

**TO:** PLANNING & REGULATORY COMMITTEE

**DATE:** FEBRUARY 2016

**BY:** PLANNING DEVELOPMENT CONTROL TEAM  
MANAGER

**DISTRICT(S)** TANDRIDGE

**ELECTORAL DIVISION(S):**

**Warlingham**

Mr. Hodge

**Oxted**

Mr. Skellett

**PURPOSE:** FOR INFORMATION

**GRID REF:** 542535 153660

**TITLE:** DECISION ON PLANNING APPEAL REFS: APP/B3600/C/14/3000220;  
APP/B3600/X/14/3000386 and 3000387

## **LAND AT MOORHOUSE SANDPITS, WESTERHAM ROAD, LIMPSFIELD**

### ***Background***

1. Moorhouse Sandpits, operated by the Titsey Estate, are a long established area of sand workings on the north side of the A25 some 3km east of Oxted and about 1km from the county boundary with Kent. The sandpits lie within the Metropolitan Green Belt, the Surrey Hills Area of Outstanding Natural Beauty ('AONB') and an Area of Great Landscape Value ('AGLV').
2. During the course of a routine monitoring visit to Moorhouse Sandpits in November 2010 it was noted by Officers of the County Planning Authority ('CPA') the a modern mortar plant of substantial construction was in the process of being erected within the mineral working along with associated infrastructure including fencing, storage bays, concrete surface etc. A photograph is attached showing these works.

### ***LDC Applications***

3. In November 2013, after much communication with the landowner's planning agent about the lawfulness or otherwise of the development, two Lawful Development Certificate applications<sup>1</sup> ('LDC') (Refs. TA/2013/1827 and TA/2013/1707) relating to mortar plant were submitted to the CPA for determination. It should be noted that by this stage the appellant had removed the mortar plant from the appeal site but had left the associated infrastructure in place.
4. In summary the appellant's contention was that the construction of modern plant for the production of mortar was lawful because: a planning permission granted in 1957 permitted the permanent use of the appeal site for the siting and operation of a mortar plant, and once this permission had been implemented in the same year the appeal site became a separate planning unit which extinguished the associated mining rights and obligations relating to the appeal site.
5. Having considered the appellant's applications, in February 2014 the CPA resolved under delegated powers to refuse the two applications for the following reasons:

<sup>1</sup> The two LDC applications were made in relation to "the resiting of an existing ready-mixed mortar mill" and "the use of the land for the stationing of a mobile mortar plant" respectively.

- On the balance of probabilities the siting and erection of a mortar mill or any other similar plant used for mortar or concrete manufacture amounts to “*operational development*” as an engineering operation on or over land within the meaning of s55(1) of the 1990 Act as opposed to a “*use*” within the meaning of s336(1) of the same.
- On the balance of probabilities planning permission Ref. GO/R2918 did not permit any mortar/concrete plant of any size within the appeal site as a matter of construction. This permission relates to the resiting of the then existing plant from Pit A and cannot therefore confer lawfulness on different plant erected on the appeal site since 2002.
- On the balance of probabilities the demolition and removal of the plant subject planning permission Ref. GO/R2918 means that the subsequent act of erecting any further plant on the appeal site is a separate and discrete act which requires express planning permission.

### ***Enforcement Action***

6. Following these refusals and despite repeated requests made by Officers the appellant failed to remove the fencing, concrete surface, storage bays etc. from the appeal site. Accordingly, in September 2014 an enforcement notice was issued which sought to force the removal of the same. This notice, together with the decision of the CPA to refuse the two LDC applications, was appealed to the Planning Inspectorate in November 2014.

### ***The Appeal***

7. A public inquiry was held to determine the appellant’s three appeals. This inquiry was held on 18 and 19 November 2015 at County Hall and was supplemented by two visits to the appeal site on 17 and 19 November 2015.

### ***The Appeal Decision***

8. In respect of the two refused LDC applications the Planning Inspector concluded firstly, that the 1957 permission was for an operational development, not a material change of use of the land. Secondly, the only ‘use’ permitted was by virtue of the mortar plant being used for its intended purpose i.e. the equipment could be used for the production of mortar whilst it was on the appeal site. Thirdly, the appeal site did not become a separate planning unit but was part of a mixed or composite use of all of the land included in the 1949 permission (and later the 2001 permission): use for mineral extraction and use for mortar production. Fourthly, permission to site a mortar mill on the appeal site ended in 2002 when what had been put there in 1957 was removed. Fifthly, the mortar plant put on the appeal site in 2002 and the one put there in 2010 were unauthorised developments.
9. In these circumstances, the Planning Inspectorate considered that the decisions of the CPA to refuse the appellant’s two LDC applications were well founded. Consequently, the appellant’s LDC appeals were dismissed.
10. In respect of the enforcement notice appeal, the appellant had argued that the infrastructure remaining on the appeal site benefited from various permitted development rights. It was also argued that in the absence of these rights the infrastructure was immune from enforcement action having been substantially completed 4-years before the enforcement notice was issued.
11. Again, the Inspector agreed with Officers in that there was no evidence to demonstrate that the work was substantially completed more than 4-years prior to the issue of the enforcement notice. However, the Inspector did vary the terms of the enforcement notice such that two storage bays could be retained on the appeal site subject to them

being lowered to no more than 2m in height and the period for compliance was extended from 8 to 16 weeks in respect of the unlawful concrete surface.

12. A copy of the appeal decision letter is attached.

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