
Appeal Decision

Site visit made on 3 April 2017

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 27 April 2017

Appeal Ref : APP/U1430/C/16/3156685

Land at Little Acre (Clear View Farm), Brays Hill, Ashburnham, East Sussex TN33 9NZ.

- 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 Toby Peters against an enforcement notice issued by Rother District Council.
- The notice was issued on 6 July 2016.
- The breach of planning control as alleged in the notice is (i) without planning permission the change of use of the land from agricultural use to a mixed use comprising agricultural and use for the parking of vehicles not associated with the agricultural use of the land and (ii) without planning permission the construction of a hard-surfaced track and vehicle parking area.
- The requirements of the notice are (i) cease the use of the land for the parking of vehicles not associated with the agricultural use of the land; (ii) dig up and remove all materials used in the construction of the hard-surfaced track and parking area that are within the area shown edged red on the plan attached to the notice; (iii) remove all materials and waste arising as a consequence of complying with requirement (ii) from the land and (iv) prepare the area affected by requirement (ii) for seeding by smoothing out the ground levels to meet the natural ground levels and applying a suitable topsoil before seeding with a grass seed to match the adjoining field.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld

Preliminary Matters

1. The Appellant mistakenly refers to the local planning authority as Wealden District Council but there is no dispute that the site is within the boundaries of Rother District Council and I have determined the appeal accordingly.
2. Planning permission (Ref RR/2015/1963/P) exists for retention of agricultural barn and farm track. The plans attached to the permission show a track from the access gate on Brays Hill to the agricultural barn. I note that the permission includes an informative note stating that the permission does not grant planning permission for the section of track between the replacement barn and the curtilage of Little Acre. The land edged red on the plan attached to the notice the subject of this appeal runs from the barn towards Little Acre.

3. An enforcement notice shall specify the boundaries of the land to which the notice relates whether by reference to a plan or otherwise. The Appellant argues that the plan attached to the notice is inaccurate. He says that the dimensions are not correct and is shown intruding into the track which already has planning permission.
4. It seems clear to me that the notice attacks the track mentioned in the informative note of the planning permission. Whilst I agree that the plans are not entirely clear I consider the notice to be sufficiently precise to enable the Appellant to understand the alleged breach and what is required to remedy it. I therefore do not consider it necessary to consider the use of my powers of variation/correction.
5. The Appellant says that he has not used and does not wish to use the track for the parking of domestic vehicles. But there is no ground (b) appeal before me and I must determine the deemed application under ground (a) on the basis of the alleged breach.

Ground (a) appeal and deemed application

Main Issue

6. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the surrounding countryside having particular regard to the location of the site in an Area of Outstanding Natural Beauty.

Character and appearance

7. The appeal site is within the countryside and the High Weald Area of Outstanding Natural Beauty (the AONB). The surrounding area is rural in character with scattered residential properties in the locality.
8. The National Planning Policy Framework (the Framework) provides that great weight is to be given to conserving landscape and scenic beauty in an AONB. This protection is mirrored in the development plan (including the Rother Local Plan Core Strategy (the Core Strategy)). Policy OSS4 of the Core Strategy requires all development to respect and not detract from the character and appearance of the locality. Policy RA2 provides that the overarching strategy for the countryside is to strictly limit new development to that which supports local agricultural, economic or tourist needs and maintains or improves the rural character. Policy EN1 seeks protection and possible enhancement of landscape features, including landscape features of an AONB.
9. The Appellant says that the track has very limited visual impact and is less intrusive than other tracks in the area. But any harm caused by other development in the area is not a justification for harm by the unauthorised development on the appeal site. The prevalence of similar tracks is not so widespread as to be characteristic of the area. The track creates an alien domestic-like feature in the landscape that is out of keeping in a designated area of scenic beauty. Whilst I agree that the development is not widely visible from public vantage points it is nevertheless not compatible with its rural location. It detracts from the character and appearance of the area and does not maintain the rural characteristics of its setting.

10. I have taken into account the likely impact of the development on the use of the surrounding land. I have considered the likely impact on the agricultural use of the site, local employment and visitors. But there is limited detail before me. The Appellant describes increasing the productivity of the land and open days for visitors but without any quantification or detail. On balance I find that the likely impact of the development on the agricultural, economic and tourist needs of the area does not outweigh the identified harm.
11. The Appellant says that the extension of the approved track is required to provide safe access to the fields for the care of donkeys. He refers to access being needed for contractors and parking in the surrounding area not being sufficient. I note the representations from a neighbour supporting the development, including reference to highway safety. But I am not persuaded on the evidence before me that the approved track is insufficient to enable the Appellant to manage the land nor that there is a risk to highway safety.
12. The Appellant says that the track would also enable access to a farm office which he wishes to reinstate but the Council state that planning permission would be required for such an office building. Mention is also made of a future winter field animal shelter. These structures are speculative and not matters to which I can attach weight.
13. I conclude that the development causes harm to the character and appearance of the site and surrounding area and adversely affects the landscape and scenic beauty of the AONB. It does not accord with relevant policies in the development plan, including policy OSS4, RA2 and EN1 of the Core Strategy or the Framework. The identified harm is not outweighed by considerations of agricultural, economic or tourist needs.
14. I have considered whether conditions could overcome the identified harm. None are suggested and having taken into account the Planning Practice Guidance I consider that none would overcome the harm to the character and appearance of the area.
15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Other matters

16. Representations are before me concerning other matters including the Appellant's management of the land. These are not matters that are relevant to this appeal.

Formal Decision

17. 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.

S. Prail

Inspector