



Appeal Decision

Site visit made on 17 January 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 27 March 2020

Appeal Ref: APP/Y9507/C/19/3227436

Land north west of Upton Farm House, Chilgrove Road, West Dean, Chichester, West Sussex PO18 9JA

- 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 Peter Renwick against an enforcement notice issued by South Downs National Park Authority.
 - The enforcement notice was issued on 29 March 2019.
 - The breach of planning control as alleged in the notice is : The engineering of an inert material bund with imported materials around three sides of a field North West of Upton Farm House and adjacent to road B2141.
 - The requirements of the notice are to:
 1. Remove the entirety of the inert material bund and dispose of the material at a registered waste disposal site, providing waste transfer notes to the South Downs National Park Authority.
 - The period for compliance is Three (3) months from the day this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

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

Preliminary Matters

2. At the time the enforcement notice was issued the South Downs National Park Local Plan (LP) had yet to be adopted and the policies cited were still in draft form. However, in July 2019 the South Downs National Park Authority (SDNPA) formally adopted the Plan. I have not been made aware of the relevant policies' wording having changed in any significant way. This Plan replaces the policies of the Chichester District Local Plan First Review (1999) which are also referred to in the enforcement notice.
3. The appellant makes reference to a planning application covering the appeal site, currently with the SDNPA, the local planning authority. This application (ref SDNP/19/05716) proposes the change of use of the land from agriculture to a camp-site. I understand that no decision has yet been reached on the application.

Background

4. In December 2018 the SDNPA contacted the now appellant as a result of an enforcement investigation following a complaint received that "a substantial

amount of soil and hardcore” had been brought onto the site to form an earth bund around the perimeter of a field. The appellant responded in writing on 3 January 2019 indicating that the material was being stored on the land under an Environment Agency U1 waste exemption, as waste for construction, and is to be used to repair farm tracks.

5. A U1 waste exemption requires for a quality protocol with a list of provisos, should not exceed what is reasonably required, and also does not mean that the waste storage is necessarily exempt from a requirement for planning permission. In this particular circumstance the SDNPA considered that as the bund created constituted engineering works requiring the benefit of planning permission, and as the appellant had indicated his understanding that the material could be stored in this manner for up to a period of 12 months, it was expedient to issue an enforcement notice in an attempt to regularise the planning position.

The Appeal on Ground (a) and the deemed planning application (DPA)

Main Issue

6. The main issue in this appeal is the development’s effect on the character and appearance of the area, with particular regard to the site’s location within the South Downs National Park.

Reasons

7. The appellant says that the bund is formed of predominantly soil and spoil from a farm holding but despite a written request from the SDNPA, in January 2019, as to details which would confirm the extent of the repairs needed to the farm tracks, and an indication of the amount of material imported, types of repairs and a timescale for completion, I am not aware that such information was ever provided. Certainly, I have not had sight of this.
8. The bund is a lengthy U-shaped feature, bounding the field and with its main stretch running parallel to the roadside. Its height fluctuates between 1.6m and 2m along this section which covers a significant expanse. The appellant mentions that it was built up over a period of some 9 months.
9. At my site visit I noted that, due to the fact the bund had been in situ for over 12 months, it was now largely covered in vegetation and the appellant makes this point. The appellant also indicates that the bund is, in the main, positioned behind trees which run along the boundary with the road beyond. However, whilst the appellant might argue that, with the passage of time, the bund has integrated into its setting the SDNPA points out that no form of landscape appraisal has been submitted and, further, the proposed retention of the bund does not address the nature of its constituent materials, for which the appellant has submitted no evidence. Photographs provided by the SDNPA show a significant amount of hardcore deposited, and I consider the term “earth bund”, as used by the appellant, something of a misnomer.
10. National Parks are independent bodies funded by central government, with the primary purpose being to conserve and enhance the natural beauty, wildlife and cultural heritage. Further, paragraph 172 of the National Planning Policy Framework (the Framework) says that great weight should be given to conserving and enhancing landscape beauty in National Parks, which have the highest status of protection.

11. The SDNPA raises concerns that, as the materials have not been verified, a risk of contaminants is possible. Other concerns highlighted by the authority are that it has not been demonstrated that the “waste” cannot practicably be reused, recycled or recovered, nor has it been demonstrated that there have been no adverse impacts on the immediate area’s biodiversity. Given the paucity of information on these matters, and with regard to the requirements of LP policy SD2 and policies W13 and W14 of the West Sussex Waste Local Plan (WLP) I share these concerns.
12. In this appeal I find that the determinant factor is the distinct lack of information from the appellant as to the reason for the bund’s existence, notwithstanding reasonable requests from the SDNPA for clarification. There is an absence of any clear and corroborative detail as to the nature and quantity of the material brought onto the site, the actual farm track repairs for which it is claimed that the materials would be used, the extent of these and also an indication of the timescales involved. No scheme of works has been put forward in this regard. However, in now seeking the retention of the bund, the appellant’s intentions would appear to have changed, especially as it is now claimed that the bund is an appropriate boundary treatment designed to support tourist accommodation in the form of a seasonal campsite.
13. Whilst the visual impact of the development may have been tempered somewhat due to its vegetative covering the bund is not a naturally formed feature and its height and extent cannot be considered as insignificant in the contextual setting. Moreover, it is not sufficient for the appellant to make the rather sweeping statement that “the earth bund does not cause harm to the visual quality and special character of the National Park, but does function to support the second purpose of the National Park to promote opportunities”. This assertion is not substantiated by the limited evidence provided, and it is certainly not understood how the development might help the public understand and enjoy the special qualities of the National Park. If the statement is with reference to the proposed camp-site then it is somewhat tenuous, especially as no planning permission has been granted. Moreover, only the bund itself is at issue in the current appeal.
14. In the absence of compelling information to the contrary, I conclude that the development is harmful to the character and appearance of the area, and is in material conflict with the aims and requirements of LP policies SD2, SD4 and SD39, WLP policies W9, W11, W12, W13, W14 and W16, and also relevant advice in paragraphs 170 and 172 of the Framework.
15. Accordingly, for the reasons given, and having had regard to all matters raised, the appeal on Ground (a) fails and planning permission, by way of the DPA, is refused.

The Appeal on Ground (f)

16. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear from the requirements of the notice that its primary purpose is to remedy the breach by restoring the land to its condition prior to the breach taking place.

17. Under ground (a) I have found that planning permission should not be granted for the development in situ, but I also note that there is no obvious and articulated scheme for me to consider as an alternative. Instead, the ground (f) appeal in this case relates to the appellant's claim as to nature and provenance of the bund's constituent materials. In his view, if the materials were removed from the site, there would be no necessity for its disposal at a registered waste disposal site. Instead, he considers that it could be redistributed across agricultural land. However, as already discussed, without the necessary evidence providing certainty as to the type of materials deposited at the site, a proper assessment is not possible in this regard, and the appellant's argument falls down.
18. Accordingly, the appeal on ground (f) does not succeed.

The Appeal on Ground (g)

19. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. In this instance the appellant considers the specified three month period is insufficient and, as the bund apparently took some nine months to fully establish, a similar period would be appropriate for its removal.
20. I see no reason why, under normal conditions, contractual arrangements could not be put in place, and a three month period not be considered adequate to comply with the notice's requirements. Although the bund might have taken longer to be built up I consider it unlikely that this involved a continuous exercise of works. Nonetheless, in view of the current national situation due to the Coronavirus outbreak and the consequent uncertainty as to when normal business might resume, I consider it would be best for the period of compliance to remain as stated, rather than me speculate as to when it might be practicably possible for the remedial works to be undertaken.
21. Instead, given the circumstances, the SDNPA may use its powers under s173A(1)(b) of the 1990 Act to extend the period for compliance as it sees fit, depending on how matters develop. Accordingly, on the basis that the two main parties might enter into a dialogue to this end due to the current situation, the appeal on ground (g) fails.

Timothy C King

INSPECTOR