

Appeal Decisions

Inquiry opened on 8 November 2016

Site visit made on 9 November 2016

by Martin Joyce DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 December 2016

Appeal A: APP/Y9507/C/16/3142877

Land North East of Flyover, Steyning Road, Shoreham-by-Sea, West Sussex

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr James Dawson against an enforcement notice (Notice A) issued by the South Downs National Park Authority.
- The enforcement notice, Ref: SDNP/15/00119/OPDEV, was issued on 18 December 2015.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from chalk grassland pasture to a mixed use of the land for chalk grassland pasture and the storage of scaffolding, including scaffolding poles, planks, ladders and fittings.
- The requirements of the notice are to cease the use of the land for the storage of scaffolding by removing from the land all items connected with the scaffolding use, including scaffolding poles, planks, ladders and fittings.
- The period for compliance with the requirements is 40 days.
- The appeal is proceeding on the grounds set out in Section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended. As the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under Section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice, as corrected, is upheld.

Appeal B: APP/Y9507/C/16/3142882

Land North East of Flyover, Steyning Road, Shoreham-by-Sea, West Sussex

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr James Dawson against an enforcement notice (Notice B) issued by the South Downs National Park Authority.
 - The enforcement notice, Ref: SDNP/15/00119/OPDEV, was issued on 18 December 2015.
 - The breach of planning control as alleged in the notice is the carrying out of operational works involving the importation of and deposit of chalk, hardcore, soils and waste materials to raise the levels of the land, including the formation of a boundary bund, track and hardstanding together with associated re-grading and contouring of the land.
 - The requirements of the notice are:
 1. Cease the further importation of soils and waste materials;
 2. To re-grade and restore the land to its previous levels and condition before the breach took place by undertaking all the following works:
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- a. Within all that area cross hatched on the plan attached to the notice as area A, adjacent to the open watercourse along the northern boundary of the land, and generally to a length of 80m, a width of 10m and a depth of up to 0.5m, remove from the land all the deposited soils and waste so that the previously undisturbed contours of the side slope to the watercourse along the northern boundary of the land are fully revealed to expose either the vegetated or topsoil layer or in its absence the undisturbed layer of subsoils to enable the regeneration of the former reed and other vegetation;
 - b. Remove from the site the soil and waste comprising the linear bund deposited along the western side of the land adjacent to the A283 Steyning Road, identified on the plan attached to the notice as area B, so that the former undisturbed ground levels of the land on this boundary are fully revealed to expose either the vegetated or topsoil layer, or in their absence the undisturbed layer of subsoils, so that there are no waste materials or imported soils within the crown spread of the trees or the hedgerow vegetation, plus one metre. All works within 100mm of the topsoil layer shall be undertaken with hand tools only to ensure that the machinery does not damage the tree roots. Where land immediately east of the western boundary fence and the crown spread of the trees or the hedgerow vegetation, plus one metre has been raised, shown as area C, it shall be graded out to a slope no steeper than 1 in 3 (measured from the toe of the slope) so that the gradients are suitable for agricultural grazing purposes;
 - c. With the exception of the pre-existing concrete apron situated adjacent to the land access and the small prefabricated site shed, to break out and remove all the hardcore, waste materials used to extend the hardstanding to the south and southeast of the land's entrance so that the former undisturbed ground levels of the land are fully revealed to expose either the vegetated or topsoil layer or absence (*sic*) the undisturbed layer of subsoils. All the hardcore, waste materials and soils shall be removed from the land. All that raised land between the southern edge of the newly formed hardstanding and the southwest corner of the site, shown hatched on the plan attached to the notice, shall be graded out to a slope no steeper than 1 in 3 (measured from the toe of the slope) so that the gradients are suitable for agricultural grazing purposes; and,
 - d. Cultivate all those parts of the land including areas A, B and C disturbed through the removal of soils, the deposit of waste, formation of hardstanding and associated activity so that there are no stones, bricks, blocks or concrete exceeding 75mm in any dimension at the surface. To grade the surface to a fine tilth so that the whole of these areas are finished to an even layer ready for seeding. During the spring or summer at a time appropriate for grass seeding reseed all the cultivated area with a grass mixture composed 20% native wild flower and 80% slow growing grass seed mix so that a grassed finish to the land is re-established.
- The periods for compliance with these requirements are, respectively, seven days for Step 1, 42 days for Steps 2a and 2b, 56 days for Step 2c and 140 days for Step 2d.
 - The appeal is proceeding on the grounds set out in Section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The deemed planning application also falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice, as corrected and varied, is upheld.

Procedural Matters

1. The Inquiry sat for two days on 8 and 9 November 2016. All evidence to the Inquiry was given on oath.

Matters Concerning the Notices

2. At the start of the Inquiry I raised a number of matters in respect of the wording of the notices, with a view to possible correction in the event of agreement that amendment could be made without causing injustice or prejudice.
3. Firstly, in respect of Notice A, I gave the opinion that the use of the term "chalk grassland pasture" was an imprecise definition of the lawful use of the appeal site, as it was more descriptive of the character and appearance of the land, rather than a correct definition in land use terms. The Authority accepted that the lawful use of the appeal site was for agriculture, albeit that there had been no such use for several years, suggesting that it had a "nil use" prior to the alleged material change of use.
4. The Authority's suggestion implies that any agricultural use of the appeal site had been abandoned, but I have no firm evidence which would suggest that this is the case. The only documents before me that give any indication of the previous use of the land are two appeal decisions produced by the Authority¹. The first of these, dated 8 August 2007, concerned an appeal against the refusal of planning permission for a proposed agricultural store in connection with the resumption of the former sheep grazing use of the land. From this there is clearly no intention of an abandonment of the lawful agricultural use. The second appeal decision, in March 2014, concerned an application for a Certificate of Lawful Use or Development in respect of a proposed bund. The reason for the development was to prevent encroachment onto the land by travellers. There is no indication in the decision of an existing use of the site, although the Inspector refers to it being predominantly unkempt grassland with areas of scrub. Again, however, I do not find that this is supportive of any abandonment of an agricultural use. Moreover, I noted, at the post-Inquiry site inspection that, although there is no current agricultural use on the land, there is an agricultural building, adjacent to the eastern boundary, which contains, amongst other things, bales of hay and some stalls used, in the past, to house livestock. Additionally, the appellant gave evidence as to his intention to resume an agricultural use, through the keeping of sheep on the land, in association with his father's farm, which is situated on land to the west.
5. In all these circumstances, and having regard to my duty to get the notice into order if I can², I conclude that the allegation in Notice A should be corrected so as to allege an unauthorised material change of use of the land from agricultural use to a mixed use of agriculture and use for the storage of scaffolding, including scaffolding poles, planks, ladders and fittings. I am satisfied that this can be done, using the powers available to me under Section 176(1)(a) of the Town and Country Planning Act 1990 (The Act), without causing injustice to either party.
6. On a second matter concerning Notice A, I drew attention to an inconsistency between the allegation and the requirements of that notice. The allegation refers to an alleged unauthorised storage use, whereas the requirements of the notice refer to a "scaffolding use". The latter is clearly erroneous as no

¹ CLG Refs: APP/Y3805/A/07/2043430, dated 8 August 2007, and APP/Y9507/X/13/2202668, dated 18 March 2014 (Appendices 6 and 7 to Mr Cantwell's proof of evidence).

² *Hammersmith London Borough Council v Secretary of State for the Environment and Sandral* [1975] 30 P and CR19.

scaffolding use is alleged, rather the storage of various scaffolding items. The Authority accepted that the notice required correction, and I can do so without causing any injustice to the appellant.

7. Turning to Notice B, there is a minor typing error in requirement 2c, as indicated above in the headings to these decisions, in that the word "in" has been omitted. Again no injustice arises from appropriate correction.
8. Secondly, on Notice B, I questioned the clarity of Requirement 2c, and its reference to the plan attached to the notice, as it did not seem to me that the plan showed either a "newly formed hardstanding", neither was there, as a matter of fact, a "southwest corner" to the site. Additionally, there are two areas of hatching in this section of the plan, so the reference to the area "shown hatched on the plan" is confusing and unclear. These points were accepted by the Authority and an amended plan was produced during the course of the Inquiry, together with a schedule of suggested revisions³ to the requirements which also took account of various concessions made. These included the need to take account of the fact that there was an extant planning permission for the construction of a hardstanding within the site, following a grant of planning permission in 1982 that had been implemented⁴. Other alterations followed from the appeals against Notice B on grounds (f) and (g).
9. Finally, on Notice B, I queried whether the alleged breach of planning control was correctly described in that the disposal of waste is normally classified as a use of land, having regard to the provisions of Section 55(3)(b) of The Act. I requested submissions on this matter and the Authority, in closing, drew my attention to relevant case law⁵ on this question, which showed that the intention of the developer was central. They submitted that if it was found that hardcore and other waste material had been imported, the development could be described as both operational development and the use of land for the disposal of waste. Moreover, if that was my conclusion then they also submitted that the notice could be corrected without causing injustice as the factual dispute between the parties purely related to the question of whether waste had, as matter of fact, been imported.
10. The appellant did not make submissions on this matter, but was questioned about the operations that had taken place on the land, and the extent to which hardcore or other waste had been imported. I deal with this in relation to the appeal on ground (b) against Notice B below, thus I shall also examine the question of the correctness or otherwise of the alleged breach of planning control in that section of my decision.
11. The appellant raised no objection to any of the suggested amendments or corrections to the notices, and I am satisfied that neither he nor the Authority would be prejudiced by appropriate correction using the powers available to me. Subject to my deliberations under grounds (f) and (g) of each appeal, I shall correct the notices accordingly.

³ Document 7.

⁴ Document 3.

⁵ *Northavon District Council v Secretary of State for the Environment* [1980] 40 P&CR 332, and *West Bowers Farm Products Limited v Essex County Council* [1985] JPL 857.

Background and the Appeal Site

12. The appeal site is an irregularly-shaped area of land, of about 4ha, lying to the east of the A283 Steyning Road. Its shape, which resembles a hook, is a consequence of the use of the central and southern part of the original field or fields for the construction, in the early 1970's, of the road interchange at the junction of the A27 and A283 roads. This included a large roundabout and a curved inclined section of carriageway, which rises to join the elevated A27, that now forms much of the southern boundary of the appeal site.
13. As mentioned above, the land was once used for agricultural grazing purposes, but such use has not taken place for some years, despite the intentions of the present and previous owners. There appears to have been an unauthorised use of the land by travellers, and the appellant produced photographs showing waste and rubbish that had been deposited on the land prior to his purchase of it, in October 2014.
14. The alleged unauthorised operational development that is the subject of Notice B is confined to the western part of the site, as shown on the plan attached to that notice. The plan was amended during the course of the Inquiry⁶. The amended plan shows five areas, including Area E, which the Authority now acknowledge is an area of lawful hardstanding, having regard to the 1982 planning permission. Area A adjoins the northern boundary of the site, whilst Area B shows the approximate position of a bund constructed along the western boundary, much of which has now been removed in compliance with the requirements of the notice. Area C concerns an area of land at the southern end of the western part of the site, and Area D relates to an area between Area C and the authorised hardstanding area. The Council's estimate that about 1 ha was the area covered by the operational development at which the notice is aimed was not challenged by the appellant.
15. Notice A also covers the entire site, which is appropriate as it is the planning unit, being in the same single ownership. At the date at which the notice was served, scaffolding was being stored in an area close to the site entrance from the A283, on part of the hardstanding area. Some of the scaffolding components have since been removed from the site, whilst that which remains is largely stored within the agricultural building on the eastern boundary. Machinery used in the operational development, including a large tracked excavator and a dumper truck, was stored close to this building at the time of my inspection.

APPEAL A ON GROUND (c)

16. The appeal on this ground is based upon the contention that planning permission is not required for the storage of scaffolding, and the associated items mentioned in the notice, because they are required for use in connection with the intended resumption of the agricultural use of the land. In this connection the appellant contends that he bought the scaffolding for use in fencing the site, and that without such fencing grazing use could not re-start.
17. The Authority, however, maintain that the site has not been in any active agricultural use since before 2007 and that, despite it being a lawful use, there is no evidence that such use has been resumed or that the materials brought

⁶ Document 7.

onto the land would be used in connection with that use. Therefore the storage of those scaffolding materials on the land is a material change of use that requires planning permission.

18. In an appeal on this ground, as with any other “legal” ground of appeal, the burden of proof lies with the appellant to show, on the balance of probabilities, that planning permission is not required for the material change of use that is alleged in the notice⁷. In this context it is pertinent to draw attention to the precise wording of Section 174(c) of the Act, which is “that those matters (if they have occurred) do not constitute a breach of planning control”. In this particular appeal the appellant’s case appears to be more akin to an appeal on ground (b) in that he is not denying that the land has been used for the storage of scaffolding, rather that such storage is associated with the lawful agricultural use of the land and that the scaffolding materials are required so that that use can resume. I take this to be, in essence, a claim that no material change of use has occurred. However, I shall deal with the appeal as it has been made, under ground (c).
19. There is no dispute that a significant quantity of scaffolding materials, including poles, planks and fittings, was brought onto the land in late August 2015, as shown in photographs taken by the Authority on 2 September 2015⁸. Planks and poles were stacked and stored in a structure formed by scaffolding poles and positioned close to the site entrance giving the appearance of such storage in a conventional builders’ yard. The appellant testified that he had bought the materials from a retired scaffolder for £1200, and that there had been more than he had expected, although some, including rotten planks, had subsequently been sold and the remainder put in the barn. He accepted, in cross-examination, that such materials were not normally used in connection with agriculture but he considered that they would provide a strong and secure boundary to the site.
20. The appellant also accepted that the site was not currently used for agricultural purposes, although its condition at the time of purchase made that impossible, because of its overgrown nature, and the quantity of waste dumped on the land. He also stated that he was not currently employed in agriculture, rather he works part-time driving a digger for a company that installs driveways. He put forward no business plan for the development of an agricultural unit, merely stating that he planned to graze sheep and keep chickens once he had made the site suitable, including through secure fencing. He would finance this venture through the sale of the machinery he had bought to clear the land. The purchase had been made using money left to him by a relative. He had no previous experience of running an agricultural holding although he had helped his father who farms land to the west of Steyning Road.
21. I saw, at my inspection, that a very short section of fencing, using the scaffolding poles and some planks, had been erected in a central part of the site, leading towards the curved boundary adjacent to the road interchange. The fencing does not seem to serve any particular purpose and may have been erected simply to test the suitability of the materials.
22. In all of the above circumstances, I have come to the conclusion that the purchase of the scaffolding materials and their storage on the appeal site is

⁷ *Nelson v Minister of Housing and Local Government* [1962] 1 WLR 404.

⁸ Appendix 2(a) to Mr Cantwell’s proof of evidence.

insufficiently related to any existing or proposed agricultural use of the land. Such materials are not conventionally used for fencing purposes, either for agriculture or for other uses, and it may have been the case that they were simply bought and stored as part of an opportunistic venture. In addition, no evidence was presented to show that the site is so insecure that such bulky materials are needed for fencing to keep livestock in, and I was not shown any particular gaps in the perimeter boundary treatment at my inspection. The storage use alleged in Notice A has occurred as a matter of fact and it is a use that requires planning permission which has not been granted. The appeal on ground (c) against Notice A therefore fails.

APPEAL A ON GROUND (f)

23. The appeal on ground (f) is based upon a contention that the requirements of the notice do not specify what the "scaffolding use" is, and also that it is excessive to require the removal of the scaffolding materials because they can be stored within the barn on the land, as incidental to the agricultural use of the site.
24. The first part of this contention has already been dealt with through the correction of the notice dealt with above, and the appellant agreed that appropriate amendment was acceptable and would not prejudice him. As for the other elements, amendment of the requirements to allow the continued storage of scaffolding materials on the site, whether inside the building or elsewhere, would be akin to a grant of planning permission for the use to persist without due consideration of an appeal under ground (a). Such an appeal was not made, and the fee for the deemed planning application was not paid, thus the planning merits of the storage use do not fall to be considered. In any event, storage of these materials within the barn would preclude or inhibit future use of that structure for its primary purpose of supporting agriculture on the land.
25. I have already considered the question of whether or not the storage use is incidental to any agricultural use of the land, in dealing with the appeal on ground (c), and concluded that it is not. In all of these circumstances the appeal on ground (f) fails.

APPEAL A ON GROUND (g)

26. The appellant claims, in his grounds of appeal, that the time period of 40 days is too short to enable arrangements to be made to clear the scaffolding materials from the site, but no further evidence was submitted to support this contention, including any estimates from contractors. It is clear that the materials were brought onto the land in a relatively short period at the end of August 2015, and a significant proportion have already been removed as the appellant told the Inquiry that he had sold some poles and planks, including some rotten timber, for £600. In all of these circumstances, there is no apparent reason why the remainder of the scaffolding materials could not be removed within the period given in the notice. The appeal on ground (g) therefore fails.

APPEAL B ON GROUND (b)

27. The appeal on this ground relates to three elements of the alleged unauthorised operational development. The appellant contends, firstly, that no

hardcore has been either imported onto the site or deposited on the land; secondly, that there has been no extension of hardstanding; and, thirdly, there has been no associated re-grading or contouring of the land.

28. On the first of these matters, the appellant contends that any hardcore present on the land was there when he purchased it, having been left, along with other waste, by the travellers when they vacated the site, albeit that it had been covered up by the scrub and brambles that covered much of the site. Additionally, during the course of the operations undertaken on the land, some original hardstanding areas were broken up. The Authority drew attention to the fact that there is no independent evidence of any hardcore, or demolition/construction waste on the site before the start of the appellant's ownership. Indeed, there is evidence to the contrary in the statement of a former Officer with the Authority⁹, on the occasion of a site visit by the Inspector who determined the 2014 appeal, and also in the inspection notes of another Officer, Mr Earl, of 6 March, 5 June and 2 October 2015¹⁰, together with contemporaneous photographs. Finally, the appellant, in cross-examination, admitted that he had riddled some of the 300 tonnes of soil that he accepted had been imported onto the land, suggesting that it was not clean soil but more general construction waste.
29. On the second matter, the Authority accept that the area of hardstanding permitted by the 1982 planning permission can remain, as discussed above, but the overall area of hardstanding has been both replaced and extended beyond that authorised area as shown in photographs and the site inspection notes, one of which, dated 5 June 2015, stated that the hardstanding had been "further consolidated", measuring 69m long by 29m back from the frontage and 25m on the eastern side¹¹. Therefore, insofar as the extended area goes beyond that approved in 1982, it remains a proper target for enforcement action.
30. On the third element of this ground of appeal, there is clear documentary and photographic evidence that grounds levels have been raised in Areas A, B and C, as shown on the plan attached to Notice B. This evidence is contained in various site inspection notes, the response, by the appellant, to a Planning Contravention Notice (PCN)¹², and various photographs produced by the Authority.
31. As with other legal grounds of appeal, the burden of proof lies with the appellant to show, on the balance of probabilities that the matters alleged in Notice B have not occurred as a matter of fact and I begin by noting that he has failed to provide any documentary evidence in support of his appeal on this, or any other, ground.
32. Turning, therefore to the evidence from the Authority that is before me, however, it does include one earlier document from the appellant - his response, of 2 May 2015, to the PCN issued by them, including attached photographs. In this document he accepts that 300 tonnes of soil was brought onto the land, and he has also said that 10 tonnes of chalk was imported. Moreover, he conceded, in cross-examination, that he may have raised the

⁹ Appendix 6 to Mr Cantwell's proof of evidence.

¹⁰ Appendix 9 to Mr Cantwell's proof of evidence.

¹¹ Appendix 9 to Mr Cantwell's proof of evidence.

¹² Appendix 11 to Mr Cantwell's proof of evidence.

level in Area A after rubbish had been dug out of that area. However, even if waste had been removed from the site, it is clear from a further PCN response of 12 May 2015, from the proprietor of Greenacre Recycling¹³, that more material was imported onto the land (190 cu m of soil) than was removed (92 cu m of mixed waste). It must follow from this that over 100 cu m of material has been retained on the site and, even if this were all clean soil, there would be a resultant raising of land levels.

33. Re-contouring and re-graded is also shown in several of the Authority's photographs, notably B6-B12, and B16-B22¹⁴ and in site inspection reports written by former Officers of the Authority. For example, that of 6 March 2015 refers to the re-profiling of the land with the removal of topsoils and the formation of a hardstanding constructed over crushed chalk and imported hardcore, as well as the importation of sub soils (mixed with other inert waste) to form a bund 5-6m in width and up to 2m in height underneath the trees on the Steyning Road frontage; that of 22 May 2015 confirms re-grading of land adjacent to the hardstanding that had been formed; and the formation of a steep slope in the southern corner, was noted on 5 June 2015. It is a matter of fact that much of the bund in Area B has now been removed, in partial compliance with the requirements of the notice, although I saw that further material needs to be removed to achieve full compliance. Moreover, some of that material is hardcore or rubble, also indicating that construction or demolition waste has been brought onto the site.
34. I have taken account of the claim that hardcore has resulted from the breaking up of part of the original hardstanding and that hardcore was hidden amongst the overgrown vegetation prior to the appellant's purchase of the land. However, there is nothing to support such claims and the photographs produced by the appellant, and attached to his PCN, show only the general waste left on the land, and not the inert construction waste that is readily apparent across disturbed parts of the site, as I saw at my inspection. Indeed much of the disturbed part of the site contains evidence of bricks, rubble and general construction or demolition waste visible on the surface of the land. It may be that some of this material has come from the breaking up of former hardstandings, but the appellant has not met the burden of proof necessary to show that this is what occurred on the balance of probabilities and his admission that he needed to riddle the imported soil material to remove rubble suggests that what was brought onto the land was waste and not clean soil that would be used to dress areas deficient in such material. In this context, the appellant admitted that he had not paid for the soil material brought onto the land, rather it had been supplied by Greenacres Recycling as an alternative to their taking it to their yard for recycling purposes. All of this confirms, in my mind, that the material brought onto the land was demolition or construction waste and that the notice requires correction to include reference, in the allegation, to the use of the land for waste disposal, as such material would not have been required for agricultural improvement purposes in respect of the quality of the land. This can be done in order to fulfil the duty to get the notice into order that I have referred to above.
35. Having concluded that hardcore, as a generic term for demolition/construction waste, has been imported onto the land, and that the land has been re-graded

¹³ Appendix 12 to Mr Cantwell's proof of evidence.

¹⁴ Appendix 2 to Mr Cantwell's proof of evidence.

and re-contoured, I turn to the question of whether the hardstanding area has been extended. The plans approved in 1982 show an area measuring approximately 34m from north to south and 11.6m in width, from west to east, within the north-western part of the site adjacent to the site entrance. This authorised area is shown as Area E on the amended plan, but it is clear that the hardstanding created by the appellant exceeds it, as shown in the site inspection notes of Mr Earl of 5 June 2015¹⁵. Some of this area may subsequently have been covered by soil material, as I observed at my inspection, but in the terms of this ground of appeal I am satisfied that this aspect of the alleged unauthorised development has occurred.

36. I conclude that the matters alleged in Notice B have occurred as a matter of fact thus the appeal on ground (b) fails. In consequence of my findings on this ground that waste material has been imported and disposed of on the land a further correction to the notice is required to include reference to the use of the land for that purpose, in addition to the operational development that has taken place.

APPEAL B ON GROUND (d)

37. The appeal on this ground concerns the claim that an area of hardstanding has existed on the site for more than four years. This is now accepted by the Authority, having regard to the plans approved in 1982, and they have produced an amended enforcement notice plan with the agreement of the appellant. I am satisfied that this shows the correct authorised area. The appeal on ground (d) succeeds to this extent and the notice will be corrected accordingly.

APPEAL B ON GROUND (a)

Planning Policy

38. The appeal site lies in open countryside within the South Downs National Park (SDNP), which was designated in 2010. Its purposes are defined under the National Parks and Access to the Countryside Act 1949 and the Environment Act 1995 and it enjoys the highest status of protection in relation to landscape and scenic beauty, as confirmed in paragraph 115 of the National Planning Policy Framework (The Framework).
39. The Development Plan for this area includes the saved policies of the Adur District Local Plan 1996 (ADLP) and the West Sussex Waste Local Plan 2014 (WSWLP). Policy AC1 of the ADLP seeks to protect the countryside of the Adur District for its own sake from development which does not need a countryside location and states that permission will not normally be granted in areas outside built-up areas unless it is for quiet recreation or related to the needs of agriculture, horticulture or forestry. It also requires development to be of a particularly high standard of design. This policy conforms generally to policies in The Framework, thus it can be given significant weight in the context of this appeal.
40. Various policies in the WSWLP are relied upon by the Authority. Policy W9 states, amongst other things, that proposals for the disposal of inert waste to land will not be permitted unless a number of matters can be demonstrated, including that the waste cannot practicably be reused, recycled or recovered;

¹⁵ Appendix 9 to Mr Cantwell's proof of evidence.

there would be no unacceptable impact on natural resources and other environmental constraints; and, it would accord with Policy W13 (Protected Landscapes). This Policy states that proposals for waste development within the SDNP and two Areas of Outstanding Natural Beauty will not be permitted other than in particular circumstances, none of which are applicable to this appeal. Other Policies are also pertinent to varying degrees. Policies W11, W12, W14, W16 and W17 require, amongst other things, that proposals for waste disposal have an acceptable impact on the character and landscape of the area, protect areas of biodiversity, do not have an unacceptable impact upon the quality of soil and water resources, and provide mitigation measures to ensure that there would not be an increased risk of flooding.

41. The South Downs Local Plan is in the process of preparation and contains various policies relating to the main issues identified below. These are Policies SD5 (Landscape Character), SD7 (Safeguarding Views), SD12 Biodiversity and Geodiversity), SD16 (Rivers and Watercourses), SD17 (Flood Risk Management) and SD37 (Trees, Woodland and Hedgerows). However, the SDLP is at a relatively early stage in the adoption process and the Authority accepts that only limited weight can be given to the emerging policies.

Main Issues

42. Having regard to the planning policy context outlined above, the main issues in this appeal are:
- (a) The effect of the development on the character and appearance of the surrounding area, including whether the development conserves or enhances the natural beauty and landscape character of this part of the SDNP;
 - (b) The effect of the development on the Authority's policy in respect of waste management and disposal;
 - (c) The effect of the development of the land on nature conservation interests in the surrounding area; and,
 - (d) The effect of the development on the surrounding area having regard to flood risk.

Reasoning

Character and Appearance

43. The site lies within an area of open countryside on the southern edge of the South Downs National Park. It is part of a network of flat open fields that border the River Adur and its tributaries, within its floodplain, but is closely related to the steeply rising landform of the South Downs to the north. The A27 and its associated road interchanges and junctions cuts through this area to form a distinctly unnatural and incongruous feature, but that raises the importance of maintaining the rural landscape beyond, much of which is in agricultural grazing use. The site is also significant in that it can be viewed from publically accessible vantage points within the Mill Hill Nature Reserve to the east and north east¹⁶.

¹⁶ Document 4.

44. The appeal development has resulted in unnatural alterations to the landform and the importation of waste material unsuited to agriculture, as the construction waste present on many surface areas would be harmful to grazing livestock. The removal of much of the bund, and the smoothing out of contours in the southern part of the site, has helped to lessen the visual impact of the operations that have taken place, and this has also been aided by the re-vegetation of parts of the site. Nevertheless, the continued stacking of waste around roots in the western boundary hedgerow threatens an important boundary feature and other areas of vegetation, including the reed beds to the north of the site, are imperilled by the tipping and groundworks that have taken place. Additionally three sections of hedgerow have been removed as well as vegetation along the banks of the stream to the north, and the natural chalk grassland is likely to have been adversely affected by the tipping of material of uncertain quality.
45. I recognise that the appellant has done some improvement work through the removal of fly-tipped waste from the site, but the subsequent waste disposal and operational development described in the notice, and shown in the Authority's photographs, is far more harmful. My conclusion on the first issue is that the appeal development has materially harmed both the character and the appearance of this part of the SDNP and thereby fails to enhance either the natural beauty or the landscape quality of the Park, contrary to relevant policies in the Development Plan and The Framework.

Waste Policies

46. The development that has taken place has involved the disposal of waste within an area that is not designated for such activity in the current Development Plan. Indeed it has taken place within a designated and protected landscape where such use is prohibited by Policy W13 other than in specific circumstances which do not apply in this location. No reason has been put forward for such importation and deposit of waste, as the appellant denies that this has taken place, rather he says that he has brought soil onto the land to help in agricultural restoration. However, the evidence before me is firmly to the contrary, as discussed above.
47. The consequences of the unauthorised and undocumented importation and deposit of waste are potentially serious. Uncertainty as to content and quantity means that the effects of such deposit on the quality of soils, water and ecological interests in the surrounding area cannot be fully assessed, and may not become immediately apparent. Lack of information, such as copies of consignment notes or even a contended Exemption Certificate, which the appellant claims was issued by the Environment Agency, leads to the inevitable conclusion on this issue that the continuation of the unauthorised use, and retention of imported materials on the land, materially harms the Council's adopted policies in respect of waste management.

Nature Conservation

48. The appeal site lies immediately to the south of, and adjacent to, a stream that is part of a Site of Local Nature Conservation Interest (SINC). This stream, in turn, flows into the River Adur, which is designated, in this area as the Adur Estuary Site of Special Scientific Interest (SSSI). The SINC is part of the semi-wetland environment at the valley base in this part of the SDNP, and the appeal site falls within the Impact Risk Zone of the SSSI, indicating that the

landscape, and elements within it, is particularly sensitive to certain types of development, thus requiring that Natural England be notified of proposals in order to determine environmental impacts to be avoided or mitigated.

49. In this case, there is clear evidence that tipping of material has taken place in Area A on the margins of the stream. The site visit report of 8 June 2015¹⁷, for example, states that the tracked excavator and a dump truck were parked on newly raised land that extended some 9m from the edge of the field into the watercourse covering areas of well-developed vegetation and reed beds. Filling-in towards the watercourse had also taken place between established hawthorn bushes.
50. As there is no documentation available to show precisely what material has been imported onto the site, and with photographic evidence, such as Photo B6¹⁸, indicating that, as well as soils, other waste including bricks, rubble, pipes and wire is present, there can be no certainty that the waste pushed into the stream at this point has not contaminated the watercourse, with consequent imperilment of the biodiversity of the nearby SSSI. My conclusion on this issue is that the development which has taken place is materially harmful to biodiversity in the surrounding area, contrary to relevant policies in the Development Plan and The Framework.

Flood Risk

51. The appeal site lies within Flood Zone 3, as identified on the Environment Agency National Flood Risk map, which is defined as a high probability or functional floodplain. Paragraph 99 of The Framework explains that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, and a sequential test is advocated in the preparation of Local Plans. In relation to the determination of planning applications, paragraph 103 of The Framework states that Local Planning Authority's should ensure that flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment (FRA), it can be demonstrated that two matters are satisfied. These are not applicable to the development before me. Moreover, footnote 20 makes it clear that all proposals for development within a Flood Zone 3 require a site-specific FRA.
52. In this case, the development, including the raising of land levels and works that have involved the pushing of material into a watercourse, or its margins, has taken place without any planning application or site-specific FRA that would allow the Authority to fully and properly assess the risks involved. Without any firm evidence to the contrary, I can only conclude on this issue that the importation of material and the raising of land levels within the appeal site has the potential to increase the risk of flooding in the surrounding area, contrary to relevant Development Plan policies and National Planning Policy in The Framework.
53. It follows from my conclusions on the main issues that the appeal on ground (a) fails and that planning permission for the continuation of the use and the retention of the operational development will not be granted.

¹⁷ Appendix 9 to Mr Cantwell's proof of evidence.

¹⁸ Appendix 2 to Mr Cantwell's proof of evidence.

APPEAL B ON GROUND (f)

54. The appeal on this ground is based upon the contention that certain elements of the requirements are excessive. These claims were set out in more detail in the grounds of appeal and are, in short, that soil and waste has already been removed from the site; that the use of hand tools close to trees, and the grading to a slope of 1 in 3, in Step 2b, is unnecessary and unduly onerous; that grading throughout the site is unnecessary; and, that the cultivation requirements are onerous and unnecessary to remediate the alleged breach of planning control. No further detail or evidence was presented by the appellant to support these grounds of appeal, although his oral testimony assisted to some extent in the explanation of his concerns, and discussion between him and the Authority in adjournments resulted in various amendments to the requirements being put forward, to which he expressed his agreement. These are shown in Document 7.
55. In considering this ground of appeal I am mindful of the terms of Section 173(3) of The Act which states that an enforcement notice shall specify the steps which the Local Planning Authority require to be taken, or the activities which they require to cease, in order to achieve, wholly or partly, the purposes set out in Section 173(4). These purposes include the discontinuation of the use of the land, the restoration of the land to its condition before the breach took place, or the remedying of any injury to amenity which has been caused by the breach. In this appeal it seems to me that the Authority is seeking all of these purposes in one form or another.
56. The amended requirements put forward by the Authority during the course of the Inquiry clarify that remedial works are only required in the specific areas A-D identified on the revised plan, with the aim of re-grading and restoring the land to its previous levels and condition before the breach took place. Given the conclusions I have reached on the main issues in respect of the uncertain effect of deposited waste and soils, and the increased levels consequent upon the importation of a significant quantity of material, I consider that this is entirely reasonable.
57. The further amendments agreed would, firstly, allow the re-use of chalk material in the blending of surface material to the south and south-east of the pre-existing hardstanding area now identified on the amended enforcement notice plan. This recognises that such material could be of value in the restoration of the site to a condition fit for agricultural grazing. The second amendment would permit the use of mechanical tools that would not damage tree roots to remove waste materials and imported soils within Area B provided that such works are undertaken in accordance with the relevant British Standard¹⁹. Both revisions are reasonable and would meet one of the claims made by the appellant in his grounds of appeal – that use of hand tools would be onerous.
58. A third amendment, to Step 2b, would clarify that the grading out of Area C should be even, in order that the resultant profile is suitable for agricultural grazing and mowing purposes. This is accepted by the appellant and I agree that it is an appropriate amendment.

¹⁹ British Standard 5837:2012 "Trees in Relation to Design, Demolition and Construction – Recommendations".

59. On a fourth revision, Step 2c would be altered to clarify that it is non-organic waste material that is to be removed from the area now identified as Area D on the revised plan. This is beneficial to the appellant as it means that soil material, suitable for restoration works, can now remain on the site, albeit that it will require careful handling. The need to grade the land to an even slope, fit also for agricultural mowing purposes is a further clarification that is additionally accepted by the appellant, and I agree with such revisions.
60. Finally, Step 2d has been revised to require final cultivation and grading requirements aimed at preparing the disturbed parts of the site for seeding in either the spring or autumn of 2017. The appellant agreed that such alterations were acceptable to him and I concur with this view.
61. Returning to the original grounds of this appeal, it seems to me that the appellant's claims have, in part, been agreed and met by the suggested amendments to the requirements of this notice. I am satisfied that the claim that waste and soils have already been removed is correct only to the extent that the bund in Area B has substantially been removed, although I saw waste and other material close to roots above original ground level at my inspection, and I have seen no evidence which suggests that the material in the bund was removed from the site, rather it seems more likely to have been utilised for other land raising within one of the other areas affected by this development. Removal of the remaining material that threatens the healthy future growth of this important boundary feature is essential, and the revised requirements make provision for this using appropriate machinery but also, if necessary, hand tools for sensitive works in accordance with the relevant British Standard. Removal of other extraneous waste material is also necessary as indicated above. As for the claims that grading is unnecessary and that the cultivation requirements are onerous, it seems to me that the appellant has now accepted the revised arrangements put forward.
62. In all of the above circumstances, the appeal on ground (f) succeeds to a limited extent and the notice will be varied accordingly.

APPEAL B ON GROUND (g)

63. The appeal on ground (g) is based upon two principal contentions – that the time periods set out in the notice are unreasonable because they would fall over the harshest winter months when the ground would be difficult to work on, and that it is likely to be difficult to arrange for a contractor to undertake the required work in such a short period of time. The Authority consider that the time periods are adequate and reasonable, subject to the minor extensions in respect of the time for when seeding of the land, following cultivation, takes place.
64. As with the appeal on ground (f), the appellant has failed to support his contentions with any factual information or documentation, relying instead on his oral testimony and responses to questioning during the Inquiry. In answer to my questions he stated that the material imported onto the land had been made available by Greenacres Recycling within a week, and that a similar period would be feasible in terms of their collection of material that needed to be moved from the site. The appellant, however, also stated that the work required needed to be done during drier periods of the year, which he defined as June-August, to prevent mud being transported from the site onto the adjoining highway.

65. The revised requirements of the notice would necessitate, in part, the removal of material that is threatening biodiversity and water interests, including the potential for flooding. To delay such work until the summer of 2017 would, in my view, further endanger those interests and there would be no certainty that those months would be notably drier than earlier parts of the year, especially in the absence of firm evidence one way or the other. Additionally, no representations have been made by the Highway Authority in respect of the possibility of the transmission of mud onto the adjoining road, and the appellant would, as with all users, be bound to make suitable arrangements to ensure that such material did not cause a hazard to road users. I am also mindful of the fact that the Authority has the power, under Section 173A(1)(b) of The Act, to extend any period for compliance with the terms of a notice. Adverse weather conditions may be a factor in consideration of the use of such powers.
66. In all these circumstances I conclude that the time periods set out in the notice are reasonable, subject to an extension of the period for compliance with Step 2d to allow seeding to take place no later than October 2017. The appeal on ground (g) succeeds to this limited extent, and the notice will be varied accordingly.

Other Matters

67. I have taken account of all other matters raised in the evidence presented to the Inquiry and in the written representations, including the Planning Policy Statement on intentional unauthorised development issued by the Secretary of State on 31 August 2015. The Authority submitted that the development that has taken place on the site should be found to be an intentional breach of planning control given that the appellant was warned during the course of operations to stop and seek planning permission. However, he failed to take any steps to do this, or even to check whether or not permission was needed. Given the site's location in a National Park where the highest level of protection is required against inappropriate development, the revised policy is a material consideration against a grant of planning permission.
68. I concur with the views of the Authority on this matter, and it adds to the overall objections to the developments that have taken place on the appeal site. Having regard to this, and the other matters raised by the appellant in support of his case, I find nothing to outweigh the conclusions I have reached in respect of the main grounds and issues of these appeals.

Conclusions

69. In respect of Appeal A, against Notice A, for the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.
70. With regard to Appeal B, against Notice B, for the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

FORMAL DECISIONS

Appeal A: APP/Y9507/C/16/3142877

71. The enforcement notice (Notice A) is corrected by:

- (a) The deletion, in Section 3, of the words "chalk grassland pasture" and the substitution therefor of the word "agriculture"; and,
- (b) The deletion, in Section 5, of the words "scaffolding use", and the substitution therefor of the words "storage use".

72. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/Y9507/C/16/3142882

73. The enforcement notice (Notice B) is:

- (a) corrected by the deletion of Section 3 in its entirety, and the substitution therefor of the following allegation:

"THE BREACH OF PLANNING CONTROL ALLEGED

The use of the land for the importation and deposit of waste materials, chalk, hardcore, and soils, and associated operational development to raise the levels of the Land, including the formation of a boundary bund, track and hardstanding together with re-grading and contouring of the Land";

- (b) corrected by the deletion of Step 1 of Section 5 and the substitution therefore of the following requirement:

"1. Cease the use of the land for the importation and deposit of waste material, chalk, hardcore and soils.";

- (c) varied and corrected by the deletion of Step 2 in its entirety and the substitution therefor of the following requirements:

"2. In the Areas identified by hatching or cross-hatching, and annotated as Areas A, B, C and D on the plan attached to this decision, re-grade and restore the Land to its previous levels and condition before the breach took place by undertaking all of the following works:

- a. Within all that area identified on the plan attached to this decision as Area A, adjacent to the open watercourse along the northern boundary of the land, and generally to a length of 80m, a width of 10m and a depth of up to 0.5m, remove from the land all the deposited soils, chalk material and waste (although chalk material may be used to blend with surface material to the south and south-east of the pre-existing hardstanding as part of the remedial work required at Step c. below), so that the previously undisturbed contours of the side slope to the watercourse along the northern boundary of the land are fully revealed to expose either the vegetated or topsoil layer or, in its absence, the undisturbed layer of subsoils to enable the regeneration of the former reed and other vegetation.

- b. Remove from the site the soil and waste comprising the linear bund deposited along the western side of the land adjacent to the A283 Steyning Road, identified on the plan attached to this decision as Area B, so that the former undisturbed ground levels of the land on this boundary are fully revealed to expose either the vegetated or topsoil layer or, in their absence, the undisturbed layer of subsoils, so that there are no waste materials or imported soils within the crown spread of the trees or the hedgerow vegetation and a zone of not less than one metre beyond this. All works within 100mm of the topsoil layer shall only be undertaken in accordance with British Standard 5837:2012 "Trees in Relation to Design, Demolition and Construction – Recommendations" to ensure that the machinery does not damage the tree roots. Where land immediately east of the western boundary fence and the crown spread of the trees or the hedgerow vegetation plus one metre has been raised, shown as Area C on the plan attached to this decision, it shall be graded out to an even slope no steeper than 1 in 3 (measured from the toe of the slope) so that the resulting profile is suitable for agricultural grazing and mowing purposes.
 - c. Remove from the area identified on the plan attached to this decision as Area D, all forms of non-organic waste material, metal, plastics, concrete, block-work and any other material not of natural origin and all stone, wood, loose roots and branches and other hard materials (other than chalk material) over 75mm in any direction so that the former undisturbed ground levels of Area D are fully revealed to expose either the vegetated or topsoil layer or, in their absence, the undisturbed layer of subsoils or former chalk bedrock. Area D shall be graded out to an even slope no steeper than 1 in 3 (measured from the toe of the slope) so that the gradients are suitable for agricultural grazing and mowing purposes and all of the aforementioned materials removed from Area D shall also be removed from the Land.
 - d. Following Steps a-c above, cultivate all those parts of the land disturbed, including Areas A, B, C and D, by the undertaking of weeding and de-compaction of the resulting surface and incorporation of the chalk material removed from Area A, as required by Step a. above of these remedial works. Grade the surface to a fine tilth ready for seeding. During the spring or summer of 2017, reseed Areas A, B, C and D with a grass mixture composed of 20% native wild flower and 80% slow growing grass seed mix so that a grassed finish to the land is re-established.
- (d) Varied by the deletion of part 2d of Section 6 in its entirety and the substitution therefor of the following period for compliance:
- "2d. 140 days after the enforcement notice taking effect, save that the reseeding with the required grass mixture shall be completed no later than 31 October 2017."; and,
- (e) corrected and varied by the substitution of the plan attached to this decision for that attached to the notice.

74. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

Martin Joyce

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr James Dawson Represented himself and gave evidence

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Clarke of Counsel, instructed by the South Downs
National Park Authority

He called:

Mr Stephen Cantwell Development Management Lead with the
MRTPI AIEMA Authority

Ms Alice Cooper BA Hons Landscape Consultant with terrafirma, Landscape
DipLA CMLI Architects

ADDITIONAL DOCUMENTS PRODUCED AT THE INQUIRY

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| Document 1 | Letter of notification of the Inquiry and list of those so notified. |
| Document 2 | Extracts from the South Downs National Park Partnership Management Plan "Shaping the future of your South Downs National Park 2014-2019", produced by the Authority. |
| Document 3 | Bundle of documents relating to Planning Permission Ref: SU/68/82/TP/FP, dated 13 July 1982, for the construction of access and hardstanding, formation of ditch and embankment and erection of fencing at the appeal site. |
| Document 4 | Bundle of plans, photographs and written summaries concerning representative viewpoints of the appeal site from the surrounding area, produced by Ms Cooper. |
| Document 5 | Schedule of draft conditions in the event of a grant of planning permission for Appeal B under ground (a), produced by the Authority. |
| Document 6 | Document entitled "Purpose of the Impact Risk Zones for SSSIs", and plan relating to the nearby SSSI, produced by the Authority. |
| Document 7 | Suggested revisions to the requirements of Notice B, and amended plan, produced by the Authority. |



Plan

This is the plan referred to in my decision dated: 7 December 2016

by Martin Joyce DipTP MRTPI

Land North East of Flyover, Steyning Road, Shoreham-by-Sea, West Sussex.:

Reference: APP/Y9507/C/16/3142882

Scale: Not to scale

