thus gradually outstripping capacity. Again, the Council are sanguine about this looming shortfall as several of the sites are in the process of renewing their planning permissions and so the shortfall is largely illusory. They also pointed to various sites in Hampshire, which are near to the appeal site and also have a capacity to take on inert waste recycling.
88. A further complication is that the Council have now realised they missed out an entire recycling facility at Broadcroft, both from the waste plan and the updated figures provided in advance of the Inquiry. This adds a further 30,000tpa capacity up to 2028 when the temporary planning permission expires.
89. The appellant argues that the up to date waste plan shows a serious shortfall and that is the end of the matter. The Council may well be producing a monitoring report (which is where all these updated figures come from), but that has been delayed and is still not published so the figures are not in the public domain. They cannot replace the adopted plan figures.
90. I have some sympathy that the appellant was confused by the rather tangled policy process the Council have adopted but nevertheless, the published documents do support their case that MS4 encourages the development of White's Pit and this was granted planning permission recently. There is no evidence to suggest that White's Pit cannot operate at its capacity of 250,000tpa so I find that as a matter of fact the shortfall does not begin until 2023. I also have no reason to doubt that the Broadcroft figures should also be included. These too seem to be a matter of fact. None of this suggests the waste plan was fundamentally flawed and should be set aside, as argued by the appellant. The Broadcroft issue was a minor error that does not change the emphasis of the plan at all. White's Pit was included in the various plans to deal with the short term shortfall and is simply an example of the plan operating as it should.

⁵ I am rounding all figures for ease of reference.

91. The appellant also argues that none of the Council's later data should be given weight as it is all untested. This is true, and the picture will be much clearer when the monitoring report is produced later this year, but that doesn't mean up to date evidence should be dismissed. I have no reason to doubt that various other facilities are actively seeking to renew their planning permissions, indeed it would be odd if they did not, given the evident future demand. Therefore there would seem to be more than adequate future capacity for inert waste recycling.
92. There is also an issue concerning the calculation of arisings. The Council use a forecast model that produced a figure of 3.1% increase pa. This model was also found sound at the waste plan inquiry. Since then the appellant argues there is considerable new demand arising from the rolling out of broadband and electric car charging points that was not catered for in the plan. Some of this increase may well be accounted for by the forecasting model, but it is reasonable to assume that not all of it is, unless the model was particularly prescient. The appellant also sought to argue a number of the recycling facilities relied on by the Council did not actually recycle the sort of inert waste that was dealt with at the appeal site. The Council denied this in most cases and it is difficult to take this further on the basis of hearsay, but even if I assume that capacity has been exaggerated and arisings may well be higher, then I ought to give equal weight to the Council's unevidenced hopes regarding future renewal of planning permissions. Either way, there would seem to be adequate capacity in Dorset for inert waste recycling. There is no reason to doubt the waste plan or the up dated figures provided by the Council and so there is no need for the facility at the appeal site.
93. As to the location of the site, it is undoubtedly well located close to the trunk road network. Mr Munnings explained his table of distances relied on actual miles travelled and showed the site was better located than White's Pit and Mannings Heath in terms of distance and if not distance then in terms of time. The latter was the case because access to Bournemouth was along dual carriageways rather than through the town. This had obvious advantages in terms of directing HGVs to the trunk network away from residential areas and in reducing their carbon footprint.
94. The Council sought to chip away at this table by arguing there were other sites not included, it ignored the use of sites in Hampshire that were also well located to trunk roads and it was too simplistic to just say distances or time can equate directly to carbon footprint. I agree with all these comments but even allowing for the rather simplistic analysis provided, it does seem the appeal site is well located and possibly better located than other sites. Certainly there was no evidence to suggest the opposite. This is a matter that weighs in favour of the appeal.

Highways and Noise

95. The Council did not raise a highways issue and providing conditions restricted the number of HGVs using the site and hours of working were satisfied there would be no problems. Third parties however raised issues of the safety of the junction and the excessive movement of traffic. The site is accessed from the eastbound carriageway of the A31 and the access road has its own slip road which is close to the roundabout junction with Boundary Lane, traffic should not therefore be travelling at any speed on exiting the roundabout. There are

- no technical problems with the junction from the A31 which seems adequate to me.
96. The access road leads to two campsites, a riding school and several dwellings but the entrance to the yard is closest to the road, so HGVs should not need to pass any other homes or businesses. There might be times when large caravans need to pass large HGVs, but the access road is not narrow, and 50 HGVs as an absolute maximum per day averages out at 5 per hour. This should not cause any significant issues on the access road.
 97. Noise is a different and highly emotive issue. A large number of third parties objected to this appeal on the basis of noise, and also opposed the granting of a permit by the EA for the same reason. However, for noise to be an issue at this appeal it needs to be harmful and not just noticeable and it also needs to exceed the background noise from the A31.
 98. Although many local residents complained about the operation of the concrete crusher, as the appellant pointed out there were no noise issues before 2019, when the EA wrote to locals and the Council began enforcement proceedings. Several complaints were made to the Council which were followed up by their environmental health team. Noise logs were issued to various residents but none were returned and the case was closed. The EA also made a visit to the site in 2019, partly to investigate noise issues. Although they took no readings, officers visited various noise sensitive sites around the area, including Fir Tree Close and Rowan Close while the crusher and a trommell (used for screening and sorting the aggregate) were operating and could detect no noise problems.
 99. The appellants have carried out their own noise survey and found that noise at the boundaries of the site – that is next to the houses in Fir Tree Close and the Shamba Holiday park could be contained to within 10db above background noise or an overall maximum of 55db⁶. Background noise levels were found to be around the 44-49dB levels and machinery noise was so little above that it was difficult to measure. It also noted that a number of complaints concerned the noise from the MRA, which is independent of the inert waste recycling facility and not subject to controls.
 100. The Council were concerned this noise survey had not been carried out using BS4142:2014. The appellant's consultant argued that the BS standard was not appropriate given the low noise levels coming from the plant, and a more accurate assessment is gained by carrying out a standard survey. However, the figures were reworked using BS4142 and a new survey produced. BS4142 states that at 5dB above background noise there is likely to be an issue and at 10dB a significant issue. The readings, taken on two different occasions show noise above background at only 1 site, next to Shamba Holiday park, and then it was within the 5dB limit. The appellants' position remains the same that there is no noise issue, and a condition, as suggested, would ensure that remained the situation.
 101. Despite the third party comments, there is no actual evidence of any noise problem, and what evidence there is supports the view that noise can be controlled by condition. The Council did not present contrary evidence and did not argue the latest noise survey was not BS54142 compliant. Consequently, I

⁶ Specifically 55dB(A) LAeq 1 hour

have no reason to assume that noise could not be satisfactorily controlled by the use of a suitably worded condition.

Conclusion on ground (a)

102. The starting point is that the use is inappropriate development in the green belt which is by definition harmful and should not be approved except in very special circumstances. In addition to the green belt harm I consider the minor benefit of the proposed landscape improvements are outweighed by the harm caused by the bunds and the unlawful use so there is a minor landscape/ecology harm. Although I have considered there would be no harm in terms of noise, highways, dust, lighting and hydrology that could not be overcome by conditions, these are not matters that weigh in favour of the appeal. I do not consider that the figures demonstrate there is a need for further waste recycling facilities at the moment in the area, but the location of the site, close to the trunk road system is advantageous. However, this is the only element I have found in favour of the appeal and it does not outweigh the harm I have found and does not amount to very special circumstances. The appeal on ground (a) fails.

The Appeal on Ground (f)

103. It is clear from the above that I do not consider there is an advantage to retaining either bund if the recycling use on areas A and B were to cease. The benefit of the screening of area A is outweighed by the landscape and ecological harm.

104. The question of a temporary planning permission was also explored. It was suggested this could be for 7 years which is the length of time the contract that TCR hope to sign will have to run. However, the harm caused to the green belt and the landscape/ecology is immediate and there is no benefit to allowing the inert waste recycling activity to continue for what is a further lengthy period of 7 years. Even though a temporary planning permission causes less harm than a permanent one this does not lead to a different conclusion on overall harm that I identify above and so does not amount to the very special circumstances required.

The Appeal on Ground (g)

105. The time limits require the use to cease immediately and the equipment and storage on B to be removed, along with the bunds at C and D, within 4 months. No evidence has been provided as to why 4 months is too short a period to achieve this. With the large earth moving equipment available to the Guppys the bunds should easily be removed within 4 months and it will take very little time for TCR to remove their equipment.

106. The appellant does argue that TCR have a contract to carry out recycling on behalf of operators working in the Bournemouth area and require about a year to fulfil that contract. However, the evidence before the inquiry was that the contract was actually dependant on the outcome of the appeal. In any event contractual matters are between TCR and whoever they may have signed with. They took on the site in the middle of enforcement appeal so were well aware of the risk they ran.

107. There is no good reason to extend the compliance period and the appeal on ground (g) fails.

Overall Conclusions

108. I shall dismiss appeal A and uphold the enforcement notice. I shall allow appeal B insofar as it relates to hardstanding area H and issue an LDC accordingly. I shall allow appeal C for the MRA and issue an LDC subject to the description as discussed above.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Gavin Collett – Barrister

He called

Simon Munnings – planning consultant

Julie Lazell – The Landscape Practice

Simon Guppy

Paul Rider

Tony Tester

Milner Hogan

Andrew Cooper – Three Cross Recycling

Andrew Guy – Three Cross Recycling

John Evans – Chord Environment

Stephen Guppy

Richard Parker – highways consultant

John Pollard – JSP Consultants (noise)

FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Easton – Barrister

He called

Dr Annabel King – Natural Environment team leader

Sarah Hardy – Minerals and waste

Aaron Carpenter – Landscape Officer

Stephanie Marriott – Environment Agency

Jeremy Smith – Lead Project Officer – minerals

Louise Joyner – Environmental Health Officer

Lawful Development Certificate (Hardstanding)

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 1 August 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in blue and labelled H on the aerial photograph attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason: The area labelled H had been created more than 10 years prior to the application for the LDC.

Signed

Simon Hand

Inspector

Date: 17 May 2021

Reference: APP/D1265/X/20/3260162

First Schedule

Creation of a hardstanding

Second Schedule

Land at Guppy's Yard, East Moors Lane, St Leonards, Ringwood, BH24 2SB as shown on the attached aerial photograph labelled H

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan of Hardstanding

This is the plan referred to in the Lawful Development Certificate (Hardstanding) dated: 17 May 2021

by **Simon Hand MA**

Land at: Guppy's Yard, East Moors Lane, St Leonards, Ringwood, BH24 2SB

Reference: APP/D1265/X/20/3260162

Scale: not to scale



Identification of areas where lawful hardstanding exists or does not exist - 2017 GetMapping aerial image



Area of lawful hardstanding as of 1st August 2019

Date: 16/11/2020
Scale 1:1500
Drawn By:
Cent X: 410509
Cent Y: 102677





Lawful Development Certificate (Metals Recycling Area)

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 20 December 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason: the use described in the First Schedule has been carried out continuously for the relevant 10 years period.

Signed

Simon Hand

Inspector

Date: 17 May 2021

Reference: APP/D1265/X/20/3260188

First Schedule

Mixed use of land as a scrap yard and metals recycling centre subject to the following characteristics:

- a) The breaking and mechanical sorting of waste metal is restricted to the area of the site shown hatched blue on the plan attached to this certificate and includes the use of mobile plant and machinery including a grab mounted on a 360 degree wheeled excavator and a magnetic hoist.
- b) Save for one electricity generator no fixed plant is installed at the site and no metal fragmentiser is used at the site.
- c) Within the area shown hatched orange on the plan attached to this certificate are positioned storage and shipping containers and lorry backs which are arranged to form a screening and security boundary around the site. The containers and lorry backs are stacked no more than three high.
- d) No end-of-life vehicle processing is undertaken at the site.
- e) The maximum amount of scrap metal stored at the site at any one time is 1000 tonnes.

This mixed use is 'sui generis' as it does not fall within any use class specified in the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended.

Second Schedule

Land at Guppy's Yard, East Moors Lane, St Leonards, Ringwood, BH24 2SB

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan of Metals Recycling Area

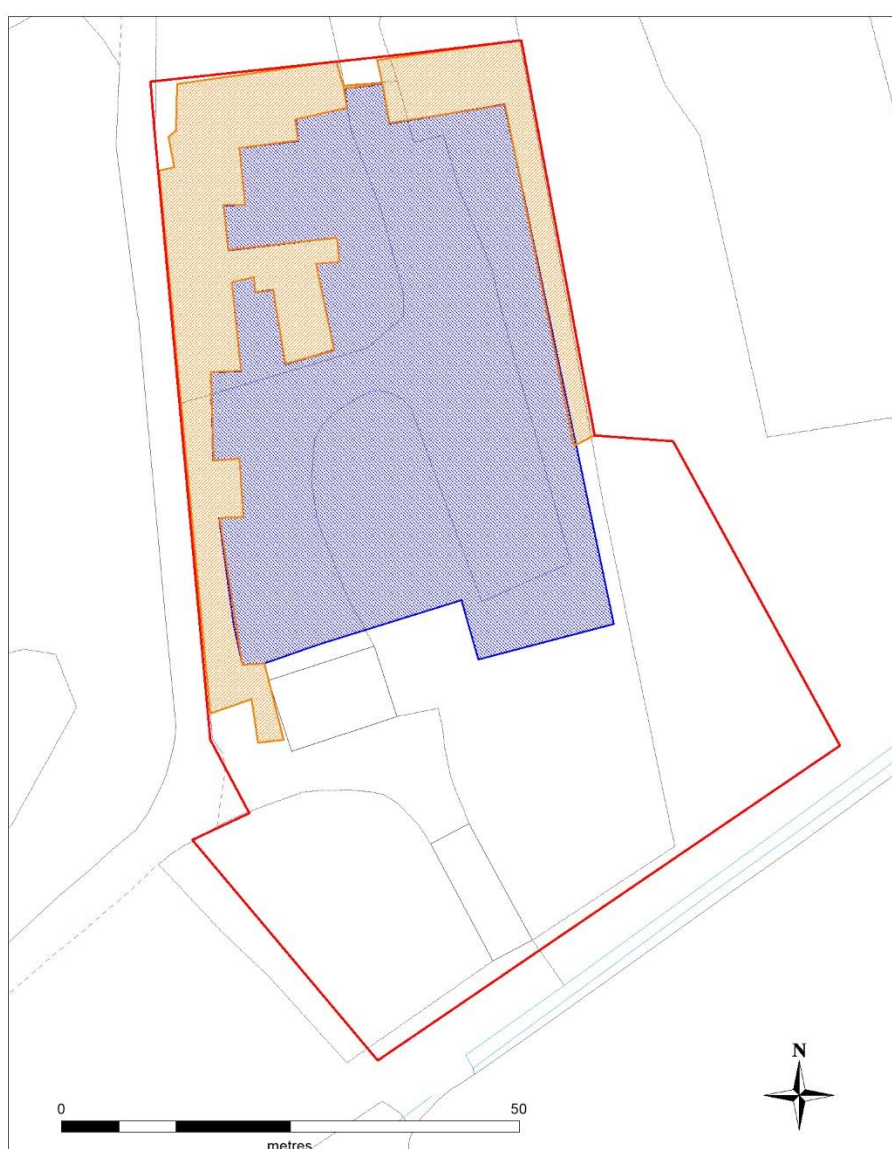
This is the plan referred to in the Lawful Development Certificate dated: 17 May 2021

by **Simon Hand MA**

Land at: Guppy's Yard, East Moors Lane, St Leonards, Ringwood, BH24 2SB

Reference: APP/D1265/X/20/3260188

Scale: not to scale



Certificate reference no: 3/19/2267/CLE

Town and Country Planning (Development Management Procedure) (England) Order 2015, Article 39

Ref:

Date: 19/02/2021
Scale 1:500 at A4

Cent X: 410593
Cent Y: 102723



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