
Appeal Decisions

Site visit made on 17 April 2018

by Nigel Burrows BA MRTPI

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

Decision date: 29 August 2018

Appeals A, B & C: APP/A2280/C/17/3180193, 3180194 & 3180195 Matts Hill Farm, Matts Hill Lane, Rainham, Gillingham, ME9 7UY

- 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 Mrs PA Cooper, Highway Care Ltd and Eiderbridge Limited against an enforcement notice issued by Medway Council.
- The enforcement notice, ref: ENF/16/0130, was issued on 29 June 2017.
- The breach of planning control as alleged in the notice is 'the change of use of former silage clamp to B8 storage and distribution and operational development consisting of the laying of hard surfacing and increasing the height of the existing earth bunds.'
- The requirements of the notice are:-
 - (i) Permanently cease the use of the former silage clamp (marked A on the attached plan) for open storage unrelated to agriculture.
 - (ii) Permanently remove from the land (marked as A on the attached plan) the hard surfaced area and restore the land to its condition prior to the laying of the hard surface area.
 - (iii) Alter the earth bunds (shown in approximate position hatched red on the attached plan) back to the original height as shown on attached drawings 04, 05 and 06.
 - (iv) Permanently remove the excess soil/spoil from the site after requirement 3 has been complied with.
- The period for compliance with the requirements is six calendar months.
- The appeals are proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the formal decision

Appeal D: APP/A2280/W/17/3177781 Matts Hill Farm, Matts Hill Lane, Rainham, Gillingham, ME9 7UY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Patricia Cooper (PA Cooper & Son) against the decision of Medway Council.
- The application Ref MC/16/3666, dated 31 August 2016, was refused by notice dated 21 December 2016.
- The development proposed is described as 'Change of use of old silage clamps to open storage B8 for temporary road barriers'.

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the formal decision

Procedural Matters

1. At the time of the site inspection a number of the documents originally lodged by the appellants appeared to be missing from the submissions. It was also unclear whether the Council had seen these documents. However, copies were subsequently forwarded to me. The Council has also confirmed that it had received the documents in question.

2. The Council and the appellants derive support for their cases from the National Planning Policy Framework published by the government in 2012 (the NPPF). However, this has been replaced by the revised NPPF published in July 2018. The parties have been given the opportunity to comment upon the implications of the revised NPPF for their respective cases. I have taken their comments into account.

Background

3. Matts Hill Farm is situated within the countryside of the Kent Downs Area of Outstanding Natural Beauty, to the south of the Medway Services on the M2 motorway.
4. The farm comprises a complex of buildings and land, albeit it now appears to be in a variety of non-agricultural uses. The planning history of Matts Hill Farm is well known to the main parties and does not need to be recited in any great detail here. Suffice to say that in 2010 the Council issued several enforcement notices in relation to the non-agricultural activities on the site. A number of planning applications were also lodged.
5. Several appeals against the enforcement notices (and refusals of planning permission) were determined in November 2011. Some of the appeals were allowed and permissions were granted for the use of certain units for workshop/storage purposes (Classes B1/B8). Some of the enforcement notices were upheld, albeit with corrections and/or variations.
6. Appeals D and J are of particular relevance. Appeal D related to Enforcement Notice K, which alleged the change of use of land to storage use unconnected with agriculture. The land in question is the larger of the two silage clamps subject of the current section 78 appeal. The appeal was dismissed and the notice was upheld, albeit with an extended period for compliance. Appeal J was made under section 78 and, in effect, concerned the same silage clamp - it involved 'the change of use from agricultural silage storage area and bunded open storage area to B8 bunded open storage area'. The appeal was dismissed.
7. The three enforcement appeals which are now before me (A, B & C) relate to an area on the southwest side of the silage clamp subject of Enforcement Notice K, together with the bunds which extend around the silage clamps and alongside the site access.
8. The current section 78 appeal (Appeal D) relates to a more extensive area. It encompasses the land and bunds subject of the three enforcement appeals, plus the area subject of Enforcement Notice K. The appeal also includes additional land intended for landscaping which extends along the site access and frontage of Matts Hill Farm to Matts Hill Lane.

The appeals on ground (b)

9. The issue under the ground (b) appeals is whether or not the breach of planning control alleged in the enforcement notice has occurred as a matter of fact.
10. According to the Council, the area marked 'A' on the plan attached to the enforcement notice was unmade land in 2011; a bund separated it from the adjacent land subject of Enforcement Notice K. The Council indicates that at some point between 2014 and 2016 the bund was removed and area 'A' had been hard surfaced; unauthorised storage had returned to the land covered by Enforcement Notice K and had also spread to area 'A'.
11. The submissions for the appellants do not appear to dispute the fact that area 'A' has been used for non-agricultural storage. The submissions focus mainly on the hardstanding and work to the bunds. It is alleged the area was previously a mix of hard core and tarmac; it was only cleared of weeds and dressed with road planings in early 2015. It is also alleged that works were only carried out to some of the bunds within the plan attached to the notice.
12. However, it is evident the development cited in the notice has taken place as a matter of fact, irrespective of any dispute between the parties about whether or not it is subject to planning control. I therefore conclude the appeal on ground (b) should not succeed.

The appeals on ground (c)

13. The onus is firmly on the appellants under ground (c) to make out the case that there has not been a breach of planning control. For example, the appellants need to demonstrate that development has not occurred for the purposes of section 55 of the Town and Country Planning Act 1990, or that the matters alleged in the notice have been granted planning permission, or that they constitute 'permitted' development.
14. As noted above, the appellants do not appear to dispute the fact that area 'A' has been used for non-agricultural storage. At the time of my visit this involved the storage of a variety of temporary road barriers (some coloured white and orange) together with some lorry trailers. In terms of fact and degree, this activity on the land has involved a change in the character of its use and is likely to have had significant planning consequences. It constitutes a material change of use of the land for the purposes of section 55 of the Act.
15. The appellants claim the majority of area 'A' has been covered by a hardstanding for over 17 years; however, this does not sit comfortably with the Council's photographs showing the appearance of the site in 2011 and 2016. According to the Council the area was unmade land. The fact the area had to be cleared of weeds also tends to reinforce the impression that it was not hard-surfaced to the extent claimed by the appellants. I find there is no firm or compelling evidence from the appellants to contradict the Council's version of events.
16. I observed the area was levelled and covered by what appeared to be road planings. There is no persuasive evidence to demonstrate the provision of this hard surface is the type of work that would generally be supervised by an engineer. As a matter of fact and degree, I conclude that it could more properly be described as 'other operations normally undertaken by a person carrying on a business as a builder' for the purposes of section 55(1A) of the Act. In any event, it constitutes development for the purposes of section 55. Planning permission has not been granted for the work and there is no evidence before me to demonstrate that it would fall within any category of permitted development.
17. Turning to the bunds, the submissions on the appellants' behalf state: "*The bund walls are lawful; the alleged breach in (iii) is merely maintenance. The majority of the soil placed on them merely comprised reinstating, degradation due to slippage or reduction in height due to compaction of original materials. The increased height for the most part is De Minimis.*"
18. It is not clear in what sense the bunds are considered to be 'lawful'. In any event, the Council indicates the soil used to raise the bunds came from within the site, namely from the bund that had separated the site from the land subject of Enforcement Notice K. According to the planning application drawings (Appeal D), some of the bunds appear to have been raised by 600mm to 900mm. I do not consider this work to be de minimis.
19. The Inspector who dealt with the 2011 appeals estimated the bund along the northwest boundary was not less than 1.5m high, albeit the other bunds were somewhat lower. At the time of my visit, I estimated the bund along the northwest boundary to be nearer 4m in height. The bund along the southwest boundary appeared to be similar in height and it was covered with scrub and old tyres. Some of the other bunds appeared to be lower and I estimated they were roughly 2.4m in height. As matter of fact and degree, I conclude that the work to increase the height of the bunds constitutes development for the purposes of section 55 of the Act. Planning permission has not been granted for the work and there is no evidence to demonstrate that it would fall within any category of permitted development.
20. Overall, I conclude that a material change of use has occurred and operational development has taken place on the land in breach of planning control, as alleged in the enforcement notice. I therefore conclude that the appeals lodged on ground (c) should not succeed.

The ground (a) appeals and the section 78 appeal

Main Issues

21. There are two main issues in these appeals. The first is whether the change of use of

the land and the associated operational development would be an appropriate form of development in this location, having regard to the relevant development plan policies for the area and other material considerations. The second is the effect of the development upon the character and appearance of the site and the visual qualities of the landscape within the Kent Downs Area of Outstanding Natural Beauty (AONB).

Planning Policy

22. The development plan for the area includes the Medway Local Plan (2003). The parties have cited various 'saved' policies. The following are most pertinent to the appeals. Policy BNE32 indicates that development within the Kent Downs AONB will only be permitted if it conserves the natural beauty, wildlife and cultural heritage of the area. Major development will only be permitted in exceptional circumstances and assessed against various criteria. The site is within the North Downs Special Landscape Area (SLA). Policy BNE33 indicates that development in the SLAs will only be permitted if it conserves and enhances the natural beauty of the landscape, or the economic or social benefits are so important they outweigh the priority to conserve the natural beauty of the landscape.

Issue 1: The appropriateness of the development

23. According to the appellants the development subject of Appeal D relates to a site of about 2.38 ha, albeit the open storage takes place on about 0.404 ha. The surrounding bunds, the access road and the extensive area of proposed landscaping account for the remainder of the appeal site. As previously noted, Appeals A, B and C concern a smaller site area.
24. There is a dispute between the parties about whether this is a 'major development' for the purposes of paragraph 116 of the NPPF. The relevant paragraph is now carried forward into paragraph 172 of the replacement NPPF. Footnote 55 states it is a matter for the decision maker as to whether a proposal is 'major development' for the purposes of paragraph 172, taking into account, its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated.
25. I concur with the appellants' view that this is not a 'major development'. The development mainly relates to open storage on about 0.4 ha of land and work to the adjacent bunds. The remainder of the land subject of Appeal D is intended to enhance the landscaping and biodiversity of the land at Matts Hill Farm. I recognise that the land occupies a sensitive setting within the AONB and SLA. However, the site is not visible in wider views (as acknowledged by the Kent Downs AONB Unit) and the proposal subject of Appeal D contains various measures to mitigate its local impact.
26. The proposal also appears to be comparatively low-key in nature. The appellants' Transportation Statement concludes that no material intensification of traffic is likely to occur on the local road network and, in any event, the network can accommodate the traffic flows and types of vehicles likely to be involved. The Council has not raised any objections to the development on highway grounds. Furthermore, the Council does not seek to argue the development would create any amenity or environmental pollution concerns. The appeal site is well related to the complex of buildings at Matts Hill Farm, a number of which now have the benefit of B1 and B8 uses. There is a similar bunded area about 160m away, which was granted permission for open storage by Swale BC.
27. The proposal subject of Appeal D also appears to offer scope to enhance the landscaping and biodiversity of the site to ensure the development does not have a significant adverse impact on the purposes for which the AONB and SLA were designated. All of these factors, individually and cumulatively, reinforce my view that the appeals do not involve 'major development' for the purposes of paragraph 172 of the revised NPPF.
28. I therefore consider it would be illogical and inconsistent to treat this as 'major development' for the purposes of Local Plan policy BNE32. Consequently, the test to be applied under this particular policy is whether the development subject of these appeals conserves the natural beauty, wildlife and cultural heritage of the Kent Downs AONB.

29. The Inspector who considered the 2011 appeals estimated the open storage was 4m or 5m in height - it exceeded the height of the bunds. In the absence of a condition to limit the height of the storage he considered that it was hard to disagree with the Council's claim that it would be an eyesore.¹ The Inspector concluded that in the absence of a detailed landscaping scheme to show the use could be successfully integrated into the landscape, it was unacceptable. However, with respect to Appeal D, the Inspector anticipated that the appellant might wish to make a further application to address the deficiencies which he had identified. With that in mind, he extended the period for compliance with the notice.²
30. All of this suggests to me that my colleague had not discounted the possibility that the planning objections to the open storage on the site could be overcome, particularly if a comprehensive landscaping scheme could be devised in order to demonstrate the visual impact of the open storage could be successfully mitigated. I take a similar view.
31. The area of the silage clamps was originally used for open agricultural storage with no restriction on height. In my experience, such facilities are often covered with a variety of materials, including polythene sheeting held down with old tyres. As such, they can be visually intrusive. In this instance, the opportunity exists to limit the height of the non-agricultural storage on the site and to enhance the site's landscaping and biodiversity.
32. The appellants' stance is the site is a scarce economic resource located close to Highway England's infrastructure network, which is served by this particular storage use. The Council's stance is that Highway Care Ltd operates from a site at Detling, which appears more suited to the use. However, there is persuasive evidence from the appellants to suggest that the Detling site is less suitable in terms of size and access for the type of storage involved at Matts Hill Farm. The appellants indicate they have also considered other sites for open storage but these have been discounted, mainly for operational or contractual reasons. Details of these alternative sites have been provided and the reasons for their rejection. As matters stand, it is not obvious to me that there might be other alternative sites which are suitable and available for this use.
33. Weighing all the relevant considerations in the planning balance, I conclude the open storage activities on this site would not be inappropriate in this location - provided that the adverse impact of the use upon the AONB and SLA could be successfully mitigated. I intend to address this matter in more detail in the second main issue.

Issue 2: Implications for the AONB and SLA

34. As noted earlier, the section 78 appeal (Appeal D) relates to a more extensive area which did not form part of the application dismissed on appeal during 2011. It includes the land and bunds subject of the current enforcement appeals, the area subject of Enforcement Notice K, and the additional land intended for landscaping which extends alongside the site access and the frontage of Matts Hill Farm to Matts Hill Lane.
35. The Council's stance is that planting should not be used to screen development that is otherwise unacceptable in this location. However, I have concluded the storage use would not be inappropriate here - provided that its visual impact can be successfully mitigated.
36. The application drawings show a range of proposed storage heights upon the bunded area. The lowest is 2.2m and the highest is 4.4m - which according to the submissions from Highway Care Ltd, equates to a stack of 5 barriers including timber bearers.
37. The proposal includes the clearing of undergrowth on the bunds and new planting on their faces. Bunds with no existing planting will be planted on their tops and field sides with internal faces cleaned annually. A notable element of the scheme is the provision of extensive woodland planting along the southwest and northwest sides of the bunds. Woodland planting is also to be provided over a significant triangular area near the junction of the access and Matts Hill Lane. The woodland planting would also extend

¹ Appeal J (APP/A2280/A/11/2154174): paragraph 52

² Appeal D (APP/A2280/C/10/2138468): paragraph 100

along the frontage of the lane for some distance to either side of the site access and would include 3m-4m high specimen trees. Furthermore, the intention is to create scrub up to 5m wide by providing edge planting adjacent to sections of the woodland.

38. The Council acknowledges this planting could screen the development, but is critical of the lack of information concerning the maintenance of such an extensive area of landscaping. It is suggested the maintenance proposals do not indicate 'a desire to provide long-term management to ensure the successful mitigation for the proposed use'. However, this shortcoming could be addressed by a suitable planning condition.
39. Overall, it is clear the appellants have endeavoured to address the deficiencies identified by the Inspector who considered the 2011 appeals. The scale of the proposed landscaping would not only help to assimilate the storage use into this sensitive location but would also help to screen the modern, utilitarian buildings at Matts Hill Farm. The landscaping would result in a long-term enhancement to the landscape and visual character of the AONB and SLA as well as benefitting the biodiversity of the area.
40. I recognise the increased height of the bunding would accentuate this artificial land form. The Inspector who dealt with the 2011 appeals did not consider this would be an appropriate way forward. Be that as it may, the very extensive landscaping now proposed should mitigate the visual impact of the bunding as well as the open storage.
41. On the evidence before me, I conclude the appellants have demonstrated that the adverse impact of the development on the AONB and SLA could be successfully mitigated. The ecological benefits arising from the landscaping proposals are further positive factors in favour of the development. On balance, I conclude the development would conserve and enhance the natural beauty of the landscape of the AONB and SLA and benefit wildlife and biodiversity. There is no firm evidence to show that it would harm the cultural heritage of the AONB. Overall, I find it would not be inconsistent with the objectives of Local Plan policies BNE32 and BNE33 or with the provisions of the NPPF.

Overall Conclusions

42. Given my findings on the main issues, I conclude the section 78 appeal should succeed. I conclude the ground (a) appeals should also succeed for similar reasons. Consequently, the enforcement notice will be quashed and permission will be granted on the deemed applications. It is therefore unnecessary for me to deal with the ground (f) and (g) appeals.
43. I have taken into account all the other matters raised in the representations, but I find they do not alter or outweigh the main considerations that have led to my decisions.
44. The parties have suggested a number of planning conditions in the event of the appeals being allowed. As the development has already been commenced, it would not be necessary to impose the standard condition concerning the implementation of the permissions. However, I agree that it is reasonable and necessary to ensure the works are carried out in accordance with the drawings accompanying the planning application (Appeal D) in order to ensure the satisfactory development of the site. Conditions requiring the carrying out of the landscaping, a landscape management plan, limitations on the height and nature of the storage are all necessary to safeguard the character and landscape of the AONB and SLA. A planning condition prohibiting any external lighting is also required for the same reason.

Formal Decisions

Appeals A, B & C: APP/A2280/C/17/3180193, 3180194 & 3180195

45. The appeals are allowed and the enforcement notice is quashed. Planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change of use of former silage clamp to B8 storage and distribution and operational development consisting of the laying of hard surfacing and increasing the height of the existing earth

bunds on Land at Matts Hill Farm, Matts Hill Lane, Rainham, Gillingham, ME9 7UY subject to the following conditions:

- 1) The use hereby permitted shall cease, the operational development shall be removed and all equipment and materials brought onto the land for the purposes of the development shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved landscape management plan specified in this condition, that plan shall thereafter be maintained and remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The landscaping works shown upon drawings No's 02 rev B, 07 rev B, 08 and 09 accompanying Appeal D shall be carried out in the first planting and seeding seasons following the grant of this permission and shall be completed in full within two years from the date of this permission; any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 3) The development hereby permitted shall be carried out in accordance with the following plans accompanying Appeal D, insofar as they relate to the area subject of the deemed applications for planning permission; drawing No's 01 rev A, 02 rev B, 03, 04, 05, 06, 07 rev B, 08, 09, and 10.
- 4) The site shall only be used for the storage of temporary road barriers and trailers for their transportation and for no other purpose (including any other purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 5) The storage use hereby permitted shall be laid out in accordance with the details shown on drawing No 10 accompanying Appeal D, insofar as it relates to the area subject of the deemed applications for planning permission, within 3 months from the date of this decision and shall remain laid out thereafter in accordance with these details. No materials, plant or equipment of any description shall be stored in the open, other than in the areas shown on drawing No 10.
- 6) The height of all items stored, deposited or otherwise stacked within the site shall not exceed that shown upon drawing No's 05 and 10 accompanying Appeal D, insofar as they relate to the area subject of the deemed applications for planning permission, unless the Local Planning Authority gives written consent to any variation.
- 7) No external lighting, whether freestanding, mobile or fixed to a structure shall be provided on the site.

Appeal D: APP/A2280/W/17/3177781

46. The appeal is allowed and planning permission is granted for development described as 'Change of use of old silage clamps to open storage B8 for temporary road barriers' on land at Matts Hill Farm, Matts Hill Lane, Rainham, Gillingham, ME9 7UY7HJ in

accordance with the terms of the application Ref MC/16/3666, dated 31 August 2016, and the plans submitted therewith, subject to the following conditions:

- 1) The use hereby permitted shall cease, the operational development shall be removed and all equipment and materials brought onto the land for the purposes of the development shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved landscape management plan specified in this condition, that plan shall thereafter be maintained and remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The landscaping works shown upon drawings No's 02 rev B, 07 rev B, 08 and 09 shall be carried out in the first planting and seeding seasons following the grant of this permission and shall be completed in full within two years from the date of this permission; any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 3) The development hereby permitted shall be carried out in accordance with drawing No's 01 rev A, 02 rev B, 03, 04, 05, 06, 07 rev B, 08, 09, and 10.
- 4) The site shall only be used for the storage of temporary road barriers and trailers for their transportation and for no other purpose (including any other purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 5) The storage use hereby permitted shall be laid out in accordance with the details shown upon drawing No 10 within 3 months from the date of this decision and shall remain laid out thereafter in accordance with these details. No materials, plant or equipment of any description shall be stored in the open, other than in the areas shown on drawing No 10.
- 6) The height of all items stored, deposited or otherwise stacked within the site shall not exceed that shown upon drawing No's 05 and 10, unless the Local Planning Authority gives written consent to any variation.
- 7) No external lighting, whether freestanding, mobile or fixed to a structure shall be provided on the site.

Nigel Burrows

INSPECTOR