
Appeal Decisions

Site visit made on 20 August 2019

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

an Inspector appointed by the Secretary of State

Decision date: 17 September 2019

Appeal A Ref : APP/A3825/C/18/3209340

**Land at Woodpecker Orchard, Coolham Road, West Chiltington,
Pulborough, West Sussex, RH20 2LH**

- Appeal A 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 & Mrs Dichello against an enforcement notice issued by Horsham District Council.
- The notice was issued on 28 June 2018 (Enforcement Notice 1) .
- The breach of planning control as alleged in the notice is without planning permission the laying of the hardstanding/track on the land shown hatched blue on the plan attached to the notice, the erection of a retail unit on the land and the erection of a store used by the retail unit on the land.
- The requirements of the notice are i) permanently remove the hardstanding area shown hatched blue on the plan attached to the notice from the land; ii) permanently remove the farm shop from the land; iii) permanently remove the store from the land; iv) remove from the land all materials and debris resulting from taking the steps set out in paras i), ii) and iii) above; v) restore the land to its former condition as agricultural land and re-seed as necessary.
- The period for compliance with the requirements is eight months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out in the Formal Decision.

Appeal B Ref : APP/A3825/C/18/3209341

**Land at Woodpecker Orchard, Coolham Road, West Chiltington,
Pulborough, West Sussex, RH20 2LH**

- Appeal B 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 & Mrs Dichello against an enforcement notice issued by Horsham District Council.
- The notice was issued on 28 June 2018 (Enforcement Notice 2) .
- The breach of planning control as alleged in the notice is without planning permission the change of use of the land from use for agricultural purposes to a mixed use for agriculture and for the stationing of a mobile home and associated residential paraphernalia for residential purposes, the stationing of storage containers, the stationing of a touring caravan and the storage of logs on the land unrelated to the agricultural use of the land.
- The requirements of the notice are i) permanently cease the use of the land for the stationing of a mobile home, ii) permanently cease the use of the land for residential purposes, iii) permanently remove from the land the mobile home, and all paraphernalia associated with the mobile home and its residential use, iv) permanently remove from the land the storage containers and all paraphernalia associated with the storage

containers, v) permanently cease the use of the land for the stationing of a touring caravan, vi) permanently remove the touring caravan and all paraphernalia associated with it from the land, vii) permanently cease the use of the land for the storage of logs unrelated to the agricultural use of the land.

- The period for compliance with the requirements is eight months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended.

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

Appeal A

Ground (b) appeal

1. This ground of appeal is that the development the subject of the notice has not occurred as a matter of fact. The onus of proof rests on the Appellants and the test of evidence is the balance of probabilities.
2. The notice concerns operational development in the form of a section of hardstanding, the erection of a retail unit and store used by the retail unit. The Appellants do not provide detailed grounds of appeal.
3. I saw the hardstanding, retail shop and store at my site visit. They exist as a matter of fact. This ground of appeal therefore does not succeed.

Ground (c) appeal

4. This ground of appeal is that there has not been a breach of planning control. A breach of planning control comprises development without the required planning permission. Development is defined in section 55 of the 1990 Act as amended to include the carrying out of building, engineering, mining or other operations in, on, over or under land.
5. The Appellants claim that the works do not amount to development but provide little reasoning. I shall address each element of the development in turn.
6. A hardstanding gravel track provides access to and across the site. The notice concerns part of the track, namely that section hatched blue on the plan attached to the notice. As a matter of fact and degree I find that the hardstanding constitutes an engineering operation for the purposes of section 55. There are no counter arguments before me.
7. The retail unit and store are of not insignificant size, are affixed to the ground and have the appearance of permanence. I find as a matter of fact and degree that they constitute building operations for the purposes of section 55. I saw at my site visit that the shop stocks a mix of home grown and home produced produce and products clearly from elsewhere (such as canned goods). There is no quantification of sale goods before me. It seems unlikely that the agricultural operations on the site alone provide enough to sell on site and that a high proportion of the goods sold are brought in from elsewhere for sale. In the absence of detailed evidence I cannot conclude with any certainty that the shop is used for purposes ancillary to the agricultural use of the site. There are no arguments before me that the retail unit and store have the benefit of permitted development rights and I have no reason to conclude otherwise.

8. For the reasons given above the hardstanding, retail unit and store comprise development requiring planning permission. This ground of appeal therefore does not succeed.

Ground (a) appeal and deemed application

Main Issue

9. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the surrounding area.
10. The appeal site is a plot of agricultural land in a rural location. It lies outside the defined built up area and is accessed off the B2139. The nearest settlement is Thakeham which is designated as a smaller village characterised by limited facilities with good accessibility to larger settlements.
11. The development plan (including the Horsham District Planning Framework (the HDPF)) mirrors the National Planning Policy Framework (the Framework) in seeking to prevent inappropriate development in the countryside. I shall also take into account the Thakeham Neighbourhood Plan as a material consideration.
12. Policy 26 of the HDPF provides that outside the built up areas the rural character and undeveloped nature of the countryside will be protected against inappropriate development. Any proposal must be essential to its countryside location and meet one of a set of four identified criteria. These criteria including supporting the needs of agriculture and enabling the sustainable development of rural areas. Policy 10 states that rural economic development will be encouraged where it maintains the quality and character of the area, contributes to sustainable farming enterprises and be contained wherever possible in suitably located buildings.
13. The hardstanding the subject of the notice is part of a larger track. The Council says that the remainder of the track is immune from enforcement action. I do not agree with the Council that such a small section of hardstanding in the context of the larger track creates an urban appearance. It is not formal in appearance and does not look domestic or out of place in its agricultural setting.
14. I do not find the hardstanding to cause undue harm to the character and appearance of the area and it is not contrary to the development plan or the Framework.
15. The retail unit is of timber construction and is next to an open fronted building used for storage of products sold in the retail unit. Whilst I recognise the employment it provides and the benefits to the local community and customers generally its design does not maintain the quality and character of the area. It has a cluttered, ramshackle retail appearance that is out of keeping in its rural location. There is insufficient justification before me to conclude that it contributes to a sustainable farming enterprise or agricultural need. It is located on a busy road outside the built up area. It therefore does not satisfy policy 10 or 26 of the HDPF and causes undue harm to the character and appearance of the area.

Conclusion

16. I have considered whether conditions could overcome the identified harm and have taken into account the Planning Practice Guidance. I conclude that no conditions would overcome the identified harm.
17. For the reasons given above I conclude that the appeal should succeed in part only and I will grant planning permission for one part of the matter the subject of the enforcement notice (namely the hardstanding) but otherwise I will uphold the notice and refuse to grant planning permission on the other parts. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I shall grant by virtue of s180 of the Act.

Appeal B

Ground (b) appeal

18. This ground of appeal is that the development the subject of the notice has not occurred as a matter of fact. The onus of proof rests on the Appellants and the test of evidence is the balance of probabilities.
19. The Appellants do not provide detailed grounds of appeal.
20. I saw the mobile home and associated residential paraphernalia, the storage containers and the storage of logs on the land at my site visit. The touring caravan was not present but the Appellants do not deny that it is stationed on the land from time to time. The development has therefore occurred as a matter of fact. This ground of appeal therefore does not succeed.

Ground (c) appeal

21. This ground of appeal is that there has not been a breach of planning control. A breach of planning control comprises development without the required planning permission. Development is defined in section 55 of the 1990 Act as amended to include the making of any material change in the use of buildings or other land.
22. The Appellants say that the storage of logs is ancillary to the agricultural use of the site and its associated farming operations. But there is no woodland area on the site and there is no evidence that the land is used for timber production. It is therefore likely that the logs are imported to the site from elsewhere and sold in the shop. In the absence of detailed evidence I cannot conclude with any certainty that the storage of logs is related to or ancillary to the lawful agricultural use of the site.
23. There is no argument before me that the mobile home, storage containers and touring caravan are not in breach of planning control and I see no reason to conclude otherwise.
24. This ground of appeal therefore does not succeed.

Ground (a) appeal and deemed application

Main Issue

25. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the surrounding area.
26. The mobile home, storage containers, touring caravan and storage of large amounts of logs are visually prominent. They bring a domestic and urban, cluttered appearance to an open agricultural setting.
27. The mobile home is occupied by one of the Appellants and he says that its presence is essential to ensure that the farm and its associated produce, livestock and equipment remains safe and secure. But there is no supporting evidence before me and I am not satisfied that the residential use is essential to its countryside location. I cannot conclude on the evidence before me that it supports the needs of agriculture and its location is not sustainable being some distance from the nearest settlement and via a busy road. The stationing of the mobile home for residential purposes does not accord with relevant policies in the development plan. The use of the site for limited sale of produce from the site is not sufficient justification to permit unsustainable development in the countryside and it causes harm to the character and appearance of this rural area.

Conclusion

28. For the reasons given I conclude that the change of use of the land to a mixed use for agriculture and the stationing of a mobile home for residential purposes and the stationing of storage containers and a touring caravan and the storage of logs unrelated to agricultural use causes undue harm to the rural character and appearance of the area and the residential use is unsuitable in an unsustainable location. The change of use is contrary to relevant policies in the development plan (including policy 26 of the HDPF) and the Framework and planning permission should not be granted.
29. I have balanced competing interests - the Appellants' private interests in land and rights to a home and the public interest in bringing the identified harm to an end without unnecessary delay. I consider that the notice strikes an appropriate balance and is proportionate so as not to violate individual rights.
30. I have considered whether conditions could overcome the identified harm and have taken into account the Planning Practice Guidance. I conclude that no conditions would overcome the identified harm. Planning permission is therefore refused on the deemed application.

Formal Decisions

Appeal A

31. The appeal is allowed insofar as it relates to the hardstanding the subject of the notice and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the hardstanding hatched blue on the plan attached to the notice. It is directed that the enforcement notice be varied by deletion of the first bullet point of paragraph 3.1 of the notice and paragraph 5.1.1. Subject to this the enforcement notice is upheld.

Appeal B

32. 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