

## **PROPOSED ENFORCEMENT ACTION AT MORETON BRICKWORKS, MORETON**

### **1. Executive Summary**

- 1.1 The purpose of this report is to advise members that the appeal against the Council refusal to grant consent to continue the waste recycling operation at the former Moreton Brickworks site was dismissed by the Planning Inspectorate on 6 May 2009 following the hearing held on 17 March 2009.

The Appeal against the Enforcement Notice, which was served on 6 January 2009, is due to be heard at an Informal Hearing on 19 August 2009.

The approval of Members is sought to agree the offer made by the appellant to withdraw their Appeal on condition that they can continue the recycling operations until 30 September 2009 and that the site restoration works are completed by 31 March 2010. It also proposed that as part of the agreement, the appellant operates the site in accordance with the conditions attached to APP/1999/6780 and APP/2003/5880 (as applicable).

### **2. Implications**

- 2.1 The Planning Enforcement Notice was served on 6 January 2009. The appellant had until 10 February 2009 in which to appeal. An appeal was lodged against the Notice within the relevant period and will be dealt with as indicated by way of an Informal Hearing, which has been set for 19 August 2009.
- 2.2 In effect, the Council is powerless to prevent the waste recycling operation from continuing until that appeal is determined. It is unlikely that a decision will be received before 30 September 2009 in any event.
- 2.3 The Council refused to grant consent on 9 May 2008 for a continuation of the recycling operations; planning applications APP/2008/5213 and APP/2008/5267. An appeal was lodged against the refusal of planning permission. The reasons for refusing the planning consent and for issuing the Enforcement Notice were reconsidered on 20 November 2008, and the appellant and Planning Inspectorate were informed of the changes made.
- 2.4 An Appeal Hearing was held on 17 March 2009 against the Council's revised reasons for refusing planning consent. The appeal was dismissed on 6 May 2009.

- 2.5 The appellant has made an offer to the Council to withdraw his appeal providing he can continue recycling operations until 30 September 2009 and be allowed until 31 March 2010 to complete the restoration of the site. Therefore, if the appeal were withdrawn, the Council would use its discretion and would agree not to pursue formal action until there was a failure to comply with the aforementioned dates. The appellant have also agreed to waive the costs they were awarded on 6 May 2009.
- 2.6 If the Council were to refuse to agree to the offer made and insists on the appeal proceeding, the appellant may avoid an award of costs even though the Notice may be upheld. The Council could also be viewed as acting unreasonably unless there are good reasons why the Hearing should have proceeded.
- 2.7 The Council would therefore benefit from agreeing to the appellants offer. There would be certainty, the Notice would be in place and enforceable. Costs already awarded would be waived and additional costs in time and resources would be avoided. Whilst additional time was granted for certain operations to continue; the case would be the same if the appeal was to continue.
- 2.8 At present the unauthorised development can operate unconditionally. The appellant has offered to operate in accordance with conditions attached to planning applications APP/1999/6780 and APP/2003/5880.

### **3.0 Expediency for Enforcement Action**

- 3.1 These are included in the body of the report.

### **4. Anti-Poverty Implications**

- 4.1 I am not aware of any Anti-Poverty Implications.

### **5. Social Inclusion**

- 5.1 I am not aware of any Social inclusion Implications.

### **6. Financial and Staffing Implications**

- 6.1 There are considerable cost benefits.

### **7. Equal Opportunities Implications**

- 7.1 I am not aware of any Equal Opportunities Implications.

### **8. Local Agenda 21 Implications**

- 8.1 I am not aware of any Local Agenda 21 Implications

### **9. Human Rights implications**

- 9.1 I am not aware of any Human Rights Implications.

## **10. Local Member Support Implications**

10.1 This report will be of interest to Moreton West and Saughall Massie Ward.

## **11. Background Papers**

11.1 Planning Application APP/1999/6780, APP/2003/5880 APP/2008/5213 and APP/2008/5267, and Appeal Decision APP/W4325/A/08/2088852.

## **12. Planning Implications**

12.1 These are included in the body of the report.

## **13. Recommendation(s)**

13.1 The Council accepts the offer of the appellant on condition that:

- 1) The recycling operations, including the importation and exportation of waste material, cease on 30 September 2009;
- 2) The restoration of the site is completed in accordance with the requirements of the Planning Enforcement Notice by 31 March 2010.
- 3) That the site is operated in accordance with the conditions attached to planning permissions APP/1999/6780 and APP/2003/5880 (as applicable).
- 4) That each side pays its own costs and that the appellant agrees not to claim costs previously awarded at appeal (APP/W4325/A/08/2088852).

D Green  
**DIRECTOR OF TECHNICAL SERVICES**

This report was prepared by Lee Walsh of the Enforcement Section who can be contacted on (0151) 606 2237.