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## Appeal Decision

Site visit made on 8 October 2019

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

**an Inspector appointed by the Secretary of State**

**Decision date: 25 October 2019**

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**Appeal Ref : APP/M2270/C/18/3213679**

**Land adjacent to 1 Lewes Heath Cottages, Lewes Heath, Horsmonden, Tonbridge, Kent, TN12 8AF**

- 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 Mrs Patricia Davenport against an enforcement notice issued by Tunbridge Wells Borough Council.
- The notice was issued on 7 September 2018.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised material change of use of the land from agriculture to use as a residential garden.
- The requirements of the notice are 1. Cease the use of the land as residential garden, 2. Permanently remove from the land the raised garden beds, wooden table with attached benches, basketball hoop on post, childrens' swing, small climbing frame and any other domestic paraphernalia associated with the unauthorised use.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

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

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### Ground (a) appeal and deemed application

#### Main Issue

1. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the surrounding area with particular regard to its location adjacent to an Area of Outstanding Natural Beauty.
2. The appeal site is located in an isolated rural area outside the Limits to Built Development and within the Landscape Character Area (Fruit Belt). The High Weald Area of Outstanding Natural Beauty (the AONB) is located to the south of the site. The land the subject of the appeal adjoins the residential curtilage of No.1 Lewes Heath Cottages, one of a pair of semi-detached cottages. The site backs onto orchards and open agricultural land. It is accessed by a private track that serves other dwellings in the locality. Mature trees marks the boundary adjacent to the road.
3. The development plan (including the Core Strategy and saved policies in the Tunbridge Wells Borough Local Plan) mirrors the National Planning Policy Framework (the Framework) in seeking to ensure that development respects

its setting. Policy CP14 of the Core Strategy concerns development in rural areas and provides that the countryside will be protected for its own sake and a policy of restraint will operate in order to maintain the landscape character and quality of the countryside. Policy CP4 of the Core Strategy states that rural landscapes, including the AONB, will be conserved and enhanced.

4. The land the subject of the notice is relatively large in size. It forms part of the open countryside. The unauthorised urban garden use with its domestic appearance intrudes into the open rural landscape and fails to conserve the character and appearance of the surrounding area including the AONB. Whilst I recognise that the garden area of the cottage is relatively small for a three bedroom family dwellinghouse and smaller than the garden area of its neighbour this does not justify the scale of incursion into the countryside.
5. The notice refers to various equipment such as childrens' swings and climbing frames and the neighbour who objects refers to a trampoline. At the time of my visit many of these items had been removed but I recognise that such items are likely to be introduced into a domestic garden with consequential visual impact that is harmful in this location. I do not consider that this could be adequately controlled by condition.
6. I have taken into account the needs of the family that occupies the dwellinghouse and the lack of outdoor amenity space for children. But the footprint of the extended residential curtilage is significant and without justification and the harm it causes is not outweighed by the personal circumstances of the occupiers.
7. The Appellant argues that the land is not suitable for agriculture and has not been used as such for more than 50 years. But I am not persuaded on the evidence before me that the land could not be restored to its lawful use. The site is not widely visible from the surrounding area but it is highly visible from the neighbouring property and the development plan seeks to protect the countryside for its own sake.
8. I conclude that the development by reason of its size causes undue harm to the character and appearance of the surrounding area and fails to conserve or enhance the rural landscape contrary to relevant development plan policies (including policies CP4 and CP14 of the Core Strategy) and the Framework.
9. In determining the deemed application I have the power to grant permission in respect of part of the appeal site. But in the absence of detailed submissions or an application for permission concerning a smaller parcel of land I am not in a position to grant permission in respect of part of the site.
10. I have considered whether conditions could overcome the identified harm. The parties suggest the removal of permitted development rights in Classes E and F of the Town and Country (General Permitted Development)(England) Order 2015 (as amended) in the event that the appeal is allowed. But I do not consider that this would overcome the harm to the character and appearance of the surrounding area caused by the size of the development.

11. For the reasons given above I conclude that the appeal under ground (a) should not succeed and planning permission should not be granted on the deemed application.

### **Ground (f) appeal**

12. This ground of appeal is that the steps required by the notice are excessive. There are two purposes that the steps required by an enforcement notice may seek to achieve – to remedy the breach of planning control and to remedy the injury to amenity caused by the breach. In this case the notice requires the cessation of use and therefore its purpose is to remedy the breach of planning control. No lesser steps would achieve that purpose.
13. The Appellant argues that as the Council's concerns relate to the size of the plot that the notice should only require cessation of use of part of the land. But there is no detail before me as to an appropriate parcel of land and as I have explained above I have not granted permission on the deemed application.

14. For the reasons given above the ground (f) appeal does not succeed.

### **Other matters**

15. The Appellant expresses concern about the absence of discussions with the Council. But this is not a ground of appeal and not a matter that I have taken into account.

### **Formal Decision**

16. 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**