

Part I

Executive Member: Councillor Perkins

WELWYN HATFIELD BOROUGH COUNCIL  
DEVELOPMENT MANAGEMENT COMMITTEE – 18 AUGUST 2016  
REPORT OF THE DIRECTOR (GOVERNANCE)

S6/2015/1107/MA

WARRENWOOD MANOR, HORNBEAM LANE, BROOKMANS PARK, HATFIELD,  
AL9 6JF

RETENTION OF MODIFIED LAND LEVELS AND FURTHER LAND REMODELLING  
TO AGREED CONTOURS

APPLICANT: Mr Nigel Brunt

(Hatfield East)

**1 Background**

- 1.1 This application was deferred from Development Management Committee on 21 July 2016 for a site visit. This took place on 14 August 2016.
- 1.2 This report has been updated in paragraphs 3.1, 11.14, 11.15, 11.16, 11.17, 11.19 and 11.20, 11.21 and 11.22 to take account of late representations previously reported.

**2. Site Description**

- 2.1 The application site is located approximately 2km to the south of the village of Essendon. It forms part of the wider Warrenwood site which extends to 24.05ha. The land associated with Warrenwood Manor appears to be used primarily for equestrian purposes and the wider site comprises of a dwellinghouse and 20 box stable block with associated equestrian paraphernalia.
- 2.2 The site lies within land owned by Warrenwood Manor and is bounded to the north by a recently formed manege, which is the subject of planning application S6/2015/1106/FP. Beyond that is hardstanding, also the subject of that application, a 20 box stable building and associated horse rider and storage barn, the subject of application S6/2015/1105/FP.
- 2.3 Access to the site is via Hornbeam Lane onto Kentish Lane, which serves the site, a number of cottages and also forms a public bridleway. It also serves the dwelling relating to this land. That Lane is also designated as a bridleway.
- 2.4 The application site has undergone extensive re-grading and consists currently of soil with scattered fragments of concrete, brick, glass, plastic and

metal with limited vegetation growth. There are two stockpiles of material located on the site, which appear to comprise topsoil, and uncrushed demolition material.

### **3. The Proposal**

3.1 This application seeks planning permission for the retention of the modified land levels and further land remodelling to the proposed contours. Piles of excavated material have been spread over part of the application site and further works are necessary to complete this process and return the natural contours of the land. The slope is proposed to be remodelled through spreading two of the stockpiles on the site. The third stockpile

3.2 The applicant has outlined that the made ground present on the site is composed of material cleared from the adjacent sites, although it is also possible that there has been additional importation of material from external sources.

### **4. Reason for Committee Consideration**

4.1 This application is presented to the Development Management Committee because Councillor Sarson has called the application in on the following reasons;

- *“Building on Green Belt without permission;*
- *To be used as a commercial venture;*
- *Have the highway authorities made any comments; and*
- *The buildings are detrimental to the surrounding residents.”*

### **5. Relevant Planning History**

5.1 ENF/2015/0004 – Operational development/MCOU – Open enforcement investigations relating erection of 24 floodlights on 8 poles around menage, use of site for commercial livery, use of stables for residential purposes and importation of waste.

Relevant planning applications under consideration

5.2 S6/2015/1105/FP- Retention of single storey storage barn, open horse walker and associated fencing. Pending Consideration.

5.3 S6/2015/1106/FP - Retention of parking area for cars and horseboxes, horse holding area and manege area with associated fencing and lighting. Pending Consideration.

### **6. Planning Policy**

6.1 National Planning Policy Framework (NPPF) March 2012

6.2 Welwyn Hatfield District Plan 2005

6.3 Supplementary Design Guidance, February 2005

## 7. Site Designation

7.1 The site lies within the Metropolitan Green Belt, Brickendon Wooded Slopes Landscape Character Area and Wildlife Site as designated in the Welwyn Hatfield District Plan 2005.

## 8. Representations Received

8.1 The application has been advertised by means of neighbour notification letters, site notice and press notice. One comment has been received from Follyfoot Farm, Woodfield Lane which can be summarised as;

- Objects to the application
- The landfilling is a disgrace;
- The land is many meters above the lay of the land and in some places 20m higher
- The size of the manege is bigger than is acceptable especially as it has been built of Green Belt land;
- The block paving has total disregard for the Green Belt and is not in keeping with anything in the area; and
- The lighting is unacceptable and floods nearby woodland which disturbs wildlife.

## 9. Consultations Received

9.1 The **Environment Agency** object to the application as the level of risk posed by the proposal to be unacceptable.

9.2 No objections have been received from **Welwyn Hatfield Environmental Health or Herts Biological Records Centre**, and they both recommend permission is granted subject to conditions.

9.3 **Herts & Middlesex Wildlife Trust** and **Hertfordshire County Council Waste & Minerals** have made no comment and consultation expired on 24 June 2016.

## 10. Parish Council Representations

10.1 Essendon Parish Council has concerns to the proposed development stating:

*'We are very concerned about a number of aspects of this development, not the least of which is the apparent lack of the necessary public consultation. Our clerk has no record of Essendon Parish Council being consulted on previous related applications, our awareness of the development stemming from observing the many hundreds of lorries that went into and tipped on to the site over very many months.'*

*When we expressed our concern at this, WHBC LPA simply assured us it had received permission. We gather that the end result does not accord with that planning permission.*

*Of more concern is that local residents along Hornbeam Lane, who suffered much of the mud and disruption to their amenity with the hundreds of tipper lorries passing through, many dozens a day, were also not consulted. When they queried this with the LPA, they inform us they were told that there was a field between them and the development, so they were not neighbours and there was no need for the LPA to consult with them. Given what they have endured, this seems to us to be an unreasonably restricted interpretation of the LPA's statutory duty in this regard, contrary to natural justice and, together with the apparent failure to consult with the Parish Council, displaying a distressing regard for the democratic and community basis for the planning system. This will not do. Further to this, we are now informed that the said intervening field is owned by the applicant. There was, therefore, no legitimate basis for the LPA to refuse to consult with these neighbouring properties. Now that the above applications are before us, we assume to legitimise the landfill and the change of use from domestic to commercial use, we have received a number of plans printed on A4. We find these difficult to read in view of which we must leave it to the LPA to arrive at a determination on the contouring, horse walker and storage building. What is of concern to us is the change of use for these equestrian facilities from a domestic to a commercial use. Local residents inform us that commercial use is already being carried out, with gymkhanas, noisy PA systems and the everyday impact of the commercial letting of stabling facilities with attendant noise, disruption and heavy traffic along Hornbeam Lane. The Parish Council would not be concerned if the facilities were for domestic use attached to the main residence. Now this new commercial use is causing demonstrable harm to the quality of life and amenity of the residents along Hornbeam Lane. As such we strongly object to the change of use of the facilities to a commercial use. We have been e-mailed by our Borough Councillor, Bernard Sarson, who has called these applications in such they will be considered by the Planning Committee. We understand that affected residents want to address that committee and, given the above circumstances, we would hope that they will receive every assistance from the LPA's offices.'*

## **11 Analysis**

### **Background**

11.1 The main planning issues with this application are:

- 1. Principle of development in Green Belt (GBSP1, RA10, National Planning Policy Framework (NPPF))**
- 2. Impact on character and appearance of the area (D1, D2, D8, RA10, SDG and NPPF)**
- 3. Impact on Ground Conditions (R7, R9 and NPPF)**
- 4. Impact on Wildlife and Biodiversity (R11, R15 and NPPF)**
- 5. Other Matters**

## ***i) Representations***

### **1. Principle of development in Green Belt**

- 11.2 The site and surrounding area was historically used as agricultural land. In the early 1990s, under planning application S6/1983/350/OP, planning permission was granted to demolish Meadow Cottage, the original property on the site, and construct a replacement house. Since then permission has been granted through a number of later planning permission renewals with the most recent concerning a replacement dwelling in 2013 (S6/2013/0919/FP). In 2001, planning permission was also granted for a new stable building although there have been further permissions with the latest being in 2013 reference S6/2012/2661/S73B.
- 11.3 In 2012, the applicant bought the site, where the original replacement house and stable building were only partially built and contained several piles of presumed demolition material arising from the original house. The applicant was granted planning permission in 2013 (S6/2012/2656/S73B) for the demolition of the partially built house and barn and construction of a new house, as well as completing the stable block. The applicant outlines that the foundations of the barn were scrubbed out and placed on the application site. Additionally the top soil in this area was also scraped into the application site currently occupying the site. The partially built house was demolished and the nearby piles of material relating to the original house were moved across to the application site. The made ground present on the site is composed of material cleared from the adjacent sites, although it is also possible that there has been additional importation of material from external sources. The applicant outlines that there is no historical topographical survey available for the site undertaken prior to the regrading of the site.
- 11.4 The site is within the Green Belt wherein only specified developments will be permitted. Paragraph 90 of the National Planning Policy Framework (NPPF) is applicable and notes that certain forms of development are not inappropriate in the Green Belt, including engineering operations, provided that the development preserves the openness of the Green Belt and does not conflict with the purposes of including land in Green Belt. The nature of the proposal is considered to be an engineering operation, with material used to raise the level of the land. Therefore the question to be addressed is whether the proposed alterations to the land levels would have a greater impact on the openness of the Green Belt and the purposes of including land within it.
- 11.5 The Government attaches great importance to Green Belts. Paragraph 79 of the National Planning Policy Framework (NPPF) identifies openness and their permanence as the essential characteristics of Green Belt whilst Paragraph 80 lists the five purposes of Green Belt. One of the five purposes that is particularly relevant is; to assist in safeguarding the countryside from encroachment.
- 11.6 The wider area is predominately open and undeveloped land where there is dense woodland and hedgerows in the landscape, which does restrict some

open views. However it is typical of rural locations with little built development and undulating land.

- 11.7 No information has been provided concerning the former land levels of the site as these were not prepared prior to the commencement of the works taking place therefore the information submitted includes historic OS data. The plans show that the mounds of topsoil previously scraped back will be re-distributed to reinstate the contours and therefore would be similar to those original contours. Whilst the proposed raising and remodelling of the land would be in what is currently an open field and would spread across it, it would not form any substantial height or alteration to the existing landscape. Subsequently it is not considered to materially impact on the openness of the Green Belt to an extent to cause harm. Additionally due to the limited alterations of the land and lack of buildings ensures that the proposal would not conflict with the five purposes of including land in the Green Belt. Accordingly, the proposed development is appropriate development in the Green Belt.

## **2. Impact on character and appearance of the area (D2, D8, RA10, SDG and NPPF**

- 11.8 Local Plan Policy D2 (Character and Context) aims to ensure that development respects and relates to the character and context of the locality, maintaining and where possible enhancing the character of the existing area. This policy is expanded upon in the Council's Supplementary Design Guidance (SDG) which requires the impact of a development to be sensitive to the local character and not detrimentally affect the landscape. In addition, as the site is located within Brickendon Wooded Slopes Landscape Character Area Policy RA10 (Landscape Regions and Character Areas) is applicable. That Policy outlines that proposals for development in the rural area will be expected to contribute, as appropriate, to the conservation, maintenance and enhancement of the local landscape character of the area.
- 11.9 Chapter 7 of the NPPF emphasises the importance of good design in context and, in particular, paragraph 64 states permission should be refused for development of poor design that fails to improve the character and quality of an area and the way it functions. Furthermore, paragraph 81 of the NPPF draws attention to the importance of retaining and enhancing the landscapes, visual amenity and biodiversity of Green Belts to positively enhance the beneficial use of the Green Belt.
- 11.10 The site is within the Brickendon Wooded Slopes Landscape Character Area and which is described in the Welwyn Hatfield Landscape Character Assessment as;

*'Steeply undulating wooded slopes, clearly differentiated topography, woodland and age of settlement from both the arable slope to the north and the small plateau to the south. Very articulated and complex topography, with parkland and ancient settlements strung out along winding undulating lanes. An old landscape pattern, remote and enclosed, with a small domestic scale.'*

*Densely wooded and treed, with a clear pattern of irregular fields with tall treed boundaries and food views across the Lea valley. Here arable conversion does not appear to have had a negative impact on hedges’.*

*‘The physical influences include a degree of slope 1 in 35 and land cover and land use is predominately wooded farmland and parkland’.*

- 11.11 In this instance, the proposed development would alter the topography of the land. Plans show that the mounds of topsoil previously scraped back to be re-distributed and which would have a similar contours to that originally on the site. Given the varying topography within the immediate vicinity of the application site, the proposal is not considered to detract and be materially at contrast to the existing landscape and the visual amenity to warrant a refusal in this regard. It would continue the undulating form of the existing landscape and would not be significantly intrusive. With a condition to require suitable landscaping in the form of grass once the land is regraded, it is considered that the proposal would have no conflict to the NPPF and Policies D2 which requires development to respect the character of its surroundings and RA10, which seeks to ensure that development in rural areas should conserve, maintain or enhance local landscape character.

### **3. Impact on Ground Conditions (R7 and NPPF)**

- 11.12 Paragraph 109 of the Framework states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Paragraph 120 states that local policies and decisions should ensure that new development is appropriate for its location, having regard to the effects of pollution on health or the natural environment, taking account of the potential sensitivity of the area or proposed development to adverse effects from pollution. Paragraph 121 of the NPPF also states that planning policies and decisions should ensure that adequate site investigation information, prepared by a competent person, is presented.
- 11.13 Policy R7 (Protection of Ground and Surface Water) of the District Plan outlines that planning permission will not be granted for development which poses a threat to the quality of both surface and/or groundwater.
- 11.14 The site and surrounding area do not appear to have had a history of potentially significant contaminative usage. A Preliminary Land Contamination Risk Assessment has been submitted to accompany the application which outlines that the current site surface reveals a significant amount of scattered fragments of concrete, brick, glass, plastic and metal with limited vegetation. It outlines that the principal potential source of significant contamination that has been identified is limited to the made ground material that has evidently been placed upon the site, which appears to be either demolition material from the previous buildings or imported from unknown sources. Therefore the nature of the material is unknown and potentially contaminative.

- 11.15 The site is located in a drinking water protected area and there is a risk of runoff entering the Essendon Brook. The Preliminary Land Contamination Risk Assessment outlines that the risk associated with the principal possible pollutant linkages for the site, with regard to the proposed end use is a medium risk. The report outlines that as a result of this medium risk it would normally warrant some degree of further assessment/mitigation/remediation. The impact of such a medium risk includes chronic health risk, risk of injury and appreciable costs to meet regulatory standards.
- 11.16 As a result of the development surface water would be likely to be affected which could runoff into the Essendon Brook. In light of the above the Environment Agency has objected to the development and considers the level of risk posed by the proposal to be unacceptable. Accordingly the proposed development prejudices the aquifer and is therefore contrary to the NPPF and Policy R7 of the District Plan.
- 11.17 Whilst the Council's Environmental Health department has not objected to the application, they look at human health rather than the risk to the environment that the Environment Agency considers.

#### **4. Impact on wildlife and biodiversity (R11, R15 and NPPF)**

- 11.18 The application site is located within a Local Wildlife Site. Policy R11 (Biodiversity and Development) expects all new development to demonstrate how it would contribute positively to the biodiversity of the site by a number of features, which include; the retention and enhancement of the natural features of the site. Policy R15 outlines that permission will not be granted for any development which would have an adverse effect on Wildlife Sites unless it can be demonstrated that the reasons for development outweigh the need to safeguard the biodiversity of the site and measures are taken to mitigate the effect of the development, to compensate for any residual adverse effects and to reinstate the nature conservation value of the site.
- 11.19 The site before the remodelling was undertaken was in equestrian use and was covered by grass. The proposed development has removed this grass and consists of rubble. Given the site is away from hedges, bushes and vegetation where the majority of wildlife would be, it is considered that the proposed development does not impact detrimentally on the wildlife and biodiversity of the site to warrant a refusal in this regard. Additionally, whilst no comments have been received from Herts & Middlesex Wildlife Trust, Herts Biological Records Centre raise no objections to the development and recommend that in the event of an approval a condition regarding a landscaping plan that enhances the existing interest of the Wildlife site is agreed by the Local Planning Authority.

#### **5. Other Matters**

- 11.20 *i) Representations*  
An objection has been received from Follyfoot Farm regarding the proposed development. The applicant has responded to this and outlines that the stable building are linked to the approved use of the land. However, that



stable building does not form part of this application and neither does the hardstanding which is the subject of application S6/2015/1106/FP. Therefore those comments are not relevant to this application.

- 11.21 Whilst the Call in from Councillor Sarson does not specifically address this application, officers consider that this application should be presented to the Development Management Committee for consideration.
- 11.22 Essendon Parish Council's representation refers largely to matters which are under consideration under applications S6/2015/1106/. Therefore, whilst their comments are not associated with the proposed development under this application, they are dealt with in those applications, which are also being presented to Members at this Development Management Committee meeting. The Parish Council however make reference to the stable building being used as a commercial use. However, that building is within the red line and does not form part of the proposed development. In any event, as outlined above, the stable block was conditioned to be used for a non commercial use and only in conjunction with the residential development to the south of the site. The applicant has confirmed to officers that the stables are used for stabling the applicant's horses together with those of some friends and is not in use as a commercial livery. The Council have no evidence to dispute this. If however, as outlined in *Welwyn Hatfield Council v. SoSCLG & Beesley (2011)* in an appropriate case the principle of public policy is that a person should not benefit from their own wrong. It [the wrong doing] can therefore be relied upon to defeat [i.e. refuse] an application for a certificate of lawful use. Therefore, in the event that it is found that the stable building is being used as a commercial livery or riding school, officers would have been deliberately misinformed and therefore enforcement action would be able to be taken if appropriate.

## **12. Conclusion**

- 12.1 The proposed remodelling of the land is appropriate development in the Green Belt and given the topography of land surrounding the site, it is not considered to be visually harmful to the character and appearance of the area. Additionally there does not appear to be any detrimental impact to the wildlife and biodiversity of the site. However, the materials on site are potentially hazardous and therefore the level of risk posed by the development is unacceptable, a view supported by the Environment Agency. Accordingly the development is contrary to the NPPF and Policy R7 of the District Plan.

## **13. Recommendation**

- 13.1 It is recommended that planning permission be refused for the following reason:
1. The materials brought onto site to modify the land levels are identified as having a risk ranking of 'Medium' as outlined in the 'Preliminary Land Contamination Risk Assessment' dated March 2016. Accordingly they are hazardous and the level of risk posed by this development to

the quality of Essendon Brook by runoff of surface water are unacceptable where the impact of such to human health is outlined in that report as chronic health risk or risk of injury. Accordingly the proposed development is contrary to the National Planning Policy Framework and Policy R7 of the Welwyn Hatfield District Plan 2005.

### **Refused Drawing Nos.**

Site Location Plan & Drawing Nos. 101 & 703/LP1 & Land Survey & Land Survey 2 & Land Survey 3 received and dated 24 June 2015 & 101A & 102 received and dated 8 June 2016.

### **Positive and Proactive Statement**

The decision has been made taking into account, where practicable and appropriate the requirements of paragraphs 186-187 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be viewed on the Council's website or inspected at these offices).

### **14. Enforcement Recommendation**

- 14.1 Should the Development Management Committee, agree with officer's recommendation to refuse this planning application it is recommended that enforcement action is authorised. This recommendation should not prejudice the Development Management Committee from making a different planning decision.
- 14.2 That the Head of Planning be authorised to issue and serve a planning enforcement notice under Section 172 of the Town and Country Planning Act 1990 requiring the recipient(s) to take appropriate steps which shall be formulated after discussions with the Environment Agency, and any other further action, including prosecution proceedings if necessary, to rectify the breach of planning control.

### **Reasons why it is expedient to issue an enforcement notice:**

- 1 The development fails to contribute or enhance the natural environment and is considered to have an adverse effect on water quality by virtue of the materials imported and resulting contamination. It is therefore contrary to policy R7 of the Welwyn Hatfield District Plan 2005 and the National Planning Policy Framework.

### **15. Requirements**

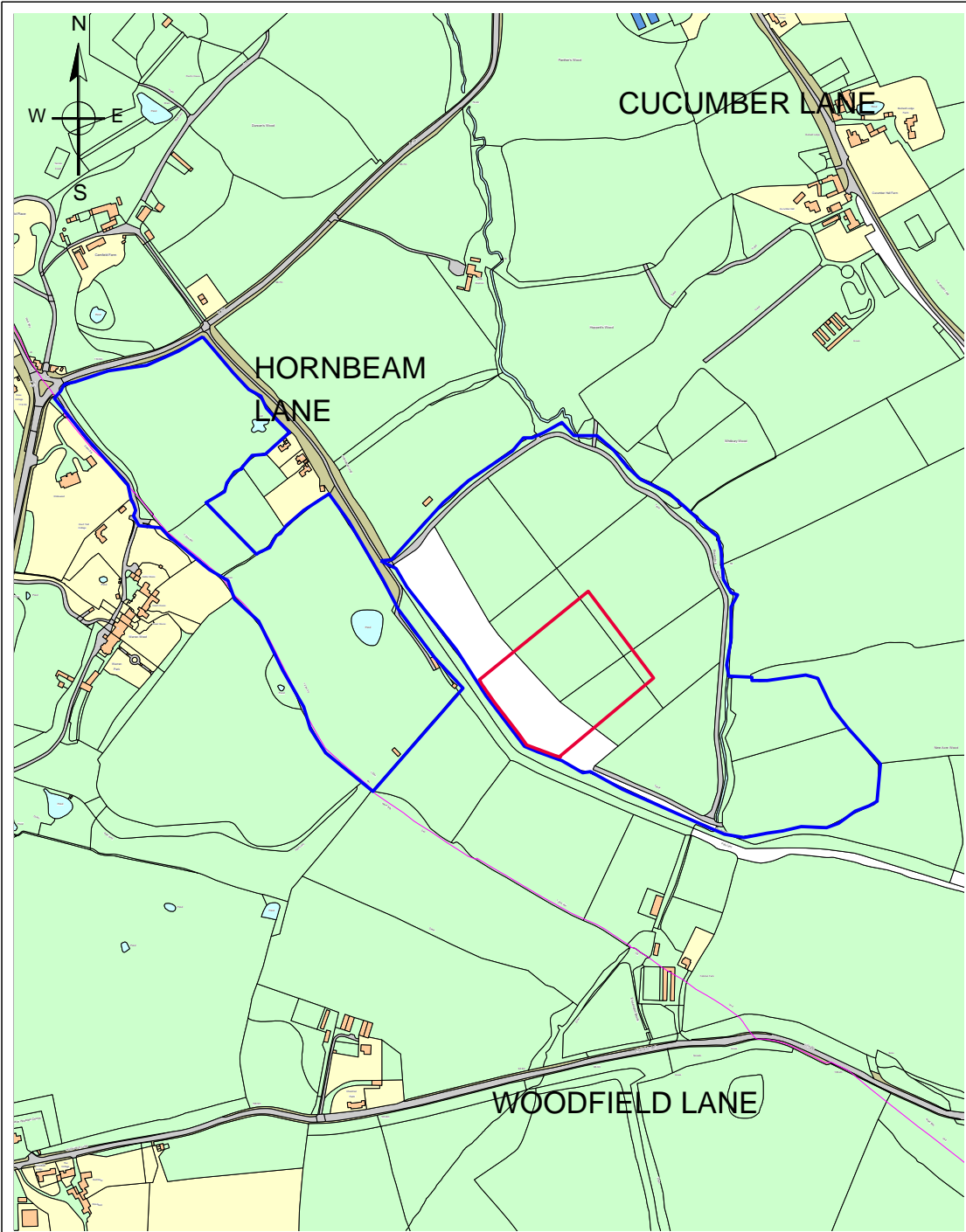
- (a) To be drafted following the outcome of the Environment Agency's investigation into the unlawful importation of waste in to the site.

### **Time Limit**

Officers consider that this will be dependent what is decided following the Environment Agency's investigation but will be an appropriate period of time to enable the required steps to be taken.

*Sarah Smith*, (Strategy and Development)  
Date 28/07/2016

Expiry Date: 22/07/2016



Council Offices, The Campus,  
Welwyn Garden City, Herts. AL8 6AE

Title:

Warrenwood Manor, Hornbeam Lane, Brookmans Park

Scale: DNS

Date: 2016

Project:

DMC Meeting

Drawing Number:

S6/2015/1107/FP

Drawn:

Andrew Windscheffel

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