



Appeal Decision

Site visit made on 14 January 2021

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 04 February 2021

Appeal Ref: APP/D1265/C/20/3259944

Former Windmill Stables, off Watery Lane, Weston Street, Portland, Dorset DT5 2JH

- 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 Jason Cliffe, Island Recycling against an enforcement notice issued by Dorset Council.
 - The enforcement notice, referenced 20/06, was issued on 26 August 2020.
 - The breach of planning control as alleged in the notice is the change of use of the Land to use for the importation, deposit, processing and recycling of waste materials.
 - The requirements of the notice are:
 - (i) Permanently cease the importation, deposit, processing and recycling of waste materials into and on the Land.
 - (ii) Remove from the Land all waste and recycled material to a licensed facility, retaining waste transfer notes for inspection.
 - (ii) Remove from the Land any vehicles, skips, or other machinery involved in the importation, deposit, storage, processing or recycling of waste materials.
 - The period for compliance with the requirements is, in respect of (i) the day the notice takes effect, and in respect of (ii) and (ii) within one month of the notice taking effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Subject to the variations indicated below, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Notice

2. The address of the site on the notice refers to Water Lane. The parties agree that the correct address is Weston Street, although I noticed from my site visit that the site is actually at the end of an unsurfaced unnamed spur road off Watery Lane, which itself runs north off Weston Lane. The notice is therefore hereby corrected to reflect the full address in the banner heading above and this address should also be reflected on the plan attached to the notice. No uncertainty has arisen from this slightly incorrect address on the notice and plan because the latter correctly identifies the site within its red line.
3. The Reasons for Issuing the Notice (Section 4 of the Notice) states that the carrying out of the unauthorised use are contrary to policies in the Dorset Waste Plan 2019 (DWP), Dorset Minerals Strategy 2014 (DMS), Dorset Mineral Sites Plan 2019 (DMP) and West Dorset, Weymouth and Portland Local Plan

2015 (LP). But it does not identify which specific policies. However, the Council's appeal documentation clearly does this. The appellant has not therefore been prejudiced by this omission since he has had an opportunity to respond to the Council's points about conflict with the relevant policies in the development plan, albeit he has made no such response. I assess the development in relation to these policies below. But for sake of clarity, this section of the notice is amended to refer to the following policies: Policies 3, 4, 12, 13, 14 and 19 of the DWP, Policies PD5 and RS1 of the DMS and Policy ENV3 of the LP.

Ground (a)

4. Ground (a) is that planning permission ought to be granted for the development. The appellant's case on this ground is essentially that he performs a legitimate and useful waste recycling operation and that the requirements of the notice would leave him unemployed.
5. The Council as Local Planning Authority (LPA) maintains that the use of the site for the storage, processing and recycling of waste has a harmful visual effect on the local area's landscape and heritage assets, as well as sterilising mineral resources – in this case the quarrying of Portland Stone.
6. Mixed waste is being brought to the site, sorted by hand, distributed to charity shops, local people and community groups or transferred for disposal or recycling elsewhere. The LPA states that some items are collected from the site whilst others are transported off-site by the appellant and that some processing takes place on-site, for example the removal of metal from mattresses.
7. I was able to see at my visit that various types of waste are being handled including bulky and other household items, cardboard, construction, demolition and excavation waste, wood, metal, textiles, glass and electrical and electronic waste. This waste is being stored in mixed and sorted piles in the open, some of which are quite high and are clearly visible from nearby dwellings and from the Public Rights of Way (PROW) in the locality. It is also being stored in the former stable buildings on the site, as well as in two touring caravans.
8. The site is in the middle of land situated between the housing estate, primary school and Tesco supermarket on the southern end of Easton to the north and the dwellings running along this part of Weston Street to the south, which is defined as an Important Open Gap pursuant to LP Policy ENV3. Immediately to its east and north is the open Perryfield Portland Stone quarry. Land within this Gap to the west side of Watery Lane is in the Portland Conservation Area.
9. The site is on raised ground above Weston Lane, the topography gently falling north to south. The stable buildings and the external piles of waste are readily visible from the houses on the north side of Weston Lane and from Furlands to the north. They are also prominent from the bridleways running south of Furlands and from Watery Lane itself, as well as the public footpath running past the eastern end of the site and other footpaths to the north east. I noticed on my site visit that these PROWs are well used by dog and other walkers. This is not surprising because this Gap is clearly a strategic open space of recreational importance between Easton and Weston.

10. Some of the piles of waste are higher than the height of the stable buildings themselves (over 3m high), which means that they can be seen from the houses and PROWs to the north as well as from those to the south. They can clearly be seen from the Conservation Area to the west. They are also seen in the context of and directly from the two nearby Grade II listed early seventeenth century stone windmills located on these PROWs to the north, located approximately 175m and 250m away, as the LPA identify. There is no doubt that the open waste storage significantly detracts from the settings of all these designated heritage assets. Their settings are an important part of their significance.
11. Harm to their settings would in my view therefore harm their significance, albeit such harm would be 'less than substantial' as defined by paragraph 196 of the National Planning Policy Framework. In this context 'less than substantial harm' does not mean a less than substantial planning objection. Such harm should be weighed against any public benefits of the development. No such public benefits have been indicated by the appellant.
12. On the contrary, the LPA argues that there is no need for this waste site and therefore no support for it in adopted policies. Sorting waste for disposal elsewhere off the site would not comply with the waste hierarchy since there is sufficient capacity at existing authorised waste facilities to deal with this type of waste. The DWP has forecast what capacity will be needed and planned for that, including on Portland, through the allocation of sites and in criteria-based policies. The site does not meet the locational criteria for such non-allocated waste facilities because it is not a B1, B2 or B8 employment site, is not within or adjacent to other waste sites and is not brownfield land suitable for employment use.
13. The use of this as a waste site therefore fails to comply with DWP Policies 4 and 5. It would also fail to comply with DWP Policies 12 and 13 since it has not been demonstrated by the submission of a Transport Assessment that vehicles associated with the development do not adversely impact on the safety of local roads and PROWs, as well as adversely affecting the recreational enjoyment of such PROWs.
14. In terms of the development's adverse impact on the landscape of this Important Open Gap I agree with the Council's landscape officer that the site's central location in open grassland, playing fields and horse paddocks is severely adversely harmful to the local landscape. As such it is contrary to DWP Policy 14 as well as LP Policy ENV3. In terms of the development's harm to heritage assets, the development is contrary to the NPPF as well as DWP Policy 19, which reflects it.
15. The former riding stables site, which the unauthorised use occupies, was only ever granted a series of temporary permissions for that use, because there are two extant mineral permissions for the quarrying of Portland Stone which affect the site. This was why the last temporary permission required by condition the removal of the stable buildings and the restoration of the land to its former condition by 31 May 2013. The riding stables were relocated to an alternative site with permission in the spring of 2019 but the buildings on this site have not been removed, contrary to the previous condition.
16. Hence failure to cease the unauthorised waste use of this site and demolish the stables would prevent the authorised quarrying operations on this site. That

would unacceptably sterilise mineral resources and prevent restoration of the site to limestone grassland, which would be contrary to DMS Policies PD5 and RS1.

17. For all these reasons planning permission should not be granted, and so ground (a) must fail.

Ground (g)

18. Ground (g) is that the periods specified in the notice fall short of what should reasonably be allowed.

19. As the LPA point out, the appellant has put forward no reason to explain why he cannot comply with the requirements in the time specified in the notice, beyond any additional time sufficient to make a planning application. But ground (a) of this appeal is a deemed planning application, which I have determined above.

20. I can therefore see no reason for extending the compliance periods set out in the requirements of the notice. The appeal on ground (g) consequently fails.

Conclusion

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Nick Fagan

INSPECTOR