



Appeal Decision

Site visit made on 17 February 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2020

Appeal Ref: APP/X1118/C/19/3237760

Land at Porte Farm, Kentisbury, Barnstaple, Devon EX31 4NL

- 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 Richard Barrow of A&B Contractors Ltd against an enforcement notice issued by North Devon District Council.
 - The enforcement notice was issued on 29 August 2019.
 - The breach of planning control as alleged in the notice is: Within the last 10 years unauthorised material change of use consisting of the storage of machinery and within the last 4 years unauthorised operational development consisting of the creation of hardstanding.
 - The requirements of the notice are: 1. Remove the hardstanding and stored machinery from the area hatched blue within the land outlined in red on the attached location plan and seed the area with grass. 2. Cease the use of the area hatched blue within the land outlined in red on the attached location plan for the storage of machinery. 3. Remove any debris or rubble from the land when undertaking steps 1-2 from the land outlined in red on the attached location plan.
 - The period for compliance with the requirements is 6 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. Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice upheld.

Procedural Matter

2. The appeal was lodged on ground (a) only. However, it is apparent from the appellant's statement of case that he considers the creation of the hardstanding to be immune from enforcement action. This amounts to a hidden ground (d) appeal. The appellant subsequently agreed for the hidden ground (d) appeal to proceed on the basis of the evidence he had submitted. The Council were then given an opportunity to directly respond to this. I do not consider that injustice to the parties arises from this course of action.

The ground (d) appeal

3. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.

4. In this regard the appellant highlights that it was stated in response to a Planning Contravention Notice (PCN) that the hardstanding had been substantially completed in March 2015. This response is dated 4 July 2019 and is before me. Given the date the enforcement notice was issued, this would render the hardstanding immune from enforcement action on the 4-year rule.
5. The Council highlights an aerial photo that was also originally provided in its statement, which it says was taken in 2017. There is no visual evidence of a hardstanding in this image. The image itself is however undated and so despite the Council's contention, the weight that can be afforded to it is reduced.
6. The question in the PCN regarding the hardstanding has been answered, by means of providing a date for substantial completion. No amplification or further information was provided. As there is conflicting evidence in the form of the aerial image, which I still afford moderate weight, I do not have sufficiently precise or unambiguous evidence before me, such as in the form of a statutory declaration, to substantiate when the works were undertaken and then substantially complete. Given the onus is firmly on the appellant, I am consequently not satisfied on the balance of probabilities that the hardstanding was substantially complete more than 4 years prior to the issue of the enforcement notice.
7. Consequently, the hidden ground (d) appeal must fail.

The ground (a) appeal

Main Issues

8. The main issues are:
 - i. whether or not there is a justified economic need arising from the use;
 - ii. the effect of the use and hardstanding on the character and appearance of the area; and
 - iii. the effect of the use on highway safety.

Reasons

9. The site is located in an open countryside location and comprises a farmstead containing a range of traditional and modern buildings that appear to have diversified with a number of businesses operating therein. The site also contains fields to the west.
10. The developments enforced against relate to an area of land amounting to approximately 0.8 hectares. Whilst the lower part of this site does not appear to have been actively used or set to hardstanding, nevertheless a hardstanding has been created across a large part of it which is then used for the storage of machinery.

Economic development

11. The appellants business, A&B Contractors, has been operating from the site since 1988. The site from which the business operates amounts to approximately 2.5 hectares. It provides services in the form of agricultural contracting, construction and ground works with a fleet of lorries used for haulage. The company employs 53 full time staff. It is stated that more than

93 agricultural services are provided with a fleet of over 40 tractors as well as other machinery.

12. The appellant has been critical of the Council for contending that the area of land enforced against is not required for the business. However, the existing site is of a substantial size incorporating various buildings and large areas of hardstanding. At the time of my site visit, these large areas of hardstanding did not appear to be used to their full capacity. Whilst I appreciate that my site visit only represents a snapshot in time, my findings are consistent with the Council's evidence in the form of both photographs and aerial imagery.
13. This appeal therefore provided the appellant with the opportunity to evidence why a further 0.8 hectares of land was required to support the business and meet local economic and social needs. However, whilst the appellant has provided some detail as to the impact on his business in the event the appeal is dismissed, based on the comparatively limited evidence before me I am not persuaded that the business would be unable to supply a whole business contracting approach to its customers. Consequently, given the substantial area of land already available to the business, I am not satisfied on the evidence before me that the loss of the land enforced against would lead to a tangible downscaling of the business and with it the loss of multiple jobs.
14. Moreover, given its open countryside location the site is not adjacent or well related to any development boundary or settlement that has been brought to my attention. I am therefore not satisfied that the use amounts to sustainable growth. Given the size of the site enforced against, I do not accept that the use represents a small-scale economic development, even though it does have a strong functional link to local agriculture.
15. I conclude that there is not a justified economic need arising from the use and it therefore contravenes Policies ST07, DM12 and DM14 of the North Devon and Torridge Local Plan 2011-2031, adopted October 2018 (the LP). These policies, amongst other things, restrict development in the countryside to that which is enabled to meet local economic and social needs, is adjacent or well related to the development boundary/settlement and is small-scale. For the same reasons it fails to comply with the competitive economy objectives of the National Planning Policy Framework (the Framework).

Character and appearance

16. The site is not within a formally designated landscape but is within an expansive valley of attractive open countryside, mainly consisting of large fields. Given its scale and with it the amount of hardstanding and quantum of machinery that could be stored, I do not accept the use or hardstanding is unobtrusive. Whilst it may represent a continuation of hardstanding from the east of the site, it introduces formal development into what was, and is, better related to the fields to the immediate north and west. I also do not accept, given the openness of the surrounding area and topography of the site, that it is well screened by existing landscaping, although short-range public views are more limited.
17. Accordingly, I am not persuaded that the use and hardstanding protects or enhances local landscape character or that planning conditions could lead to measures that would adequately screen the developments.

18. I conclude that the effect of the use and hardstanding is harmful to the character and appearance of the area and therefore contravenes Policies ST14 and DM08A of the LP. These policies, amongst other things, require development to protect and enhance local landscape character and be of an appropriate scale.

Highway safety

19. The site is accessed via a Class A road with a 60mph speed limit. I could see from my site visit that whilst there is a comparatively wide existing access point, there is restricted visibility in both directions owing to the curvature of the road. Furthermore, there is no right-turn lane into the site which in my view renders the access potentially dangerous. I have little highways evidence or assessment before me from the appellant concerning average vehicle speeds on this stretch of the A39 or to provide accident records that may indicate a substandard access remains appropriate. I have therefore not been persuaded that there would not be an unacceptable impact on highway safety.
20. It is however contended that the storage of machinery on the area of land enforced against does not contribute to any additional vehicle movements. However, I cannot reconcile this when the appellant has also asserted that dismissing the appeal would result in the business having to be scaled back.
21. I conclude that the use is harmful to highway safety and therefore contravenes Policy DM05 of the LP, which requires, amongst other things, safe and well-designed vehicular access and egress. For the same reasons it fails to comply with the highway objectives of the Framework.

Conclusion

22. 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.

Formal Decision

23. 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.

Paul T Hocking

INSPECTOR