



STROUD DISTRICT COUNCIL

Council Offices Ebley Mill Stroud Gloucestershire GL5 4UB

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www.stroud.gov.uk

ENFORCEMENT REPORT FOR WEEKLY LIST

DATE:	24 June 2011
REFERENCE:	S.11/0174/BRCON
CONTACT:	David Corker – Principal Appeals and Enforcement Officer, 01453 754224
ADDRESS:	Land Between Buildings 66 and 104 and former 'Veolia' Depot, Aston Down, Cowcombe Lane, Chalford, Stroud

REASON FOR THE REPORT:

1. Most Members will be well aware from several site visits to Aston Down that this piece of land is roughly in the middle of the Main Site. The piece of land is used for the parking of vehicles.
2. For new Members, very briefly, the area in question is part of the former military base at Aston Down comprising the Main Site and a number of perimeter sites linked by a winding access road.
3. On 1 December 2009, the Secretary of State (S of S) granted planning permission for the re-use of buildings on the Main and perimeter sites for a variety of industrial, light industrial and storage/distribution uses. On 26 April 2011, the Council granted planning permission (ref. S.10/1764/COU) for the change of use of the land between buildings 66 and 104 for:

“the parking of vehicles.”

That use in that area had not formed part of the permission granted by the S of S.



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4. Condition 13 attached to the planning permission granted by the S of S regulates the uses permitted as follows:

“No commercial or goods vehicle shall enter or leave the site nor shall any machinery be operated or any process carried out outside the hours of 06:00 to 19:00 on Mondays to Saturdays nor at any time on Sundays, Bank or Public Holidays.”

5. Condition 4 attached to the permission granted by the Council imposes the same restriction and given that it permits the parking of HGVs extends it to the, *“running of engines and the warming up of any commercial vehicle”*.

6. The reason for imposing condition 4 is as follows:

“In the interests of the amenities of the occupiers of nearby residential properties in accordance with Policy GE1 of the adopted Stroud District Local Plan, November 2005.

7. Condition 11 imposed by the S of S states:

“There shall be no parking of any vehicle, including cars and goods vehicles, or any trailer, except in accordance with the details shown on the Masterplan and accompanying more detailed plans of the main and outer sites dated 19th March 2009.

8. That condition is imposed to avoid indiscriminate parking in ways that could be visually intrusive – the site lies within the Cotswolds Area of Outstanding Natural Beauty.



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9. The conditions therefore restrict the hours when certain activities can be undertaken and areas where vehicles can be parked. The requirements are clearly set out. It does not follow however that *any* breach of the terms of the conditions will automatically have the adverse consequences that the conditions seek to prevent.

10. Over the last few weeks there have been consistent reports from two people living in the area that condition 4 regulating the hours of vehicular movements has been breached. The breaches appear to be committed by one of the companies authorised by the planning permission granted by the Council on 26 April 2011. The land owners have been contacted and have not denied the activity complained of.

11. On 26 May 2011, the land owners submitted a planning application (ref. S.11/1036/VAR) to vary the terms of condition 4 referred to above. This is to enable no more than two vehicles belonging to the company indicated in the previous paragraph to leave the site at 4.30am Monday to Saturday.

12. The current application states that vehicle movement at this time is not on a daily basis but the actual days of the week when this is necessary is not predictable. Apparently the company has a contract requiring vehicles to be in Sittingbourne, Kent between 07.30 and 09.30. It is not clear at present whether this contract is for a specified or indefinite period.

13. It is clear that these hours were well known to the land owners when earlier this year it submitted the planning application (S.10/1764) to the Council for the use of the land in question. If not then it should have been. When they submitted that application they were patently well aware of condition 13 imposed by the S of S. It was unrealistic of them to believe that if the Council was to grant planning permission, it would not impose at least the



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same restriction.

14. The response provided on the current application form confirms its retrospective nature. This provides further confirmation that condition 4 is currently being breached.

15. Where there is a breach of planning control the Council may apprehend that breach by issuing an Enforcement Notice. It should only do so when it is *expedient*, having regard to the provisions of the Development Plan and to any other material considerations. There is a right of appeal against an Enforcement Notice. Where a breach of planning control consists of the breach of a condition to which planning permission is subject, the authority can deal with this by issuing an Enforcement Notice. Alternatively it can issue a Breach of Condition Notice (BoCN). This is often a more straightforward procedure as there is no mandatory expediency test or right of appeal.

16. There is clear evidence of breaches of condition 4. The legislation therefore entitles the Council to issue a BoCN on that fact alone. It is good practice however to always consider the extent if any, of the effects of the breach of a condition, so that there is always some tangible reason behind such action.

17. The evidence provided so far does state that people have been woken up around about the times when the company's vehicles leave the site in breach of that condition. There are others living in the area likely to be affected who have not complained however.

18. Some analysis of the effects of the breach of the condition and if necessary whether they can be successfully mitigated is therefore advisable. It is also likely that economic and employment issues that might arise from the



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strict adherence to condition 4 will also need some consideration. These judgements are better carried out in the context of the consideration of the current planning application. This will mean however that the current breaches of condition 4 will continue, at least in the short term.

19. Even if a Breach of Condition Notice is served immediately, this has to provide a minimum 28 day compliance period. The only way the activity could be stopped immediately would be through the service of a 'Stop Notice'. Consideration of the Stop Notice procedure in this case creates a circular argument. A Stop Notice can only be served alongside an Enforcement Notice and not a BoCN. For a Stop Notice to have effect therefore, the breach of the condition would therefore have to be alleged in an Enforcement Notice. This has to be based on expediency reasons having regard to the Development Plan and any other material considerations. These are the very matters on which the planning application will be determined. It is not advisable in this case to make the necessary planning judgements independently and in advance of that determination.

20. In addition, it is unclear at present whether the harm alleged by the continual breaches of the condition is sufficient to justify a Stop Notice.

21. In conclusion, if the current application is refused, then a Breach of Condition Notice should be served without delay. This should stipulate the minimum 28 day compliance period.

22. There is evidence that condition 11 is being breached, i.e. vehicles are parking other than where stipulated in the Masterplan. This has occurred in part of the depot previously used by Veolia. It is being undertaken by one of the companies that could benefit from planning permission S.10/1764/COU. This is the same company breaching condition 4. The current use of the



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former depot appears to be much less intensive than that undertaken by Veolia who vacated several months ago. It is unlikely that the area in question will remain unused even in the medium term. It is more than likely that the current land owners will wish to use some or the entire former depot. Planning permission is likely to be required for this.

23. The area of the alleged breach of condition 11 is well screened by mature trees. External views of the parking appear to be limited to adjoining farmland. The current conflict with the underlying purpose of condition 11, i.e. the prevention of adverse visual impact is therefore extremely limited. It is not therefore currently justified to issue a BoCN.

24. There is a valid enforcement notice covering the whole site. It remained in place against those uses not permitted by the S of S, this included the parking of haulage vehicles.

25. The notice was complied with when unauthorised uses ceased and when the Council granted planning permission S.10/1764/COU in respect of the parking use. The notice remains effective however against any future contraventions.

26. Permission S.10/1764/COU is limited to a specific area within the Main Site. It is therefore possible that if vehicles authorised by that permission are parking outside the area covered by the permission and outside the parking areas the subject of condition 11 they are failing to comply with the enforcement notice rather than breaching that condition. Failing to comply with any of the requirements of an enforcement notice constitutes an offence. The conclusions in paragraph 23 above apply however and it would be disproportionate to issue prosecution proceedings at present.



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27. The party that has brought the breach of condition 11 to my attention states that the site is difficult to monitor. On this particular issue that is correct because it is difficult to detect a breach of the condition. That difficulty to a large degree demonstrates that the breach of the condition is minor in its effect and it does not currently justify further action by the authority.

RECOMMENDATION:

That in the event that planning application ref. S.11/1036/VAR is refused, that the Head of Planning in consultation with the Head of Legal Services, issues a Breach of Condition Notice in respect of the breach of condition 4 of planning permission S.10/1764/COU for the reasons and in the terms set out above.

DELEGATED PANEL

Officer 1		Date	
Officer 2		Date	