

Appeals Decision

Site visit made on 30 May 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 07 June 2017

Appeal Refs: APP/M2270/C/16/3156923 and 3156924

Horizon Nurseries, Goudhurst Road, Lamberhurst, Kent TN3 8AH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr William Thornton and Mrs C Thornton against an enforcement notice (EN) issued by Tunbridge Wells Borough Council (the LPA).
 - The enforcement notice was issued on 19 July 2016.
 - The breach of planning control, as alleged in the notice, is the material change of use of the land from a licensed dog-breeding establishment to the stationing of nine-caravans for residential use, including the construction of a hardsurface in connection with the use. The nine caravans are marked in their approximate positions by bold black boxes on the attached plan. The hardsurface is marked in its approximate location by bold hatched lines on the attached plan.
 - The requirements of the notice are as follows:
 1. Cease the use of the Land for residential purposes.
 2. Remove from the Land all the caravans marked in their approximate positions by bold black boxes on the attached plan.
 3. Remove from the Land all vehicles, items and paraphernalia associated with the unauthorised residential use of the Land .
 4. Remove from the Land the hardsurface marked in its approximate location by bold hatched lines on the attached plan.
 5. Reseed with grass the area the area marked in its approximate location by bold hatched lines on the attached plan.
 6. Remove from the Land all resultant materials, rubble and rubbish arising from compliance with all the requirements above.
 - The period for compliance with the requirements is as follows:
For requirements 1, 2 and 3 above; Three (3) calendar months.
For requirements 4, 5 and 6 above; Four (4) calendar months.
 - The appeal is proceeding on grounds (a) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed but the notice is varied. See formal decision below.

Background information

2. The appeals site (as indicated on the plan attached to the notice) is located within the High Weald Area of Outstanding Natural Beauty (HWAONB), outside of any development limits and, therefore, within the open countryside. It forms part of a larger site which lies to the south of the A21, close to the Lamberhurst/Goudhurst roundabout and it is accessed from this main road. It would appear that a secondary access into the larger site, which had fallen into disuse, is in the process of being re-opened and I noted the route during my site visit. The overall site has a detailed planning history, with various permissions being granted over the years for horticultural use; a stables use and the erection of a dwelling on the site. The current lawful use of the appeals site is for a licenced dog-breeding establishment.

3. At the time of my visit there were only 8 caravans on the appeals site, but the site of the ninth was still clearly visible. Other than the issue regarding the siting of the 9 caravans/mobile homes (on part the land authorised for dog-breeding), there is no dispute regarding the past and present uses of the larger site. However, other applications, including the storage of caravans and a proposal for the erection of a kennel block, have all been refused planning permission in the past on parts of the land. As referred to above a new access route has been approved to the overall site and I inspected this and the junction with the main road during my visit. However, for whatever reasons, these works have not yet been implemented. In any case I can only deal with the allegation as set out in the notice and can only consider the deemed application on the basis of the existing access on to the A21 and the red-line area which is clearly shown on the enforcement notice plan. I was able to inspect this access in detail and clearly had to use it to enter and exit the overall site.

4. There is no dispute that this site benefits from 3 Lawful Development Certificates (LDCs) for individual mobile homes on the eastern part of the site and that the area to the western part (including the appeals site) has a lawful use for dog-breeding. There is a hard-surfaced road which links the access from the A21 to the location of the 9 mobile homes. A small stable block on another part of the land is stated by the Council to have been removed. There is no need to repeat the detailed planning history and there is no dispute between the parties about the various uses and developments already permitted or refused in relation to the overall site.

5. The detailed planning history is set out in the LPA officer's report relating to an application (15/502843/FUL) for the use of a previously hardened storage area for the temporary siting of the mobile homes (9) for the duration of works on the A21 Tunbridge to Pembury dual-carriageway works.

6. In support of the Appellants' case, it is stressed that the above application was not for a permanent residential use of the 9 caravans/mobile homes, but for a temporary use by those employed on the necessary construction of the A21 Tunbury to Pembury dualling road scheme. It is on this basis that I have, therefore, dealt with the ground (a) appeal and the deemed application. Whilst acknowledging the submissions regarding the new access, I can only deal with the notice as issued and on the basis of the red-line around the appeal site.

7. Any outstanding matters relating to the alternative access (which could give access to the location of the unauthorised caravans) are between the appellants, their advisors, the LPA and anyone else with an interest in the land.

The appeals on ground (a)

8. The main issues are as follows:

1. The effect of the unauthorised mixed use on highway safety;
2. The principle of the development and sustainability;
3. The effect on the character and appearance of this part of the HWAONB.

9. The relevant development plan policies are policies 4, 5, 6 and 14 of the Tunbridge Wells Core Strategy (CS) and saved policies LBD1, EN1, EN25, H9 and TP4 of the Tunbridge Wells Borough Local Plan 2006 (TWBLP). The National Planning Policy Framework (NPPF) is a material consideration as is the LPA's Landscape Character Area Assessment, Second Edition 2011 (LCAA). I have also had regard to the relevant sections of Planning Practice Guidance (PPG).

Highway Safety

10. Having inspected and used the existing access on to the A21, I share the concerns of the LPA and Highways England (HE) about its physical dimensions and its

location. I agree that it is unacceptable and unsafe for its current and proposed use. This was formerly a field access and is now used for all of the authorised uses of the land. Its intensification of use, due to both the authorised uses and the siting of the appeal caravans is harmful in my view to highway safety along this part of the A21.

11. In terms of visibility it falls well short of the required standards and the geometry and vertical profile of the access is also inadequate. HE also considers it unlikely that this access could be improved sufficiently to meet the design requirements for connection to this part of the Strategic Road Network. I consider, therefore, that even a temporary use is contrary to policy TP4 of the TWBLP. It is not a safely located access; it is providing access on to a primary route outside of the Limits of Build Development (LBD) and it compromises the safe free flow of traffic and the safe use of the road by others.

12. There are no conditions that could overcome this harm. The suggestion that the access be closed and the alternative be used does not have been able to be completed at this stage. As the LPA states, there is no indication as to when all of the issues relating to the alternative access might be resolved. Whilst accepting that the application is for a temporary use, I agree with the LPA that the access as indicated in the notice, being the only one available at present, is unacceptable for highway reasons. The appeals, therefore, fail on this first issue.

The principle of development and sustainability

13. Within the countryside and the HWAONB, there is a principle against development outside of the LBD, unless there are overriding material considerations or need. Policy LBD1 of the TWBLP seeks to restrict new development in the countryside and development outside of the LBD is only permitted if it is in accordance with other relevant policies. These include policies EN25 (relating to impact on landscape character); H9 (relating to housing for key rural workers) and H4 (relating to land occupied by gypsies and travellers).

14. None of these policies is relevant in this instance since the occupiers of the caravans are workers employed by the main contractor for the road scheme. There is no provision for this type of residential accommodation with the development plan and thus the temporary use is contrary to the plan. However, I accept that the NPPF refers to special circumstances and essential needs for housing in the countryside. I also acknowledge that the road workers need to live close to the site and that this is a sustainable solution, as well as being a benefit to the economy.

15. Also, where the development plan is silent on any issue/policy, paragraph 14 of the NPPF can be triggered and the presumption in favour of development comes into play. Permission should then be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. I deal with the planning balance below but on this issue I acknowledge that such a temporary use could be acceptable in principle and that in terms of location the use can be considered to be sustainable.

Effect on the character and appearance of the HWAONB

16. Prior to the caravans being sited on the land, the LPA indicates that it had previously been covered by a hard surface and could be considered to be previously developed land (PDL). The LPA had noted a previous use being for the parking of vehicles and state that no trees or other important landscape features have been removed. It is reasonably well screened from the wider area. Overall, therefore, whilst it is recognised that the development has had an impact through the introduction of additional structures within the rural area, the wider impact is

considered by the LPA to be minimal. The LPA does not therefore consider that the development would be significantly harmful. I agree with their conclusion and the fact that the use is temporary and for a specific purpose would ensure that it would not set an unacceptable precedent in this part of the HWAONB.

Planning Balance

17. I have concluded that demonstrable harm would not be caused to the character and appearance of the HWAONB and that the proposal, subject to other matters, would be sustainable and acceptable in principle as a temporary use of this particular piece of land. There are clear benefits for the road project. However the significant harm caused by the highways situation far outweighs all of the positive benefits. I agree, therefore with the LPA that planning permission for the development (using the existing access) should not be granted. The appeals fail, therefore, on ground (a) and planning permission will not be granted for the change of use of the land.

The appeals on ground (f)

18. Under this ground of appeal, reference is made to the fact that consideration was not given to the alternative access (the bridleway) and to the fact that it was a temporary permission which was applied for in the first instance. However, I have already referred above to the fact that I can only consider the appeal on the basis of the notice as issued. There are no lesser steps put forward on behalf of the appellants for any of the requirements. I consider that all of the steps are necessary to overcome the breach of planning control: that is the unauthorised use of the land for the stationing of the 9 caravans and their use as residential accommodation.

19. However, I have noted that there are two compliance periods (3 months and 4 months). In the overall circumstances of the case and bearing in mind that the road construction works are stated to be completed '*by the summer*' I consider that it would be reasonable and logical to have just one period of four (4) months for all of the requirements. I shall vary the enforcement notice accordingly and I am satisfied that this course of action will not prejudice the Council.

Other matters

20. In reaching my conclusions I have taken into account all of the submissions made by the Council and on behalf of the appellants. These include the full planning history of the site; the details relating to the alternative access; the delegated report; the detailed grounds of appeal; the Chatham Valuation office letter (DVS) and all of the other supporting documentation.

21. However, none of these carries sufficient weight to alter my conclusions on the main issues and nor is any other factor of such significance so as to change my decision that the appeal should be dismissed and the notice upheld.

Formal Decision

22. I direct that the enforcement notice be varied by deleting in full the requirements as set out in section 6 of the enforcement notice (TIME FOR COMPLIANCE) and by substituting therefor the following:

'For all requirements Four (4) calendar months'.

23. Otherwise the appeals are dismissed and the enforcement notice is upheld as varied. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Anthony J Wharton

Inspector