

**Planning  
Control**

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Mr. A. Huggett  
20 Fritham Close  
Totton  
Hampshire  
SO40 8FB

Our Ref 12/00032/MIXED  
Enq to: Mr. Darren Hobson  
Direct Dial: 01962 848248  
Email: [dhobson@winchester.gov.uk](mailto:dhobson@winchester.gov.uk)

Please quote Our Ref: on all correspondence

21 November 2012

Dear Mr. Huggett

**Alleged extension to existing workshop and storage of industrial items at Stratton  
Highways Road Compton Winchester Hampshire SO21 2DF**

Thank you for your letter dated 4<sup>th</sup> November stating that you are now acting on behalf of Mr. Field.

As you may know I had been in contact with Mr. Field regarding a site visit with the Building Control surveyor but unfortunately for whatever reason no response was received. I was then invited along with Mrs Pye and Mr. Walsgrove as they had arranged another inspection.

As you may know the Planning Enforcement team works closely with Building Control on numerous occasions. For example during building works we often take commencement and completion from them.

My purpose for meeting with Building Control was because they had a different opinion of the outbuilding believing it to be separate from that completed in 2003. The new building foundations were inspected on the 19<sup>th</sup> April 2011 and that was the date noted as commencement. During a consultation with surveyors I advised that your client had advise me that they were in fact one building. So to avoid any further confusion it was decided that we should visit together.

As you have now confirmed the building to be one single structure I have advised Mr. Walsgrove (Building Control Team Manager) who will be in touch with your client requiring an application to include the 2003 structure along with the relevant fees.



As mentioned during our meeting on site, I will now close the case regarding the outbuilding. I would appreciate you confirming with me if your client has any further future plans to increase the outbuilding.

With regards to the planning permission reference 08/01823/FUL, again I have consulted with Building Control and they have not inspected this and therefore have no commencement date. As you have stated the Courts have in the past deemed this to be "Colourable Implementation" and there have been various cases heard and that the works must genuinely be done for the purpose of carrying out development not purely to keep the permissions live. Why else would a developer dig a relatively small trench in comparison to what is required for the approved works then go no further, but to keep an application live?

I have also checked the decision notice for this approval, condition 2 states:

- 2 No development shall take place until details and samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

It appears that this condition has not yet been discharged therefore any works would be unauthorised.

Therefore I would advise that a new application be submitted prior to any further works to being undertaken.

Also as stated in my letter dated 1<sup>st</sup> October although the Council have accepted that there has not been a material change of use to the land, the Council will continue to monitor the activity on site as we believe this to be a borderline case.

In summary:

- The planning enforcement case regarding the outbuilding will now be closed. Building control will be in touch regarding the new application.
- A new planning application is required prior to any further works to the extension.
- Site activities to be monitored.

If you require any clarification please contact me on the details supplied.

Yours Sincerely

Darren Hobson  
Planning Enforcement

CC: Mr. Micheal Field. Stratton, Highways Road, Compton, Winchester. SO21 2DF

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30 November 2012

Dear Mr. M Field

**Alleged extension to existing workshop and storage of industrial items at Stratton  
Highways Road Compton Winchester Hampshire SO21 2DF**

Thank you for your letter dated 29<sup>th</sup> November.

I have consulted with Mr. Neil March – Planning Enforcement Manager and we are fully aware of the case you are referring to. (Hart Aggregates v Hartlepool DC 2005) However we are of the opinion that Condition 2 of permission 08/01823/FUL is in fact a Condition Precedent which as you are aware is a condition which prohibits development from being carried out until something has been done, as in this case condition 2.

It has been established in law that the commencement of development without first complying with a "condition precedent" is unauthorised. In such circumstances, the Local Planning Authority is entitled to issue a Stop Notice/Temporary Stop Notice in order to prevent the development from continuing (until the required details have been submitted).

You are enquiring about the retrospective submission of materials rather than the submission of a full application. Courts have ruled (Whitley Case) that details can be submitted after the development has commenced. However this can only be done within the life of the permission.

Had the condition have been discharged it is our belief that the digging of the small trench was not commensurate to what is required for the permission.

Therefore the Council would require a fresh application be submitted to avoid any further complications.



Yours sincerely

Mr Darren Hobson  
Planning Enforcement

CC: 

**Kate Longley**

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**From:** Tom Patchell  
**Sent:** 07 December 2012 08:52  
**To:** 'Tony Huggett'  
**Cc:** Darren Sedman-Hobson  
**Subject:** RE: Planning Enforcement Case 12/00032/MIXED - Stratton, Highways Rd, Compton

Dear Mr Huggett,

Thank you for your email.

I would like to state that I have grasped what you have been saying, it is that the Council does not agree with your position.

The Council does not accept the short length of trench as being commencement of the development. The short 3 metre length of trench is not considered to be a significant amount of the foundations that would be required in total, in addition without knowing that they are the correct depth and width the Council cannot be assured that they will not in fact require further excavation to achieve the correct depth and width.

With regards to the materials, should you client wish to propose materials during the course of the resubmitted planning application these will be duly considered and may negate the need to impose a materials condition, should the application be approved.

Yours sincerely

Tom Patchell  
Principal Planning Officer (Enforcement)

Tel: 01962-848371



The Government Standard

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**From:** Tony Huggett [redacted]  
**Sent:** 06 December 2012 16:52  
**To:** Tom Patchell  
**Subject:** RE: Planning Enforcement Case 12/00032/MIXED - Stratton, Highways Rd, Compton

Dear Mr Patchell

Thank you for writing again. You do not appear to have grasped what I have been saying so I am having to quickly respond, although I accept that you might not be happy to prolong the correspondence.

I say what I do because (a) I have been trying to make sure that your Council is applying the right test to establish 'commencement'. We believe that we are beyond a *de minimis* operation and have undertaken work that relates to the planning permission. The test is a 'fact and degree' one and needs to be 100% objective; no other agency needs

to be involved and (b) in respect of the condition, what your Council is quite able to do is to give an indication of whether a particular set of external materials would be acceptable, even though we accept this would not be a formal decision. It would only be fair for Michael Field to know that his choice of materials would be the right ones for building out the extension whether he applies for a new permission or not.

Yours sincerely

Tony Huggett

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Subject: RE: Planning Enforcement Case 12/00032/MIXED - Stratton, Highways Rd, Compton  
Date: Wed, 5 Dec 2012 09:22:29 +0000  
From: TPatchell@winchester.gov.uk  
To: [REDACTED]  
CC: dhobson@winchester.gov.uk

Dear Mr Huggett,

Thank you for your email below.

Mr Hobson and myself have both described to you why the Council does not consider the small length of trench, which cannot be confirmed as being to the correct depth or width to act as foundations to the extensions, to be commencement of the development.

The Council is unable to approve, discharge or give any indication that the proposed materials would have been acceptable in terms of condition 2 of planning approval reference number 08/01823/FUL and therefore the only available option to your client is to resubmit the planning application for the extensions.

I believe that the Council has explained it's position clearly and that should your client wish to commence works associated with planning application reference number 08/01823/FUL these works would be unauthorised.

Yours sincerely

Tom Patchell  
Principal Planning Officer (Enforcement)

Tel: 01962-848371

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**From:** Tony Huggett [mailto:[REDACTED]]  
**Sent:** 04 December 2012 10:29  
**To:** Tom Patchell  
**Subject:** RE: Planning Enforcement Case 12/00032/MIXED - Stratton, Highways Rd, Compton

Dear Mr Patchell

Once again, I am grateful that you have responded so quickly to my e-mail.

I am worried that you have not really grasped what I have been saying. This is not that we can still "discharge" the condition as you put it, but that agreement to the materials ought to take away any thought your Council might have about taking enforcement action. As this was the only outstanding issue you may have encouraged this as a way to resolve the situation.

Mr Field may still well wish to go down this route. He still believes, and so do I, that he has dug a trench to contain foundations. The important thing is that what he has done is not a *de minimis* operation. He does not have to be

Appendix 3; Correspondence advising that the development had not commenced in time

inspected by Building Control. The judgement on the *de minimis* point is one of fact and degree and we are content that everything points to the trench being the first part of implementing the development.

Yours sincerely

Tony Huggett

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Subject: Planning Enforcement Case 12/00032/MIXED - Stratton, Highways Rd, Compton

Date: Mon, 3 Dec 2012 14:38:08 +0000

From: TPatchell@winchester.gov.uk

To: [REDACTED]

CC: dhobson@winchester.gov.uk

Dear Mr Huggett,

Thank you for your email below.

It would appear that in order to resolve the outstanding breach of planning control, in this case, you are suggesting that the Council only has to discharge condition 2 of planning approval reference number 08/01823/FUL, relating to the external materials to be used in the erection of the extension.

Within Mr Hobson's letter to Mr Field, dated 30 November 2012, the position of the Council is clearly explained, that whilst the Whiteley Case does permit the submission and discharge of conditions following the commencement of development, with they are conditions precedents or not, this can only be done within the life-time of the relevant permission.

With regards to the permission 08/01823/FUL, permission was approved on 30 September 2008 and therefore all conditions must have been discharged by 29 September 2011. It is not therefore possible to approve the external materials, in accordance with condition 2, as the permission has expired.

The only remedy available to your client, should they wish to proceed with the erection of the extension is the resubmission of a planning application for the two storey front, side and rear extensions; alterations and new roof over existing house.

In addition the digging of a small, 3 metre length, of trench, which had not been inspected by Building Control, is not considered to have been commencement of the development.

In order to have been considered commencement of development the Council will have expected there to have been a significant length of the foundations to have been dug and at least inspected by a Building Control Officer to ensure that they were the correct size for the approved extension.

In this case while a small length of trench has been dug, it is not considered by the Council that a small 3 metre length of trench is a significant length of the foundations that would be required for the extensions. In addition, there is no indication that the trench has been inspected to ensure that it is of the correct width and depth.

It is for these reasons that the Council does not consider that this constitutes commencement.

It is the Council's position that the only option, available to your client, to build the extensions is to resubmit an application.

Should you wish to discuss this matter further please do not hesitate to contact me.

Yours sincerely