



Appeal Decision

Site visit made on 15 September 2025

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date 10 November 2025

Appeal Ref: APP/Q1770/C/25/3365252

Waltet Materials Ltd, Bunny Lane, Timsbury, Hampshire SO51 0PG

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended (the Act).
- The appeal is made by Waltet Materials Ltd against an enforcement notice issued by Hampshire County Council.
- The enforcement notice was issued on 4 April 2025.
- The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref 22/01323/CMAS granted on 14 November 2022.
- The development to which the permission relates is: 'Section 73 planning application to vary condition(s) 1, 4, 7, 8, 14 and remove condition 24 of 21/005888/CMAS to ensure compliance and permanent retention of existing wash plant'.
- The condition in question is no.12 which states that: Stockpiles of processed and unprocessed materials and waste on the site shall not exceed 4 metres above existing ground level.
- The notice alleges that the condition has not been complied with in that: Stockpiles on the Land are in excess of 4 metres in height.
- The requirements of the notice are to:
 - a. Reduce the height of any stockpile on the Land that is over 4 metres in height down to 8 metres in height by no later than 5th August 2025.
 - b. Reduce the height of any stockpile on the Land that is over 4 metres in height down to 6 metres in height by no later than 5th November 2025.
 - c. Reduce all stockpiles on the Land to no more than 4 metres in height by no later than 5th February 2026.
- The periods for compliance with the requirements are:
 - a. Before the 5th of August 2025.
 - b. Before the 5th of November 2025.
 - c. Before the 5th of February 2026.
- The appeal was lodged on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Act.

Summary Decision: The appeal is dismissed; the enforcement notice is corrected then upheld.

Preliminary Matters

1. Following my site visit the appellant sought to make written submissions that I had not requested, and which consequently fell outside the timetable for this appeal. On balance, I accepted this late evidence which amounted to legal submissions and requested comments from the Council then final comments from the appellant. The Council then wanted to provide additional comments, but I have not accepted anything further.
2. I then do not have jurisdiction to deal with the submissions as to whether the Council acted outside their powers in first granting a planning permission and then issuing the notice. The proper course for the appellant would have been to challenge those decisions by way of judicial review. The prospect of a ground (d) appeal was also advanced in the submissions. However, this was not pleaded on the appeal form and only fleeting reference to what might constitute a ground (d) matter had been made in the appellant's original submissions. Moreover, given that

the alleged breach of planning control is directed at a condition from a 2022 permission, immunity from enforcement action could not be successful in any event.

3. Consequently, the notice is not a nullity on its face and a valid appeal has been made which is before me for determination. There is no dispute that ground (a) originally pleaded is barred. The appeal therefore proceeds on grounds (c), (f) and (g).

Enforcement Notice

4. I have a duty to ensure that the notice is in order. Sections 5 and 6 contain unnecessary duplication of time periods for compliance with the requirements. They also do not describe the same period – ‘by no later than’ in section 5 is to 23:59 hours the same day, whereas ‘before’ in section 6 is to 23:59 hours the preceding day. There is little evidence that this 24 hour discrepancy is material either way, but it results in uncertainty. In addition, the appeal process has overtaken some of the dates specified. I shall therefore correct the notice, including equivalent time periods in months from when it would otherwise come into effect. I am satisfied that this will cause no injustice to the main parties.

Ground (c)

5. For ground (c) to succeed, the onus and burden of proof is firmly on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the notice do not constitute a breach of planning control.
6. The appellant does not dispute that stockpiles of processed and unprocessed materials and waste on the Land have been at heights of more than 4 metres. This is consistent with the Council’s evidence in this regard, including as this informed its decision that it was expedient to issue the notice. Albeit a snapshot of a fluid situation, given the throughput of activity on the Land, at my site visit much of the stockpiles plainly exceeded 4 metres in height above ground level, in places by some considerable margin. As a result, there is little evidence to suggest that what I saw was not generally representative and as such there has been a failure to comply with condition no.12 of planning permission ref 22/01323/CMAS. This condition restricts stockpiles to no more than 4 metres above ground level.
7. For the reasons given above, the appellant has not, therefore, demonstrated on the balance of probabilities that the stockpiles do not amount to a breach of planning control in respect of this condition. The appellant has advanced no other reason why this situation on the Land does not constitute a breach of planning control. Consequently, ground (c) fails.

Ground (f)

8. The appellant anticipated success on ground (c) and, in essence, on that basis if there is no breach of planning control then the requirements of the notice are superfluous. However, be that as it may, the appellant does not otherwise dispute the requirements of the notice and no other lesser steps have been suggested.
9. Considering also the outcome of ground (c), I am therefore satisfied that the requirements of the notice are consistent with remedying the breach of planning control, so they are not excessive. Accordingly, ground (f) fails.

Ground (g)

10. The appellant intended to lodge an appeal against the Council's refusal to grant planning permission for 7 metre high stockpiles on the Land. On that basis it contended that the time periods set out in the notice should be held in abeyance pending the outcome of that appeal.
11. However, notwithstanding that another appeal would be a separate matter, that appeal did not proceed. The appellant intended to submit another planning application but I have not been informed about progress, including likely timings. An outcome either way would anyway be unknown, including the prospect of an appeal thereafter.
12. There is, therefore, little to counter that extending the time periods for these reasons would be without justification and disproportionate. Furthermore, in these circumstances, to do so would unduly perpetuate the harm set out in the Council's reasons for issuing the notice for an indeterminate period.
13. I acknowledge that the processed and unprocessed materials and waste stockpiled on the Land is extensive in area and volume, including height. Nevertheless, there is little evidence that necessary works to comply with the requirements of the notice within the time allowed could not be achieved in practical or operational terms. The requirements and time periods were purposefully divided into gradual stages by the Council to assist the appellant facilitate compliance.
14. While the Council has discretion under section 173A(1)(b) of the Act to extend the period for compliance, that would be a matter for the main parties. The period set out in the notice must be sufficient to begin with to take the steps required by it.
15. Consequently, I conclude that the (corrected) 4 month, 3 month and 3 month periods given by the notice to comply with the respective requirements do not fall short of what is reasonable. Accordingly, ground (g) fails.

Formal Decision

16. It is directed that the enforcement notice is corrected as follows:
 - Requirement a. – delete '*by no later than 5th August 2025*'.
 - Requirement b. – delete '*by no later than 5th November 2025*'.
 - Requirement c. – delete '*by no later than 5th February 2026*'.
 - Time for compliance – delete a., b., and c. and replace with:
 - a. *4 months after the notice takes effect.*
 - b. *7 months after the notice takes effect.*
 - c. *10 months after the notice takes effect.*
17. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Robin Buchanan
INSPECTOR