
Appeal Decision

Site visit made on 1 December 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 27 January 2021

Appeal Ref: APP/Y9507/C/20/3251190

Land east of Pony Farm, Findon, West Sussex BN14 0RS

- 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 Leach against an enforcement notice issued by South Downs National Park Authority.
 - The enforcement notice was issued on 17 March 2020.
 - The breach of planning control as alleged in the notice is the material change of use of the Land from equestrian by the importation and storage of waste materials on the Land.
 - The requirements of the notice are:
 - (i) Cease the use of the Land for importation and storage of waste materials
 - (ii) Remove all imported waste materials from the Land through the correct waste disposal methods (and send copies of the completed Environment Agency Duty of Care Waste Transfer Note to the SDNPA)
 - (iii) Return the land levels of the Land to those prior to the importation of waste materials
 - The period for compliance with the requirements is six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Application for costs

2. An application for costs was made by the appellant against the National Park Authority. This application is the subject of a separate Decision.

Procedural Matter

3. Following the site visit I wrote to the main parties via the case officer on 7 December asking a number of questions about the uses on the site, whether the notice should be corrected and whether any injustice may result from that. Both parties replied within the 10 working days deadline and I have taken their written replies into account in reaching my decision.

The Notice

4. I note the concerns raised by the appellant about the reasons stated on the Notice why the Local Planning Authority (LPA) has taken enforcement action against the alleged unauthorised use. I further note the toing and froing by the appellant seeking to have various documents supplied by the LPA. Nevertheless, on its face in my view the Notice is very clear about the reasons

why it was issued and the background of seeking more information does not undermine its validity.

5. It can be helpful for clarity reasons in a Notice directed at a material change of use for the allegation to refer to the former lawful use. However, this is not essential and it is for the appellant to show in an appeal under s174(2)(c) of the 1990 Act that the development alleged to have occurred does not constitute a breach of planning control; because, for example, the development accords with the lawful use or it doesn't require planning permission, or because planning permission has been granted for the development. The appellant's concerns about the Notice referring to the previous equestrian use do not make it invalid, whether or not equestrian use is the lawful use.
6. Regarding the raising of land levels on the site and the Notice's requirements, these are matters that I will address under appeal ground (f).
7. The appellant has made extensive reference to an application for a Lawful Development Certificate (LDC) made in 2019¹ for the use of part of the property (including the buildings that have been erected on it) for: (i) the storage of building materials, plant and equipment (Use Class B8 as set out in the Town and Country Planning (Use Class) Order 1987 (as amended); and (ii) the creation across part of the property of a hardstanding and access track in 1996 and another hardstanding in 2006. That application was granted in part by the LPA on 20 December 2019 (i.e. it was a split decision). Only the hardstandings and access track were determined to be lawful. The Class B8 storage of building materials, plant and equipment was not found to be lawful.
8. The LDC in terms of use of the property was specifically for the storage of building materials, plant and equipment as opposed to the importation and storage of waste materials on the land which is the use/activity attacked in this Notice. I take the view that the two uses are distinct and separate, for the reasons set out below, and I note from responses to the questions I asked of both parties that the LPA's position is that the building materials which I saw at my site visit have arrived since the Notice was issued. It is consequently investigating that alleged further breach of planning control separately, which it is entitled to do.
9. Moreover, the material date is when the Notice was issued. I have reviewed all the submitted evidence and in particular the photographs taken by the LPA in the months leading up to it being issued. It is clear to me that, as a matter of fact and degree, the LPA's position is likely to be correct. I am aware of the appellant's view that the LDC material is germane to this appeal and I note the references made to the witness statement of a former neighbour who attested to the building material storage being an intermittent use. However, as that is an activity outside the scope of this Notice, it has little bearing on the cases to be made out by the appellant in this appeal. I have been appointed to determine the appeal based on an alleged use different from the LDC use. I shall return to the matter of the LDC application accordingly when considering the grounds of appeal below.

¹ SDNP/19/04459/LDE

Description of the Site and its Use

10. The site the subject of the notice is a rectangular piece of land of 0.3 hectare (0.7 acre) immediately to the rear of the back gardens of three dwellings at Nos 4, 5 and 6 Pony Farm, a cul-de-sac of detached houses. It lies on the eastern edge of the village, just outside its defined settlement boundary, and is surrounded to the north, east and south by agricultural land.
11. At my visit I saw that the two buildings located at the northern end of the site – a brick-built/rendered shed in the north west corner and separate stable building to its east – and the hard surfaced area in front of and between them are being used to store a range of building materials, and plant and equipment likely to be used in building operations. These included many if not all of the items listed in the appellant's Operations Statement.² Those items stored outside on the hardstanding included those shown in the LPA's photographs taken on 2 October 2020.³ Some of the materials are clearly new and unused (e.g. plastic drainage pipes, insulation board and roll, piles of slates), some in their original packaging. Others, such as doors and kitchen fittings, have clearly been used before, but are not waste.
12. Immediately to the south of this area is a wide overgrown earth bund about 2m high running west to east across the site. Between this and the eastern boundary of the site is a hard-surfaced track, which links the site's vehicular access running along its southern side to the hardstanding and sheds at its northern end, as shown on the plan attached to the notice. There is also another hardstanding next to this track in the south east corner of the site. These are the hardstandings and access track granted in the 2019 LDC.
13. Running roughly parallel to this access track south from the above bund is another bund of the same approximate height, comprised of a mixture of building waste/rubble (broken concrete, bricks and tiles and assorted hardcore) and earth, which is partially overgrown by self-sown shrubs and weeds. Much of the rest of the site south of the first bund has also been dumped with building rubble and a smaller quantity of other general waste/rubbish. At the southern end of the site is a small portacabin within which various building material and paraphernalia (e.g. acro-props) are stored. The waste is stored on a completely different part of the site to the building materials.
14. It is clear that the site is therefore being used to store both building materials, plant and equipment and (my emphasis) to store building rubble/waste. These two uses are very different, the former clearly possessing value whilst the latter is waste. There are therefore two separate and distinct storage uses taking place on the site. The case officer photographs of the site of 30 October 2019 and earlier (back to 2016)⁴ indicates this to be correct.

Ground (c)

15. This ground of appeal is based on showing that the matters stated in the notice do not constitute a breach of planning control. The burden to make out the case successfully rests with the appellant. Notwithstanding the appellant's case that there has been no change from an equestrian use, there is no proven lawful use of the land for the importation and storage of any waste materials.

² Appendix 13 of appellant's appeal statement

³ As appended to the LPA appeal statement

⁴ As contained in the appellant's Appendix 15

16. The LDC evidence submitted by the appellant only addresses building material, plant and equipment and makes no mention of waste material. There is no evidence such as planning permission being granted for the development attacked in the Notice either. Importing and storing waste with the volumes involved, as described above, is a material change of use for which there is no lawful use and no planning permission. Consequently, there has been a breach of planning control. The ground (c) appeal must therefore fail.

Ground (d)

17. As with the above ground, the burden to make out this ground rests with the appellant. The relevant time limit in cases involving changes of use is ten years. The case to be proven is therefore whether, on the balance of probability, the importation and storage of waste had continued over a substantially uninterrupted basis since at least 17 March 2010, that being ten years before the Notice was issued. The appellant relies on the LDC evidence. However, that was for a different use of the land. Furthermore, even if the LDC background did have some relevance, the LDC was refused by the LPA. Having read through the submitted material, in the absence of anything materially different, I have no reasons to depart from the earlier LPA conclusion on the LDC application. It is also clear that the waste materials are distinctly different from building materials, as set out above.
18. The appellant has not discharged the burden on them to show, on the balance of probability, that it was too late to taken enforcement action against the breach of planning control alleged in the notice. Therefore, the ground (d) appeal also fails.

Ground (f)

19. An enforcement notice shall specify the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in s173(4) of the 1990 Act. Given that the Notice alleges the material change of use of the land, the steps required that use to cease and for the land to be put back to its original land levels by removing the imported waste, it is clear that the purpose of the Notice is to remedy the breach. The steps in the Notice do no more and no less. Consequently, on their face the steps required do not exceed what is necessary to remedy the breach of planning control.
20. I consider that it is clear what the Notice is attacking and what is required. The appellant knows what waste was brought on to the land since he has owned it and where on the land that was deposited. There may well have already been some waste material on site when he acquired it in September 2016, but he would be aware of that. It is obvious that the waste – mainly building rubble with some other rubbish as indicated above – is foreign to the site and simply needs to be removed, as the Notice requires.
21. Furthermore, the appellant knows and can readily distinguish between that waste and other materials that might be being stored on the land and required for building purposes. Clearly as well, plant and equipment also so required does not constitute waste. Removing the imported waste would naturally restore the land back to its original levels. Also, this is a flat site whereby it would be easy to match the levels on the areas where the waste has been removed with the levels of the land where no waste has been stored, that western part of the site level with the back gardens of the residential

neighbours at Pony Farm. The Notice in this appeal is far from being hopelessly ambiguous and uncertain

22. In view of the above, the ground (f) appeal must fail.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Nick Fagan

INSPECTOR