

**Brian Owen**  
**Team Leader**  
**Development Management**  
**Hertfordshire County Council**

**BY EMAIL ONLY:** [REDACTED]

**2<sup>nd</sup> May 2025**

Dear Brian

**ENF/HCC/145 – Land on the North East Side of Church Lane, Wormley, Broxbourne, Hertfordshire**

1. I am instructed to write to you on behalf of Mr. John Croke, the owner of the above site (“the Site”), to which the above Enforcement Notice applies. I write further to your meeting on site with Mr. Croke and his planning agent, Kathryn Smith held on **4<sup>th</sup> April 2025**. I am also writing to you in respect of the response received from the Council to Mr. Croke’s request, made under the Freedom of Information Act 2000 (but correctly treated by the Council as having been made under the Environmental Information Regulations (“EIR”) 2004) and the seeming omission of material that should have been disclosed as part of that request, which appears to have now been disclosed by yourself on 29<sup>th</sup> April 2025.

**ENF/HCC/145**

2. You are, I understand, aware of this Enforcement Notice (and the 1949<sup>1</sup> planning permission referred to within it) and the requirements imposed upon the Site by it – as such I do not intend to set out those requirements again for the purposes of this letter. However, I understand from Mr. Croke and Ms. Smith that you appear to be under a misapprehension as to the ongoing effect of the Enforcement Notice.
3. The Enforcement Notice itself was issued on 4<sup>th</sup> January 1980, per the Town and Country Planning 1971 Act (“the 1971 Act”). The 1971 Act has since been repealed and replaced by the Town and Country Planning Act 1990 (“the TCPA 1990”), however as per s.2 of the Planning (Consequential Provisions) Act 1990, it continues to have effect and, indeed, the Council would be entitled to prosecute any breaches under the TCPA 1990.

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<sup>1</sup> And the 1968 planning permission

4. As it currently stands, Mr. Croke understands that the Site is currently in breach of the requirements of the Enforcement Notice as it is clear that the conditions imposed by the 1949 planning permission (granted by Hoddesdon Urban District Council) were not, and have not, been complied with. That permission required (amongst other conditions) that:

*“...the excavation be completely refilled to the level of the surrounding ground, covered with a surface layer of soil not less than twelve inches deep capable of supporting plant life and the initial cultivation of the site to the satisfaction of the local planning authority, such restoration to be completed within a period of thirty years from the date of the first planning permission...”*

5. You should be aware that this Enforcement Notice was the subject of an Appeal, determined on 4<sup>th</sup> March 1981. That Appeal was unsuccessful and the Secretary of State upheld the Enforcement Notice (albeit that the time limit for compliance was varied). There is a clear public interest in ensuring that the Enforcement Notice is complied with.

### **The Site**

6. However, the Site is not currently in compliance with the Enforcement Notice, nor does it appear to ever have been in compliance, despite the material recently disclosed (and relied upon) by the Council in support of the idea that compliance was achieved some time ago. I discuss this point further in the below and in respect of Mr. Croke’s analysis of the material now disclosed to him.
7. From Mr. Croke’s recent, unhappy, involvement with Broxbourne Borough Council’s Planning Enforcement Team, he has had to remove a number of temporary buildings and structures situated and used (on Broxbourne’s case) unlawfully at the site. In doing so, it has revealed that whilst the former excavation of the site was refilled (with all manner of materials), a sufficient covering of soil on the surface was not spread across the Site as required by the 1949 permission. Certainly, it is clear that in substantial areas, far less than 12 inches of soil appears to have been spread. You will have seen the evidence of the inadequate levels of soil from your recent visit to the site.
8. Until the Site is brought into compliance with the Enforcement Notice, Mr. Croke is also unable to fully comply with Broxbourne Borough Council’s enforcement action.
9. The combined result of the failure to comply with the Enforcement Notice, and Mr. Croke’s limited compliance to date with the requirements of Broxbourne Borough

Council's recent enforcement action, is that the Site is now an eyesore, with debris and landfill poking through the surface of the land. In places, the surface levels of soil are clearly incapable of supporting plant life. If this is not remedied, then the Site will remain in a state of partial restoration in perpetuity.

### **The Proposed Remedial Action**

10. To remedy this unfortunate situation Mr. Croke has been taking steps to ensure that the Enforcement Notice is complied with. To that end, he has spent considerable time (and expense) to identify a source of good quality, clean, soil that can be spread on the land to ensure that at least 12 inches of plant-supporting matter can be identified for the site, supplied and spread asap. This has involved his engagement with a specialist contractor (D and K Solutions) who had proposed that the Site be restored through a Materials Management Plan ("MMP"), overseen by CL:AIRE, and its Definition of Waste: Code of Practice<sup>2</sup>. The aim of this was to ensure that a supply clean, naturally occurring soil could be brought onto the site. This process was halted by Broxbourne Borough Council who were originally of the view that planning permission was required to restore the land, seemingly not understanding the fact that the Enforcement Notice (and 1949 planning permission) had not been complied with and that all the works that were proposed to be carried out were being done so further to that Enforcement Notice. Broxbourne's intervention has had the result of stopping the restoration of the Site through clean soil for CL:AIRE to sign off of an MMP, it requires confirmation that importation of the soil is lawful – be that through a planning permission or, indeed, to comply with an Enforcement Notice.

### **Mr. Croke's EIR Request**

11. On 23<sup>rd</sup> January 2024, Mr. Croke made the following request of Hertfordshire County Council:

*"I am trying to get history of enforcement on land at Broomfield , Church lane , Wormley, Broxbourne I am enquiring as a concern for BROXBOURNE COUNCIL , We need to know under the freedom of information's act 2000, all records of enforcement from 1979 onwards please. I'm particular an enforcement dated 1980 ref : ENF/HCC/145 And 10/04/1996 ref: 5-2460"*

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<sup>2</sup> <https://claire.co.uk/projects-and-initiatives/dow-cop>

12. The Council's Information Access Team treated (correctly) Mr. Croke's request having been made under the EIR and provided the following response on 4<sup>th</sup> February 2025:

*"I can confirm that Hertfordshire County Council does hold the information you have requested and can respond as follows:*

*In responding to an EIR request, we would normally require a plan or map to ensure that we are providing the information as relates to the correct site. However, we have also recently received an enquiry from Broxbourne Council's enforcement team, so we believe we have been able to identify the site.*

*The site file is currently stored in the archive, but the file was reviewed in April 2024, at the request of the Broxbourne Council. The summary from the time states: -*

*"Condition 5 of E/280-48*

*"The complete refilling of the excavation to the level of the surrounding ground, covering with a surface layer of soil not less than 12 inches deep capable of supporting plant life, and the initial cultivation of the site to the satisfaction of the Local Planning Authority."*

*The restoration of the site was to have been completed within 30 years, and as this was not achieved, an Enforcement Notice was issued which was subject to an appeal. The relevant appeal decisions are APP/5059/C/80/441, APP/5251/C/80/469 and APP/5251/A/80/01164. The appeal was dismissed in a decision dated 4<sup>th</sup> March 1981, with the Enforcement Notice amended to allow a further 12 month period for compliance (i.e. March 1982), along with other decisions relating to waste transfer.*

*The file shows that the Waste Disposal Licence was revoked in April 1982; this was prior to the formation of the Environment Agency and at a time when the county council also issued Waste Disposal Licence. There is no supporting information as to why the licence was revoked, but it is after the period for compliance with the Enforcement Notice in terms of restoration.*

*There is a file note of a telephone call alleging that the site was still in use in May 1982, but no further records after that date, other than a phone call from a neighbour in July 1990 seeking to confirm who the landowner was."*

13. Based on the above response, Mr. Croke undertook preparations for remedying the clear breach of the Enforcement Notice. This included the payment for professional advice and, indeed, the purchase of machinery to undertake the necessary works to the Site.

## The Council's Further Disclosure and Mr. Croke's Analysis of the Disclosed Material

14. Mr. Croke and Ms. Smith had understood from comments made by you during your visit to the Site that you have access to two files ("the withheld files"), which appeared to contain more information than that which was identified and disclosed by the Council's Information Team.
15. The material disclosed by your on 29<sup>th</sup> April clearly contains information that could, and should have been disclosed on 4<sup>th</sup> February 2025 with the initial material. It is also significantly less material than Mr. Croke and Ms. Smith had understood to have been forthcoming from your comments about "two files" of material. This is concerning and indicates a failure in the searches undertaken by the Council in respect of Mr. Croke's EIR request. Further - I understand that you indicated that you would release this additional information to both Mr. Croke and Ms. Smith following the conclusion of the Site visit, and upon your return to the office, meaning the material was expected far sooner than it was received. No explanation is provided for this further delay.
16. From your email of 29<sup>th</sup> April, it appears that the Council considers that the Site is in compliance with the Enforcement Notice, and that conclusion appears to be drawn from the withheld files. Having reviewed the material provided now, to date, it does not appear to Mr. Croke that the evidence relied upon by the Council, when compared to the physical evidence on site, supports the contention that restoration was completed and to the standard required by the 1949 planning permission or the Enforcement Notice.
17. Turning to the material disclosed in February 2025 – the Council's own site monitoring notes from 16<sup>th</sup> August 1993 describe the **estimated** soil cover as being **approx. 300mm**. This is **less than** the 12 inches required in the Enforcement Notice and does not appear to have been considered/addressed as such. Further, the notes acknowledge that metal is seen to be protruding from the ground in places, together with a need to reseed the area to improve the general amenity of the site. Those notes also appear to be focused on the use of the site, rather than monitoring/examining the restoration requirements in the Enforcement Notice. The 1996 notes provide no detail at all as to the level and detail of examination of the site and the claims that the site has been fully restored, when compared to the 1993 and current day evidence concerning compliance with the Enforcement Notice is clearly at odds with it. The 1996 site visit appears to have been cursory at best and again, focused on the use of the site rather than compliance with the Enforcement Notice's requirements on restoration.

18. In respect of the material disclosed on 29<sup>th</sup> April 2025 – the 2<sup>nd</sup> April 1986 and the 19<sup>th</sup> January 1987 letters demonstrate that restoration had not been completed at those times.
19. The undated “Follow up to Plant Site Report 1979” contains no reference to any detailed examination of the depth of the soil spread across the site as a whole. No evidence is adduced of any digging at any point (or multiple points) at the site to establish the level of coverage provided. Even so, the concluding paragraph indicates a need to import “suitable clean topsoils” in order to bring the site up to a satisfactory standard. It seems that had the site been restored correctly, there should not have been a need for the importation of topsoil.
20. It is also important to note that, despite being undated, this Report appears to pre-date the 1993 monitoring notes discussed above and which further support the contention that the Enforcement Notice was not complied with.
21. Given the evidence at the site currently that the depth of the soil is/was clearly less than 12 inches, Mr. Croke considers that had the Council undertaken a more detail examination of any claimed restoration in the past (rather than the cursory review that appears to have taken place) it would have identified non-compliance and sought that the restoration be carried out properly, and in accordance with the requirements imposed through the 1949 permission and the Enforcement Notice or it would/could have moved to more punitive measures against the site owner. That may have encouraged compliance, together with actions to bring the site up to a satisfactory standard.
22. The previous site owner was Mr. Croke’s father. Mr. Croke knew his father well and, indeed, well enough to know that he would have sought to bluff compliance to avoid the expense of spreading such a large area of soil. Indeed, the paper trail disclosed shows that it appears to have taken an exceedingly long time to get to a stage whereby the Council ceased to assert non-compliance. At that point in time, Mr. Croke considers that his father was successful in his bluff.

### **The Action the Council is Being Asked to Take**

23. Unusually, this is a situation where the landowner is asking the Council to confirm that the Enforcement Notice has not be complied with. He is doing so as he needs this confirmation to reassure Broxbourne Borough Council and CL:AIRE that the importation of clean soil is necessary in order to comply with the Enforcement Notice. You yourself have seen the site and been shown some of the areas where the surface levels of the existing soil is clearly far less than the required minimum of 12 inches. It

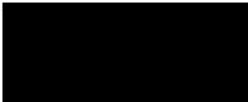
24. is understood that whilst at the Site you indicated that the Enforcement Notice had not been complied with.
25. As such, Mr. Croke is seeking that you, within the next 7 days, confirm that the Enforcement Notice is in breach and that the Council will allow him time to bring the Site into compliance. Mr. Croke is, of course, willing to share with you details of the proposed works to be carried out in line with the requirements of the proposed MMP and, indeed, permit further inspections of the Site during and after those works have been completed.
26. As the works proposed by the MMP are environmental in nature, Broxbourne's involvement with, and approval of, the MMP is also required and as such Mr. Croke would be grateful if you could confirm the breach, and requirement for compliance, with them. Broxbourne's approval of the MMP will then allow for the works to be signed off by CL:AIRE and the soil released to Mr. Croke.
27. The request for a response within 7 days is reasonable in the circumstances as with every passing day supplies of CL:AIRE approved clean soil are lost to other sites and Mr. Croke has incurred the costs of machinery, currently located at the Site to spread the soil.
28. Mr. Croke is open to discussing the proposed works with more detail with you, and is grateful for your indication that you are willing to do so – and it may be that a call between yourself and Ms. Smith could be arranged asap to facilitate this discussion.

## **Conclusion**

29. As set out earlier, this appears to be an unusual situation whereby a landowner is inviting a finding by the Council that a site is in breach of an enforcement notice. However, due to the actions by Broxbourne Borough Council in preventing the remediation of the Site by Mr. Croke, he feels he has little choice but to follow this course of action. It is hopefully clear to the Council that Mr. Croke is seeking to ensure compliance through the importation of soil in an accredited, environmentally friendly and sustainable way. Throughout his recent enforcement dealings with Broxbourne Borough Council, Mr. Croke has been made (unfairly in his view) to feel as if he has been a poor neighbour and an inconsiderate owner of the site. This is far from the truth and all Mr. Croke wishes to achieve now is for the Site to be fully brought into compliance. Lesser individuals would most likely simply import any material onto the site, or cover up the failure in compliance, but that is not Mr. Croke's nature.

30. I look forward to hearing from you within the next 7 days, with confirmation that the Site is in breach of the Enforcement Notice and Mr. Croke is required to ensure that at least 12 inches of soil is put in place across the site. Once he has that confirmation, he will be in a position to start moving forward with the restoration.

Yours sincerely

  
Simon Bell  
Counsel

CC: John Croke  
Kathryn Smith

(Both by email only)