

ENFORCEMENT NOTICE

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

SOUTH DOWNS NATIONAL PARK AUTHORITY

TOWN AND COUNTRY PLANNING ACT 1990
(AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991)

Issued By: South Downs National Park Authority

- 1. THIS IS A FORMAL NOTICE** which is issued by the South Downs National Park Authority ("the SDNPA"), because it appears that there has been a breach of planning control, within paragraph (a) of Section 171A(1) of the above Act, at the land described below. The SDNPA considers that it is expedient to issue this Notice, having regard to the provisions of the development plan and to all other material planning considerations. The Annex at the end of this Notice and the enclosures to which it refers contain important additional information.

- 2. THE LAND TO WHICH THE NOTICE RELATES**

Land at Patching Pond, Arundel Road, Clapham, West Sussex, as marked as black hatched lines within the red outlined area on the attached plan. ("the Land")

- 3. THE BREACH OF PLANNING CONTROL ALLEGED**

Without planning permission and within the last four (4) years, the importation of inert waste material to the Land which contains amongst other things soil and hardcore material comprising of broken concrete, stone chippings, plastic, the tipping and movement of the imported inert waste material and the compaction of the inert waste material to raise the level of the Land: and the use of plant and machinery on the Land.

- 4. THE REASON FOR ISSUING THE NOTICE**

The SDNPA considers that the operational works on the Land involving the importation and deposit of inert waste material to the Land which contains amongst other things soil and hardcore material comprising broken concrete, stone chippings, plastic the tipping and movement of the imported inert waste

material and the compaction of the inert waste material to raise the level of the Land: and the use of plant and machinery on the Land. is a breach of planning control which has occurred within the last 4 (four) years without the benefit of planning permission and is unacceptable for the following reasons:

Landscape/Visual Impact:

The unauthorised operational development is considered to fail to conserve or enhance the natural beauty of the landscape of the South Downs National Park.

The scale, form and design does not take into account the need to integrate with local landscape character and the characteristics of the Land in terms of topography and natural and man-made features.

Ecology:

It also does not take into account the need to enhance or conserve the local biodiversity of the area. The activities undertaken have negatively impacted the local ecology of the Land as it occurred during bird nesting season and the clearance of habitats, without the supervision of a qualified ecologist.

Principle of the Development:

This unauthorised operational development is contrary to National Planning Policy Framework paragraphs 170 and 172, the South Downs National Park Purposes, policies W8, W9, W11, W12, W13, W14, W16, W19 and W21, of the West Sussex Waste Local Plan 2014, and policies SD2, SD4, SD9, SD11, SD17, SD54 and SD55 of the South Downs Local Plan 2019. Therefore, the principle of the development is not acceptable.

5. WHAT YOU ARE REQUIRED TO DO

i) Cease the further importation to the Land of inert waste material which contains amongst other things soil and hardcore material comprising broken concrete, stone chippings, plastic the tipping and movement of the imported inert waste material and the compaction of the inert waste material to raise the level of the Land: and the use of plant and machinery on the Land

ii) Remove from the Land all the deposited inert waste material which contains amongst other things soil and hardcore material comprising broken concrete, stone chippings and plastic through the correct waste disposal methods.

Copies of the completed Environment Agency Duty of Care Waste Transfer Note is to be sent to the SDNPA. All inert waste shall be removed by machines which can be operated with a good degree of accuracy and sensitivity with regards to ecology.

iii) Return the land levels of the Land to those prior to the importation of the inert waste material to match the contours on the surrounding land.

iv) Prepare the Land, which was disturbed through the deposit of inert waste material and associated activity for planting so that there are no stones, bricks, and blocks of concrete exceeding 75mm in any dimension at the surface.

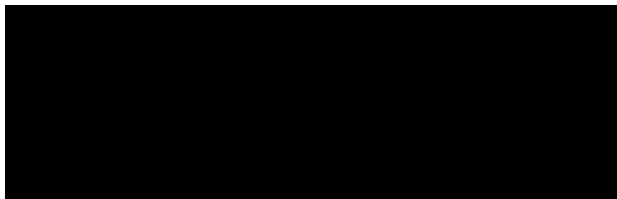
6. TIME FOR COMPLIANCE

- i) 1 day after this Notice takes effect
- ii) Six (6) months from the day this Notice takes effect.
- iii) Six (6) months from the day this Notice takes effect.
- iv) Six (6) months from the day this Notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 13th November 2020 unless an appeal is made against it beforehand.

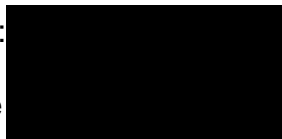
Date: 15th October 2020



Signed: Tim Slaney

Director of Planning
On behalf of South Downs National Park Authority, South Downs Centre, North Street, Midhurst, GU29 9DH

Nominated Officer:



Telephone Number

ANNEX 1

YOUR RIGHT OF APPEAL

You can appeal against this Notice, but any appeal must be received, or posted in time to be received, by the Planning Inspectorate acting on behalf of the Secretary of State before the date specified in paragraph 7 of the notice.

The enclosed information sheet published by the Planning Inspectorate gives details of how to make an appeal

<http://www.planningportal.gov.uk/uploads/pins/eninfosheet.pdf>

ANNEX 2

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period[s] specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Authority.

ANNEX 3

GUIDANCE NOTES

The following sections of the Town and Country Planning Act 1990 are relevant to Enforcement Notices:

S171A – Expressions used in connection with enforcement
S171B – Time limits
S172 – Issue of an Enforcement Notice
172A – Assurance as regards prosecution for person served with a notice
S173 – Contents and effect of Notice
S173A – Variation and Withdrawal of Notice
S174 – Appeal against a Notice
S175 – Appeal – supplementary provisions
S176 – General provisions relating to the determination of appeals
S177 – Grant/modification of planning permission on appeals against Notices.

Lodging an Appeal

Under section 174 of the Town and Country Planning Act 1990 (as amended) you may appeal on one or more of the following grounds:

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as required by section 172;
(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
(g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably allowed. Not all of these grounds may be relevant to you.

If you appeal under Ground (a) of Section 174(2) of the Town and Country Planning Act 1990 this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay a fee to the South Downs National Park Authority. Please contact the Planning department for the details on the fee required. Joint appellants need only pay one set of fees. If you decide to appeal, when you submit it, you should state in writing the ground(s) on which you are appealing against the enforcement notice and you should state briefly the facts on which you intend to rely in support of each of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

ANNEX 4

LIST OF ALL RELEVANT POLICIES

South Downs National Park Purpose 1 and 2 and Duty.

The site is situated within the South Downs National Park. The SDNPA has the following statutory purposes and social-economic responsibilities, as specified in the Environment Act 1995:

1. To conserve and enhance the natural beauty, wildlife and cultural heritage
2. To promote opportunities for the understanding and enjoyment of the special qualities of the areas

It there is a conflict between these two purposes, conservation takes precedence. There is also a duty to foster the economic and social wellbeing of the local community in pursuit of these purposes.

National Planning Policy Framework 2019:

- Paragraphs 170 and 172

Paragraph 170 of the National Planning Policy Framework – Planning policies and decisions should contribute to and enhance the natural local environment by:

- a) Protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status of identified quality in the development plan);

- b) Recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;
- c) Maintaining the character of the undeveloped coast, while improving public access to it where appropriate;
- d) Minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- e) Preventing new and existing development from contributing to, being put at unacceptable risk from or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and
- f) Remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Paragraph 172 of the National Planning Policy Framework - Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

West Sussex Waste Local Plan 2014:

- W8, W9, W11, W12, W13, W14, W16, W19 and W21

Policy W8 – West Sussex Waste Local Plan (2014):

Proposals for recovery operations involving the depositing of inert waste to land (including for the continuation in duration or the physical extension of, existing operations) will be permitted provided that:

- a) the proposal results in clear benefits for the site and, where possible, the wider area;
- b) the material to be used is only residual waste following recycling and/or recovery or it is a waste that cannot be recycled or treated;
- c) there is a genuine need to be used the waste material as a substitute for a non-waste material that would otherwise have to be used;
- d) the material to be reused is suitable for its intended use;

- e) the amount of waste material to be used is no more than is necessary to deliver the benefits identified under (a);
- f) there would be no unacceptable impact on natural resources and other environmental constraints;
- g) the proposal accords with Policy W13 (Protected Landscapes);
- h) any important mineral reserves would not be sterilised; and
- i) Restoration of the site to a high quality standard would take place in accordance with Policy W20.

Policy W9 – West Sussex Waste Local Plan (2014):

- a) Proposals for the disposal of non-inert waste at unallocated sites will not be permitted unless it can be demonstrated that the waste cannot be managed at permitted sites or at the extension to the Brookhurst Wood landfill site allocated in Policy W10.
- b) Proposals for the disposal of non-inert and inert waste to land (including the continuation in duration of, or the physical extension of, existing operations) will not be permitted unless it can be demonstrated that:
 - i. The waste to be disposed of cannot practicably be reused, recycled or recovered;
 - ii. There would be no unacceptable impact on natural resources, particularly on groundwater quality, and other environmental constraints;
 - iii. They would accord with Policy W13 (Protected Landscapes);
 - iv. Any important mineral reserves would not be sterilised;
 - v. Appropriate measures are included to recovery energy from landfill gas; and
 - vi. Restoration of the site to a high-quality standard would take place in accordance with Policy W20.
- c) Any proposals for new landfill sites (including land raise) must accord with parts (a) and (b) and will not be permitted unless it can be demonstrated that:
 - i. They are only required for the disposal of waste following recycling and recovery; and
 - ii. There are no opportunities to extend the operation of existing sites within West Sussex.

Policy W11 – West Sussex Waste Local Plan (2014) – Proposals for waste development will be permitted provided that they would not have an unacceptable impact on:

- a) The character, distinctiveness, and sense of place of the different areas of the County and that they reflect and, where possible, reinforce the character of the main natural character areas (including the retention of important features or characteristics); and
- b) The separate identity of settlements and distinctive character of towns and villages (including specific areas or neighbourhoods) and development would not lead to their actual or perceived coalescence.

Policy W12 – West Sussex Waste Local Plan (2014) - Proposals for waste development will be permitted provided that they are of high quality and, where appropriate, the scale, form, and design (including landscaping) take into the need to:

- a) Integrate with and, where possible, enhance adjoining land-uses and minimise potential conflicts between land-uses and activities;
- b) Have regard to the local context including:
 - i. The varied traditions and character of the different parts of West Sussex;
 - ii. The characteristics of the site in terms of topography, and natural and man-made features;
 - iii. The topography, landscape, townscape, streetscape and skyline of the surrounding area;
 - iv. Views into and out of the site; and
 - v. The use of materials and building styles;
- c) Includes measure to maximise water efficiently;
- d) Include measure to minimise greenhouse gas emissions to minimise the use of non-renewable energy, and to maximise the use of lower-carbon energy generation (including heat recovery and the recovery of energy from gas); and
- e) Include measures to ensure resilience and enable adaption to a changing climate.

Policy W13 – West Sussex Waste Local Plan (2014):

- a) Proposals for waste development within protected landscapes the South Downs National Park, the Chichester Harbour Area of Outstanding Natural Beauty (AONB), and the High Weald AONB) will not be permitted unless:
 - i. The site is allocated for that purpose in an adopted plan; or
 - ii. The proposal is for a small-scale facility to meet local needs that can be accommodated without undermining the objectives of the designation; or
 - iii. The proposal is for major waste development that accords with part (c) of this Policy.
- b) Proposals for waste development located outside protected landscapes will be permitted provided that they do not undermine the objectives of the designation.
- c) Proposals for major waste development within protected landscapes will not be permitted unless:
 - i. There is an overriding need for the development within the designated area; and
 - ii. The need cannot be met in some other way or met outside the designated area; and
 - iii. Any adverse impacts on the environment, landscape, and recreational opportunities can be satisfactorily mitigated.

Policy W14 – West Sussex Waste Local Plan (2014) – Proposals for waste development will be permitted provided that:

- a) Areas or sites of international biodiversity importance are protected unless there are no appropriate alternative solutions there are overriding reasons which outweigh the need to safeguard the value of sites or features, and provided that favourable conservation status is maintained;
- b) There are no adverse impacts on areas or sites of national biodiversity or geological conservation importance unless the benefits of the development clearly outweigh the impact on the objectives of the designation and on the wider network of such designated areas or site;
- c) There are no adverse impacts on areas, sites or features of regional or local biodiversity or geological conservation importance unless the benefits of the development clearly outweigh the impact on the objectives of the designation;
- d) Where development would result in the loss of or adversely affect an important area, site or feature, the harm is minimised, mitigated, or compensated for, including, where practicable, the provision of a new resources elsewhere which is of at least equivalent value;
- e) Where appropriate, the creation, enhancement, and management of habitats, ecological networks, and ecosystem services is secured consistent with wider environmental objectives including Biodiversity Opportunity Areas and the South Downs Way Ahead Nature Improvement Area; and
- f) Where necessary, the investigation, evaluation, and recording of important sites and features is undertaken and, where appropriate, representative features are preserved.

Policy W16 – West Sussex Waste Local Plan (2014) – Proposals for waste development will be permitted provided that:

- a) There are no unacceptable impacts on the intrinsic quality of and where appropriate the quality of, air, soil and water resources (including ground, surface, transitional, and coastal waters);
- b) There are no unacceptable impacts on the management and protection of such resources, including any adverse impacts on Air Quality Management Areas and Source Protection Zones;
- c) The quality of rivers and other watercourses is protected and, where possible, enhanced (including within built-up areas); and
- d) They are not located in areas subject to land instability unless problems can be satisfactorily resolved.

Policy W19 – West Sussex Waste Local Plan (2014)

Proposal for waste development will be permitted provided that:

- a) Lighting, noise, dust, odours and other emissions, including those arising from traffic, are controlled to the extent that there will not be an unacceptable impact on public health and amenity;
- b) The routes and amenities of public rights of way are safeguarded, or where temporary or permanent re-routeing can be justified, replacement routes of comparable or enhanced amenity value are provided; and
- c) Where necessary, a site liaison group is established by the operator to address issues arising from the operation of a major waste management site or facility.

Policy W21 – West Sussex Waste Local Plan (2014)

Proposals for waste development, including the intensification of use, will be permitted provided that an unreasonable level of disturbance to the environment and/or local communities will not result from waste management and other sites operating simultaneously and/or successively. Phasing agreements may be sought to co-ordinate working, thereby reducing the cumulative impact.

South Downs Local Plan 2019:

- SD2, SD4, SD9, SD11, SD17, SD29, SD54 and SD55

Policy SD2 – South Downs Local Plan (2019)

Development proposals will be permitted where they have an overall positive impact on the ability of the natural environment to contribute goods and services. This will be achieved through the use of high quality design, and by delivering all opportunities to:

- a) Sustainably manage land and water environments;
- b) Protect and provide more, better and joined up natural habitats;
- c) Conserve water resources and improve water quality;
- d) Manage and mitigate the risk of flooding;
- e) Improve the National Park's resilience to, and mitigation of, climate change;
- f) Increase the ability to store carbon through new planting or other means;
- g) Conserve and enhance soils, sustainably and protect the best and most versatile agricultural land;
- h) Support the sustainable production and use of food, forestry and raw materials;
- i) Reduce levels of pollution;
- j) Improve opportunities for peoples' health and wellbeing; and
- k) Provide opportunities for access to the natural and cultural resources which contribute to the special qualities.

Development proposals must be supported by a statement that sets out how the development proposals impacts, both positively and negatively, on ecosystem services.

Policy SD4 – South Downs Local Plan (2019) – Development proposals will only be permitted where they conserve and enhance landscape character by demonstrating that:

- a) They are informed by landscape character, reflecting the context and type of landscape in which the development is located;
- b) The design, layout and scale of proposals conserve and enhance existing landscape and seascape character features which contribute to the distinctive character, pattern and evolution of the landscape;
- c) They will safeguard the experiential and amenity qualities of the landscape;
- d) Where planting is considered appropriate, it is consistent with local character, enhances biodiversity, contributes to the delivery of green infrastructure and uses native species, unless there are appropriate and justified reasons to select non-native species; and

Where development proposals are within designed landscapes, or the setting of designed landscapes, *(including historic parkscapes and those on the Historic*

England Register of Historical Parks and Gardens) they should be based on a demonstrable understanding of the design principles of the landscape and should be complementary to it.

The settlement pattern and individual identity of settlements and the integrity of predominantly open and undeveloped land between settlements will not be undermined.

Green and blue corridors will be safeguarded. Development proposals should identify and take opportunities to create and connect green and blue corridors.

The restoration of landscapes where features have been lost or degraded will be supported where it contributes positively to landscape character.

Policy SD9 – South Downs Local Plan (2019):

Development proposals will be permitted where they conserve and enhance biodiversity and geodiversity, giving particular regard to ecological networks and areas with high potential for priority habitat restoration or creation. Prior to determination, up-to-date ecological information should be provided which demonstrates that development proposals:

- a) Retain, protect and enhance features of biodiversity and geological interest (including supporting habitat and commuting routes through the site and taking due account of any use by migratory species) and ensure appropriate and long-term management of these features;
- b) Identify and incorporate opportunities for net gains in biodiversity;
- c) Contribute to the restoration and enhancement of existing habitats, the creation of wildlife habitats and the creation of linkages between sites to create and enhance local and regional ecological networks;
- d) Protect and support recovery of rare, notable and priority species;
- e) Seek to eradicate or control any invasive non-native species present on site;
- f) Contribute to the protection, management and enhancement of biodiversity and geodiversity, for example by supporting the delivery of GI and Biodiversity Action Plan Targets and enhance Biodiversity Opportunity Areas (BOA); and
- g) Comply with the mitigation hierarchy as set out in national policy.

Policy SD11 – South Downs Local Plan:

Development proposals will be permitted where they conserve and enhance trees, hedgerows and woodlands.

Development proposals that affect trees, hedgerows and woodland must demonstrate that they have been informed by a full site survey, including an Ecological Survey, Arboricultural Method Statement and associated Tree Protection Plan, and include a management plan.

Development proposals must provide adequate protection zones and buffers around hedgerows and other woodland and trees to prevent damage to root systems and taking account of future growth. A minimum buffer of 15 metres will be required between the development and ancient woodland or veteran trees.

A proposed loss or damage of non-protected trees, woodland or hedgerows should be avoided, and if demonstrated as being unavoidable, appropriate replacement or compensation will be required.

Development proposals must demonstrate that appropriate protection measures are in place prior to any work on site throughout the development process as part of a comprehensive landscaping plan, and that suitable opportunities for the restoration, enhancement or planting of trees, woodland and hedgerows are identified and incorporated.

Opportunities should be identified and incorporated for planning of new trees, woodlands and hedgerows. New planting should be suitable for the site conditions, use native species and be informed by and contribute to local character, and enhance or create new habitat linkages.

Policy SD17 – South Downs Local Plan (2019)

Development proposals that affect groundwater, surface water features, and watercourse corridors will not be permitted unless they conserve and enhance the following:

- a) Water quality and quantity, and help achieve requirements of the European Water Framework Directive, or its replacement;
- b) Ability of groundwater, surface water features and watercourse corridors to function by natural processes throughout seasonal variations, within the immediate vicinity, and both upstream and downstream of the site of the proposals; and
- c) Specifically for surface water features and watercourse corridors:
 - i. Biodiversity;
 - ii. Historic significance;
 - iii. Character, appearance, and setting;
 - iv. Public access to and along the waterway for recreational opportunities; and
 - v. Ability for maintenance of the watercourse, including for flood risk management purposes.

Development within Groundwater Source Protection Zones (SPZs) will only be permitted provided that there is no adverse impact on the quality of the groundwater source, and provided there is no risk to its ability to maintain a water supply.

Development proposals must incorporate measures to eliminate risk of pollution to groundwater, surface water and watercourse corridor features which would harm their ecological and/or chemical status.

Development proposals from the provision of agricultural reservoirs that aid demand management, water efficiency and water storage will be permitted where they are compatible with the National Park purposes.

Policy SD54 – South Downs Local Plan (2019)

Development proposals will be permitted provided that levels of air, noise, vibration, light, water, odour or other pollutants do not have a significant negative affect on people and the natural environment now or in the foreseeable future, taking into account cumulative impacts and any mitigation.

Policy SD55 – South Downs Local Plan (2019)

Development proposals for sites with either known or suspected contamination or the potential to contaminate land either on site or in the vicinity, will require the submission of robust evidence regarding investigations and remedial measures sufficient to ensure that any unacceptable risk to human health or the health of the environment is removed prior to development proceeding.

ANNEX 5

GUIDANCE NOTES ON HOW TO MAKE AN APPEAL

Printed copies attached

1. Planning Inspectorate – Making your appeal - How to Complete Your Enforcement Appeal Form - England (March 2019)
2. Planning Inspectorate – Procedural Guidance – Enforcement Notice Appeals – England (July 2020)

These documents can also be found at: <https://www.gov.uk/appeal-enforcement-notice>

ANNEX 6

THOSE PERSONS SERVED WITH THIS NOTICE

