



Appeal Decisions

Site visit made on 18 May 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 June 2020

Appeal A: APP/B3030/C/20/3245032

Appeal B: APP/B3030/C/20/3245037

Land on the South East side of Fosse Road, Farndon, to the rear (north) of Hardy's Business Park, Hawton Lane, Newark, Nottinghamshire.

- 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 Mr Philip Ian Hardy (Appeal A) and Frank Hardy & Sons (Farndon) Ltd (Appeal B) against an enforcement notice issued by Newark & Sherwood District Council.
- The enforcement notice was issued on 17 December 2019.
- The breach of planning control as alleged in the notice is:
Without planning permission;
 - A) The material change of use of the land from agriculture to a mixed use consisting of agriculture and B8 open-air storage, including-but not limited to-the siting of storage containers (and their content), building materials/waste products, and the parking of vehicles not associated with the permitted agricultural use of the Land.
 - B) The creation of earth bunds surrounding the north-eastern and north-western perimeter of the land.
 - C) The laying of a hard surface (including a terram base, limestone and ballast) to facilitate the unauthorised use.
- The requirements of the notice are:
 - A) Cease using the land for B8 storage, and only use the land for the permitted agricultural use.
 - B) Remove from the Land all items not required for or associated with the permitted agricultural use of the Land. For the avoidance of doubt, this includes, but is not limited to: vehicles, items and equipment indicated in Figures A, B and C;
 - (1) Commercial vehicles (cars, vans, recovery trucks, HGV trucks and trailers).
 - (2) Scrap and waste materials such as; skips, barrels, pallets, building materials, building waste.
 - (3) All storage containers and their contents.
 - C) Remove the earth bunds from the Land along the north-eastern and north-western boundaries of the land, as shown in Figures E and F.
 - D) Remove all hard-surfacing from the Land, and return the ground surface to its original agricultural condition as indicated in Figure G, with the ground level being consistent with the agricultural land to the north-east and north-west.
- The period for compliance with the requirements are:
 - A. 6 months after this notice takes effect.
 - B. 6 months after this notice takes effect.
 - C. 6 months after this notice takes effect.
 - D. 6 months after this notice takes effect.
- Appeal A 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 an 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 as amended.

- Appeal B is proceeding on the grounds set out in section 174 (2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application deemed to have been made under section 177(5) of the Act as amended, has lapsed.
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Decisions

1. It is directed that:

- The enforcement notice be varied in paragraph 5A by the deletion the wording “, and only use the land for the permitted agricultural use”.
- The enforcement notice be corrected in paragraph 5D by deleting the repeated words “to the”.

2. Subject to the variation and correction above, the appeals are dismissed and the enforcement notice is upheld. In Appeal A planning permission is refused on the application deemed to have been made under Section 177 (5) of the 1990 Act as amended.

The Enforcement Notice

3. Paragraph 5A of the notice requires the appellants to cease using the land for B8 storage, and only use the land for the permitted agricultural use. However, the requirements can only go so far as remedying the breach of planning control. The requirement to only use the land for the permitted agricultural use is therefore excessive. I shall vary the terms of the notice by deleting the wording “, and only use the land for the permitted agricultural use”. I am satisfied that this variation would not cause any injustice to the appellants or the local planning authority as it does not alter the purpose of the notice and it is no more onerous than the requirements of the original notice.
4. In the interests of clarity, I shall correct the notice by deleting the words “to the” which have been repeated in paragraph 5D. This is a typographical error and there would therefore be no injustice to any of the parties.

Appeal on ground (a), deemed planning permission (Appeal A only)

Main Issues

5. The main issues in this appeal are:

- Whether the development is acceptable in principle in this location having regard to local and national planning policies; and
- The effect on the character and appearance of the area.

Reasons

Acceptable in principle

6. The appeal site lies adjacent to the northern boundary of Hardy’ Business Park, Corner House Farm (BP) and takes its access from Hawton Lane. Immediately to the east of the appeal site is an area of open land which is flanked to the north and east by bunds and contains a number of uses including storage, the siting of shipping containers, the parking of lorries and trailers and items of plant and machinery. A Lawful Development Certificate (LDC) covering these

uses was issued in 2018 for this adjoining land and there is no physical boundary between it and the appeal site.

7. Bunds have also been created to flank the north-eastern and north-western boundaries of the appeal site. The site has a hard surface of crushed stone, and at the time of my visit was in use for outside storage including the siting of storage containers used for self-storage, parking of commercial and agricultural vehicles, and building materials/waste and some plant.
8. Spatial Policy 1 of Newark & Sherwood District Council Amended Core Strategy, (adopted March 2019) (CS) identifies the settlements which will help to deliver sustainable development in the District. Spatial Policy 2 of the CS sets out which areas are to be the focus of growth and the intended spatial distribution of it. The appeal site is not within an area specifically identified for growth and therefore development in this location falls to be considered against the sustainability criteria set out in Spatial Policy 3 of the CS.
9. Spatial Policy 3 sets out the Council's overarching policy for development in rural areas. It provides support for the rural economy by encouraging tourism, rural diversification and by supporting appropriate agricultural and forestry development. Five criteria are identified for the consideration of development in rural areas which include, location, scale, need, impact and character.
10. In terms of location new development should be in villages. It should not generate excessive car-borne traffic from out of the area or have an undue impact on local infrastructure. New development should be appropriate to the proposed location and small scale in nature. Development which supports local agriculture, farm diversification or employment and tourism which are sustainable and meet the requirements of the relevant Core Policies will be supported. The development should not have a detrimental impact on the character of the location or its landscape.
11. Spatial Policy 3 states that development not in villages or settlements, in the open countryside, will be strictly controlled and restricted to uses which require a rural setting. The supporting text to Spatial Policy 3 advises that its locational criteria supports development of sites in sustainable accessible villages and which in decision making terms means locations within the existing built extent of the villages, which include farm yards. It would not normally include undeveloped land, fields, paddocks or open space which form the edge of built form.
12. The village of Farndon is situated on the north-western side of Fosse Road and has developed on the land between this ancient Roman Road and the River Trent. The appeal site lies on the south-eastern side of Fosse Road in an area which is more generally characterised by open fields and countryside. Fosse Road provides a strong physical edge to the built form of Farndon and, albeit the appeal site is within walking distance of public transport routes and a number of the village's facilities and services, it is both physically and visually separated from the built form of the village. I concur with the Council's view that the appeal site does not lie within the village.
13. Furthermore, the appeal site does not form part of the existing envelope of buildings within the farm's yard area, and prior to the unauthorised development taking place it was pasture land. From the evidence available to me, including the site's planning history and my own observations on my site

visit, Hardy's BP, farm shop and the garden centre at Corner House Farm appear to have been predominantly developed within the original 'farm yard' and former agricultural buildings. Albeit many of the businesses operating at the BP are not related to agriculture or uses that require a rural setting, they generally appear to re-use or have involved the redevelopment of the former farmyard/farm buildings. In contrast, the appeal site and the area to its east covered by the LDC extend beyond the former farm yard/BP, which is clearly delineated by a row of mature conifer trees along its northern boundary. The hard surfaced area, earth bunds and open storage which are the subject of this appeal are an erosion of open countryside and conflict with the location criteria set out in Spatial Policy 3.

14. Core Policy 6 of the CS and Policy DM8 of Newark & Sherwood Allocations & Development Management Development Plan Document (DPD) support rural diversification where it can be shown to contribute to the local economy. Such development should be complementary to the existing business in their nature and scale and be accommodated in existing buildings wherever possible. In addition, Policy DM8 makes provision for small scale employment development in the countryside where it can demonstrate the need for a particular rural location and a contribution to providing or sustaining rural employment to meet local needs in accordance with the aims of Core Policy 6. Although Policy DM8 pre-dates the current National Planning Policy Framework, 2019 (the Framework) and the CS, its aims with regard to rural diversification and employment uses are consistent with those set out in paragraphs 83 and 84 of the Framework which aim to support a prosperous rural economy. I therefore give this policy moderate weight.
15. As set out above rural diversification has taken place at Corner House Farm with the BP, farm shop and garden centre having been developed to support the agricultural business. Whilst it is clear from my own observations that not all of the businesses on the BP may be considered as complementary to agriculture or require a rural location, overall the BP is contained within the envelope of built form at Corner House Farm and has predominately developed from the re-use of existing buildings. It is also likely that this development provides some local employment opportunities as well as services/facilities for the local community. I have not been provided with any substantive evidence that the B8 open-air storage use the subject of the enforcement notice is complementary to the agricultural enterprise. Although the appellant asserts that the containers provide additional storage space for some of the occupiers of the BP, it is clear from the Planning Contravention Notice and indeed the advertising hoardings which are displayed at the junction of Hawton Lane and Fosse Road that the shipping containers are utilised to operate a self-storage business and are not solely for use of occupiers of the business park.
16. I recognise that the appellant regards the development as an expansion to the existing storage area which has been established to the east of the appeal site. However, although that development is now lawful, it seems to me that such development in this location is not a precedent that should be repeated. The storage facilities that have been developed do not lie within a village, nor do they involve the re-use of existing buildings and are not confined to an existing farm yard or the envelope of existing buildings on the wider site. Furthermore, self-storage is not a use which requires a rural location and would almost certainly generate journeys by a motor vehicle as opposed to being able to be serviced by other more sustainable methods of transport. Moreover, I have

not been provided with any evidence that would suggest that this use generates local employment opportunities and is essential to the viability of the existing farm holding or BP.

17. I conclude that the development is not acceptable in principle in this location having regard to local and national planning policies. It conflicts with the development plan and in particular with Strategy Policy 3 and Core Policy 6 of the CS as well as Policy DM8 of the DPD, the aims of which are set out above.

Character and appearance

18. The appeal site lies within an area identified as the Trent Washlands Policy Zone within Newark & Sherwood Landscape Character Assessment (CA). It is a landscape which is characterised by flat arable land with suburban influences of housing on the edge of Newark and Farndon. The CA considers the landscape condition to be poor with a low sensitivity. The Policy Action for this area in the CA is aimed at restoring arable land to permanent pasture.
19. The predominantly flat landscape provides a clear vista of the surrounding open countryside and the appeal site is clearly visible when travelling south along Fosse Road. The existing BP, garden centre and farm shop form a cluster of built development close to the junction of Hawton Lane and Fosse Road. The BP is well screened from Fosse Road by the farm shop and garden centre to the west and an established row of conifers to the north. The landscape to the north of the BP where the appeal site is situated is predominantly open punctuated only by low fencing delineating field boundaries.
20. Despite the dark green colour of the shipping containers, their physical presence and bulk form, together with other stored material/vehicles, erode the open landscape and have an urbanising impact on the countryside. Whilst the earth bunds have been created to screen the stored items, these manmade features do not sit comfortably within an otherwise flat landscape. The form of the bunds has an incongruous appearance in this location which draws the eye to the appeal site, particularly when viewed from Fosse Road. Consequently, this part of the development contributes to the visual harm of the unauthorised use, rather than its intended purpose of mitigation. The presence of the earth bunds which surround the LDC area also cause harm to the visual qualities of the landscape and do not therefore set a precedent that should be repeated.
21. Furthermore, the laying of a hard surface conflicts with the aims of the CA which seek to restore and reinforce the landscape character of this area.
22. I conclude that the development has a harmful impact on the character and appearance of the area. It conflicts with the development plan and in particular with Core Policies 9 and 13 of the CS which seek to ensure, amongst other things, that development complements the existing landscape character and contributes towards meeting the Landscape Conservation and Enhancement Aims for the area. I also find conflict with Policy DM5 of the DPD which, amongst other criteria, seeks to ensure that new development protects local distinctiveness and character.

Other Matters

23. I have had regard to the Council's view that the location of the site within Flood Zones 2 and 3 and the nature of the development that has taken place, means the appellants should have undertaken a Sequential Test. However, taking into

account the Flood Risk Assessment, dated January 2020 submitted with the appeal documents and subsequent Environment Agency's comments appended to the Council's Statement of Case, I am satisfied that had the development been acceptable in all other respects, the scale and nature of the development is such that concerns relating to flood risk could have been adequately dealt with by the imposition of conditions. However, given my findings on the main issues set out above, this is not a matter that I need to consider further.

Conclusion

24. For the reasons given above and taking into account all other matters raised, I conclude that Appeal A on ground (a) must fail.

Appeal on ground (f) (Appeal A and Appeal B)

25. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
26. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. The purpose of the notice in this case is to remedy the breach of planning control.
27. It can be seen from my decision on ground (a) that I found both the earth bunds and the hard surfacing to have a harmful effect on the character and appearance of the area. Although the unauthorised earth bunds do provide some screening of the neighbouring yard area, their retention would not remedy the injury to amenity caused by the breach and only the complete removal of the stored goods, together with the removal of the earth bunds and hard surface would remedy the breach of planning control.
28. I have had regard to the appellant's view that the hard surfacing would be permitted development for use as a yard in connection with the agricultural use of the farm unit. However, I have not been provided with any substantive evidence that demonstrates to me that the retention of the hard-surfaced area would be lawful development and only its complete removal would remedy the breach of planning control. There are no lesser steps that would achieve the statutory purpose behind the notice and Appeal A and Appeal B on ground (f) must fail.

Appeal on ground (g) (Appeal A and B)

29. The issue is whether the compliance period of six months is reasonable. The appellants consider that a more reasonable compliance period would be a minimum of 49 weeks to allow them to pursue alternative options. In addition, they advise that there are rental agreements of up to a year in place with individual renters of the self-storage containers.
30. However, I have not been provided with any substantive evidence to demonstrate that the existing rental agreements would prevent compliance. Indeed, the appellant's statement of case advises that the seven storage containers on the appeal site are rented on a rolling short-term basis to various third parties. Given that there have been enforcement proceedings relating to this development dating back to September 2018, the appellant should have

been aware that it would not be prudent to enter into long term rental agreements.

31. I have taken into consideration the appellants' desire to enter into pre-application discussions and secure an alternative planning permission. However, I agree with the Council that it is not appropriate to extend the period for compliance to enable alternatives to be considered. From the information I have before me I see no evidence to suggest that the appellant has advanced any alternatives. In my view six months is sufficient time for the unauthorised use to cease and works undertaken to remove the earth bunds, stored items and hard surfacing from the land. I conclude that Appeal A and Appeal B on ground (g) must fail.

Overall Conclusion

32. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the deemed application.

Elizabeth Pleasant

INSPECTOR