



Appeal Decisions

Hearing Held on 13 April 2021

Site visit made on 14 April 2021

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 8 June 2021

Appeal A: APP/D3830/C/19/3243862

Appeal B: APP/D3830/C/19/3243864

Appeal C: APP/D3830/C/19/3243865

Land lying to the west of Lanehurst, Twineham Lane, Albourne, West Sussex

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Edmar Lopes, Appeal B is made by Mrs Marie Louise Davies and Appeal C is made by Mr Charles Davies, against an enforcement notice issued by Mid Sussex District Council.
 - The enforcement notice was issued on 27 November 2019.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of the Land from agriculture to a mixed use for agriculture and the repair, maintenance and storage of vehicles for commercial purposes.'
 - The requirements of the notice are:
 - i) Cease the use of the Land for the repair, maintenance and storage of vehicles for commercial purposes and remove from the Land all vehicles, machinery, materials and equipment brought on to the Land for the purpose of such use.
 - The period for compliance with the requirements is 14 days.
 - 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. Appeals B and C are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal D: APP/D3830/C/19/3243863

Appeal E: APP/D3830/C/19/3243866

Appeal F: APP/D3830/C/19/3243867

Land lying to the west of Lanehurst, Twineham Lane, Albourne, West Sussex

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal D is made by Mr Edmar Lopes, Appeal E is made by Mr Charles Davies and Appeal F is made by Mrs Marie Louise Davies, against an enforcement notice issued by Mid Sussex District Council.
 - The enforcement notice was issued on 27 November 2019.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the erection of a building in the approximate position shown edged in blue on the Plan ("the Building") and the construction of hardstanding in the approximate position shown edged in green ("the Hardstanding" on the Plan ("the Unauthorised Development")).'
 - The requirements of the notice are:
 - i) Demolish and remove the Building from the Land.
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- ii) Remove the Hardstanding from the Land.
 - iii) Restore the Land to its condition before the Unauthorised Development took place.
 - iv) Remove from the Land all equipment, materials, paraphernalia, waste and debris arising from compliance with i) to iii) above.
 - The period for compliance with the requirements is 3 months.
 - Appeal D 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. Appeals E and F are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeals A, B and C

1. It is directed that the enforcement notice be varied by
 - The deletion of the words 'for the repair, maintenance and storage of vehicles for commercial purposes and remove from the Land all vehicles, machinery, materials and equipment brought on to the Land for the purpose of such use' at paragraph 4 i) of the enforcement notice;
 - The insertion of the following words after paragraph 4 i) of the enforcement notice, 'and ii) Remove from the land all vehicles, machinery, materials and equipment brought onto the Land for the purpose of the use'; and
 - The deletion of the words '14 days after this Notice takes effect' and the substitution thereto of the words '9 months' at paragraph 5 of the enforcement notice.

Subject to these variations the appeal is dismissed and 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.

Appeal D

2. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a building in the approximate position shown edged in blue on the Plan ("the Building") and the construction of hardstanding in the approximate position shown edged in green ("the Hardstanding") on the Plan on land lying to the west of Lanehurst, Twineham Lane, Albourne, West Sussex referred to in the notice, subject to the following condition
 - 1) The building and hardstanding hereby permitted shall be used for the purposes of agriculture as defined in section 336 of the Town and Country Planning Act 1990 as amended and for no other purpose.

Appeals E and F

3. No further action

Preliminary Matters

4. The hearing was adjourned to allow for the consideration of the Unilateral Undertaking by the Council. Following receipt of the completed Unilateral Undertaking on 21 May 2021, the Hearing was closed in writing on 2 June 2021.
5. I will refer to the Enforcement Notice the subject of Appeals A, B and C as EN 1 and the Enforcement Notice the subject of Appeals D, E and F as EN 2.

Appeals A and D – appeals on ground (a)

6. The main issues in relation to both Appeal A and Appeal D on ground (a) and the deemed planning applications are whether the visual impact and levels of associated activity are acceptable having regard to local and national planning policies that seek to protect the countryside.

Reasons

7. The site is part of a farm holding (New House Farm) located about 3.8km to the west of Burgess Hill on the western side of the A23. It lies in open countryside about 2km to the north west of the village of Sayers Common and about 0.7km to the south of the hamlet of Twineham. It comprises a collection of fields on the western side of Twineham Lane.
8. The building the subject of Appeal D is a modern portal frame agricultural barn with gravelled hardstanding on three sides surrounded by fields. It is set about 400m back from Twineham Lane, with access via a private track. While there are noted to be a number of footpaths within a 1km radius of the site¹, a single footpath (13T/2HU) passes close to the western and northern boundaries of the site.
9. The surrounding area is gently undulating arable and pastoral land, with sporadic development, rural lanes, hedgerows and trees.
10. The site is within the countryside outside of built up area boundaries on the Policies Map of the Mid-Sussex District Plan 2014-2031 (March 2018) (DP). I will deal firstly with the ground (a) deemed application relating to the use of the land for a mixed use for agriculture and the repair, maintenance and storage of vehicles for commercial purposes and secondly with the ground (a) deemed application relating to the erection of the building. I will refer to the repair, maintenance and storage of vehicles for commercial purposes as alleged in EN 1, for ease of reference in this decision, as the mechanics use.

Background

11. Planning permission was granted in 2017² for a steel framed agricultural building. This was not constructed. A revised application was submitted for a different location and was granted planning permission in 2018³. It was stated to be required for the storage of feed, grain and implement storage. The building which has been built and is the subject of EN 2 Appeals D, E and F, is stated to be the 2018 building which was reorientated on the site by about 60

¹ Recorded in the Landscape and Visual Impact Appraisal dated May 2020.

² Reference DM/17/1968 granted 1 September 2017.

³ Reference DM/18/1786 granted 22 June 2018.

degrees on the north south axis. The only external changes to the building granted in 2018 is that a roller shutter door has been installed at the far end of the building and its orientation. The hardstanding is on three sides of the building.

12. The Council in granting planning permission for the buildings in 2017 and 2018 accepted that there was an agricultural need for a building and that it was associated with a wider land holding and agricultural holding than the immediate land it is sited on. The evidence is not detailed, but it appears that the appellant in Appeals C and E, owns two farms and is a tenant on another farm. There are various buildings across the agricultural holding (i.e. the three farms) and the immediate need for a grain store has dropped away due to market conditions. However, as the buildings being utilised currently are on the tenanted farm these are not secure for the future. I was satisfied at the Hearing that the appellant in Appeals C and E, had requirements for agricultural buildings and that the appeal building had been designed for agricultural purposes and there would be an agricultural use to which it could be put, in relation to the agricultural holding run by the appellant in Appeals C and E.
13. The appellant states the building subject of EN 2 was completed in October 2018 and used for agricultural storage. This is disputed by the Council. Both parties agree that the building was used from early 2019 by EI Autos for the repair, maintenance, and storage of vehicles for commercial purposes. Part of the building is also used for the storage of agricultural machinery and items by the appellant in Appeals C and E. The appellant states that the split is about 75% for mechanics use and 25% for agricultural storage use.

Mixed use for agriculture and the repair, maintenance and storage of vehicles for commercial purposes use (Appeal A)

14. There is no objection in relation to the agricultural element of the mixed use and I will therefore address the matter of the mechanics use here. The lawful use of the land is for agriculture. The predominant activity of the mechanics use takes place within the building the subject of EN 2, with ancillary parking/storage and machinery (generator) located around the building. The use is therefore very much tied up with the existence of the building. The wider area of land within the identified area of EN 1 is in agricultural use.
15. The mechanics use has resulted in numerous vehicles being stored or parked outside of the building, which are clearly viewed from the public footpath to the north and west, and to a lesser degree from the road. The 'storage' had expanded beyond the area identified on the EN 1 plan at the time of my site visit. The mechanics use also results in vehicle movements by customers, delivery vehicles and those who carry out the work on the vehicles coming and going via the private access track.
16. The appellant has suggested that had the building been used for agriculture external storage of machinery and agricultural items would have taken place. However, given the separateness of this building from the other buildings and other land within the agricultural holding, I am not satisfied that this would be the case. Even if some machinery and agricultural items were stored outside the building for use on the holding the quantity of items would be significantly

less given the size of the holding and the other areas within it on which such items could be stored.

17. While there is some limited evidence that the mechanics use does carry out some agricultural repairs and there is some limited storage of agricultural equipment, by the appellant in Appeals C and E, within the building it appears as though the majority of the mechanics use is unconnected with agricultural use of the land or the agricultural holding. The mechanics use has, in my view, resulted in increased vehicle movements and outside parking and storage of vehicles. The vehicle movements and storage/parking of general vehicles detracts from the rural setting and the landscape character of the area. To my mind, the external storage and parking of vehicles detracts from the visual amenity of the area due to their number and their incongruous appearance within a rural setting where lines of parked cars and other vehicles appear out of place.
18. I accept that the mechanics use is an economic activity which adds to the economic vitality of the rural area. However, it is not a use which requires a countryside location. The site is divorced from other buildings and non-agricultural uses and as such is isolated. It relies on customers, those employed within the business and those supplying the business to drive to and from the location. In my view, the use is not located in a sustainable location for the non-agricultural customers associated with the business. Moreover, the building is so recently constructed that it is not a sustainable reuse of an existing built asset but has displaced the agricultural use to existing buildings on the tenanted part of the agricultural holding. Albeit I accept that the original planned use for the building, has for the time being diminished.
19. Although the appellants refer to some agricultural repair and maintenance, the evidence does not demonstrate this is a predominant part of the business or that it relates necessarily to just local agricultural business machinery. On the basis of the evidence, this is a minor element of the work undertaken on the land by the mechanics use.
20. DP Policy DP 12 supports new small scale economic development in the countryside which supports sustainable growth and the vitality of the rural economy. DP Policy DP14 supports the diversification of activities on existing farm units provided they are of a scale consistent to the location of the farm holding and would not prejudice the agricultural use of a unit. The site is separate to the other farm hubs within the agricultural holding and, although the evidence is limited, other agricultural buildings on the tenanted part of the agricultural holding are not secure in the long term to provide for the agricultural storage of the holding as a whole. Therefore, the building on this site is likely to be required for the long term needs of the agricultural holding within the ownership of the appellant in Appeals C and E. I am therefore not satisfied that its use for the mechanics use would not prejudice the agricultural use of the agricultural holding as a whole. It is therefore contrary to DP Policy DP12 and the diversification part of DP Policy DP14.
21. DP Policy DP 14 also allows for the re-use and adaption of rural buildings for business use. However, this is only permitted where the building is of permanent construction without substantial reconstruction or extensive alteration, the appearance and setting is not materially altered, and it is not a recently constructed agricultural building which has not been or has been little

used for its original purpose. If I accept the appellant's version of events that the building was erected then used for a short period for agricultural purposes, and soon after used for the mechanics use and limited agricultural storage, the use of the building for the mechanics use is contrary to DP Policy DP14 as the building was recently constructed. Furthermore, the mechanics use results in external storage of vehicles and machinery detracts from the appearance and setting of the building.

22. In addition, I consider the use for mechanics use, due to the storage and parking required outside of the building is be contrary to Policy DP12 because it fails to maintain the quality of the rural and landscape character of the District and is not required for the purposes of agriculture or supported by a specific policy reference either in the LP, a Development Plan Document or relevant Neighbourhood Plan.
23. Policy ALC1 of the Albourne Parish Councils Neighbourhood Plan 2014-2031 (September 2016) (NP) supports development where it is necessary for the purposes of agriculture or some other use which has to be located in the countryside and maintains the quality of the rural and landscape character of the Parish area. This is on the basis that it is supported by specific policy reference in the NP, is necessary for essential infrastructure and it can be demonstrated that there are no alternative sites suitable and available and that the benefit outweighs any harm or loss. The mechanics use does not have to be located within the countryside and harms the quality of the rural landscape. As such it is contrary to this policy.
24. The appellant has referred to a scaled back workshop use/workshop dedicated to agricultural machinery whether exclusive to the farm or not. If a workshop use, solely for the agricultural machinery used on the agricultural holding operated by the appellant in Appeals C and E were to use the land, I consider that it would be likely to be ancillary to the lawful use of the land for agriculture. It would also be likely to be of a limited scale of activity and there is nothing to suggest this would be required on a full time basis operating full working days. The activity and outside storage would also be much reduced.
25. In the alternative a general mechanical workshop for agricultural machinery from multiple agricultural holdings would, to my mind, result in a similar level of activity, comings and goings by customers, employees and delivery vehicles which would be similar to the harm identified from a general mechanics use. Moreover, it has not been demonstrated that such a use needs to be located in a countryside location. I therefore consider it is also be contrary to the development plan as a whole.
26. In conclusion, the use of the site for a mixed use of agriculture and the repair, maintenance and storage of vehicles for commercial purposes is contrary to the development plan as a whole. There are no material considerations which would outweigh that harm and as such the appeal on ground (a) fails.

The Building and hardstanding (Appeal D)

27. The deemed planning application in Appeal D does not express any use of the building or hardstanding. In the light of my conclusions on Appeal A, EN 1 would require the mixed agricultural and mechanics use to cease and thus the

land could be used for its lawful agricultural use. I will therefore determine the ground (a) appeal in Appeal D on the basis of this position.

28. The previously permitted buildings, in both 2017 and 2018 were assessed as being for agricultural purposes and were found to comply with the development plan. DP Policies DP12, DP14 and DP26 are referenced in the officer report for the 2018 scheme. The design and the development's effect on the countryside was assessed as acceptable by the Council. It is not clear whether any works to begin the 2017 building had been undertaken.
29. The 2018 building siting overlaps with the appeal building and could not be built unless the appeal building is removed. The appellant made clear if the appeal building was required to be removed, he would build out the 2018 building. The 2018 building is therefore a legitimate fall back development. I also note that there was no mechanism to prevent the build out of both the 2017 and 2018 buildings when the 2018 permission was granted. The 2018 building location was separate and clear from the 2017 building and thus both could have been constructed. If the appeal building is removed the 2018 building could still be built.
30. The appellant has submitted a Unilateral Undertaking with reference to Appeals D, E and F which prevents any further works pursuant to planning permissions referenced DM/17/1968 and DM/18/1786, any claim for compensation from the Council where revocation or modification order is made pursuant to s97 of the Act with respect to that permission or object or cause or permit any objection to be made in respect of their interests to any such modification or revocation order. It is not clear whether the 2017 scheme has been initiated, although the terms of the Unilateral Undertaking seem to imply that this may be the case. The Council accepts that this Unilateral Undertaking would prevent the implementation of the previous schemes. I see no reason to demur from this conclusion.
31. The appellant has submitted a Landscape and Visual Impact Appraisal (May 2020) which concludes that there was a medium sensitivity from the footpath⁴ and low sensitivity from Twineham Lane. It recommends a mitigation and maintenance strategy resulting in a net gain of hedge, shrub and tree planting across the site to screen the appearance of the constructed building and contribute to the amenity of the surrounding wider landscape.
32. The Council has accepted a building was acceptable for agricultural purposes on this area of land. The location of the appeal building is similar to that granted in 2018, although I accept that due to the orientation it is slightly more visible in the landscape from the nearby public footpath with a longer flank elevation seen in views. However, whichever orientation a building was placed on in the site it would have been visible from the public footpath and from Twineham Road. The orientation of the building, does not, in my view result in unacceptable harm to the landscape character or visual impact of the building. The difference between the previously approved buildings and the building as built is minimal in terms of the effect on the landscape character or the visual appearance. I consider, on balance, it maintains the rural and landscape character of the District.

⁴ The study only identified a short section of the footpath which allowed views. At my site visit the building was clearly visible from a longer section of the footpath.

33. The previous agricultural building permissions did not require additional landscaping to be provided, to either screen the building or to assimilate it within the landscape. While I have found the building to be slightly more visible in the landscape than the schemes granted planning permission previously, I consider that screening it would not be justified. There are hedges and mature trees in the immediate landscape which provide a wider setting to the building. The building appears as a large agricultural building within an agricultural setting. The paraphernalia around the building associated with the mechanics use detracts significantly from the landscape setting and I have dealt with that earlier in the decision in relation to Appeal A.
34. The hardstanding provides a practical area on which to enter the building, park machinery or vehicles once out of the building. Many agricultural buildings have similar hardstanding areas around them. The hardstanding itself does not visually intrude in the public views of the site, and while there may be some machinery or vehicles parked and visible on the hardstanding at times, the scale of that parking, in my view, would be significantly less than the mechanics use parking and storage which currently takes place on the hardstanding.
35. DP Policy DP12 states the countryside will be protected in recognition of its intrinsic character and beauty. I consider that the building and hardstanding maintains the quality of the rural and landscape character of the District and is necessary for the purposes of agriculture. As was the case in relation to the 2017 and 2018 planning permissions, the building the subject of EN 1 complies with this policy if it is utilised for agricultural purposes. I also find that the hardstanding complies for the reasons set out above.
36. DP Policy DP 26 seeks development of high quality design and layout which reflects the distinctive character of towns and villages while being sensitive to the countryside. Again, the buildings granted planning permission in 2017 and 2018 complied with this policy and, on balance, I consider that the appeal building also complies as it is of a similar design and size, albeit the orientation and some details are different. The appeal building contributes to the character of the area, as the previous buildings permitted did, and I consider it to be sensitive to the countryside. The hardstanding has a low key impact and is sensitive to the countryside.
37. Moreover, the building and hardstanding comply with Policy ALC1 of the NP. This policy supports development where it is necessary for the purposes of agriculture and maintains the quality of the rural and landscape character of the Parish.

Conditions and Unilateral Undertaking

38. A number of conditions were suggested by the parties. In relation to the use of the building, including hours of operation, in the light of my conclusion on the mechanics use, I consider it would be reasonable and provide clarity to restrict the use of the building and hardstanding for agriculture. I do not consider that there is any justification for an hours of use restriction if the building is used for agriculture. No hours of operation conditions were imposed on the 2017 and 2018 building planning permissions.

39. I have also addressed the landscaping point earlier in this decision and find a landscaping condition is not justified.
40. DP Policy DP29 seeks to protect landscapes and amenity, in particular in respect of light pollution development which should minimise its impact upon intrinsically dark landscapes and nature conservation. The lighting that exists externally on the building is clearly connected to the mechanics use⁵ and would be required to be removed as part of EN 1. Any new lighting that amounted to development under the Act would require planning permission, albeit I accept not all lighting would amount to development. I note there was no condition imposed in relation to external lighting on the 2017 or 2018 building planning permissions. On the basis of the evidence before me I see no justification to impose a condition restricting lighting.
41. The Unilateral Undertaking prevents previous permissions from being built out. I consider it would comply with the 3 tests within the National Planning Policy Framework. I find that it is necessary as it would ensure that only one building occupies the appeal site, it is directly related to the development before me, and it is fairly and reasonably related in scale and kind to the development.

Conclusion

42. I therefore find that the building is similar to other modern agricultural buildings in the countryside and have a similar effect on the open countryside. Subject to the use of the building and hardstanding being limited to agriculture the level of activity the development would generate is appropriate to its countryside setting. In my view, the development complies with the development plan as a whole.

Overall Conclusions for Appeal A and Appeal D on ground (a)

43. In relation to Appeal A for the reasons set out above I conclude that the appeal should not succeed on ground (a).
44. In relation to Appeal D, I have found that planning permission for the building and hard standing to be used for agricultural purposes complies with the development plan as a whole. As such, I will impose a condition to require the development to be used for agricultural purposes only for the avoidance of doubt and to provide clarity. Subject to the imposition of this condition the appeal should succeed on ground (a) and planning permission will be granted. Appeals E and F on grounds (f) and (g) do not therefore need to be considered.

Appeals A, B and C on ground (f)

45. This ground of appeal is that the requirements of the notice are excessive and lesser steps would overcome the objections. The purpose of EN 1 is to remedy the breach of planning control.
46. The appellants considered that an agricultural machinery only workshop, whether for the agricultural holding or wider agricultural community should be permitted to remain. I have dealt with that in relation to the ground (a) appeal. In addition, the appellants considered the requirement to cease all repair, maintenance and storage of vehicles for commercial purposes and to

⁵ At the Hearing the lighting was discussed and it the appellant explained that it was installed for clients and security of the building. As such, they are directly related to the existing use of the building.

remove all vehicles machinery, materials and equipment brought onto the land for the purpose of such use, would impinge on the storage of agricultural vehicles machinery and materials as part of the agricultural use of the land. This is because the agricultural use is a commercial purpose.

47. The allegation is for a mixed use of agriculture and the repair, maintenance and storage of vehicles for commercial purposes. I appreciate the appellants' concerns and for clarity and avoidance of doubt I will vary the requirements to a requirement to cease the use i.e. the mixed use, and remove all vehicles, machinery, materials and equipment brought onto the land for the purpose of the mixed use would be, to my mind, adequate to remedy the breach of planning control. In my view, this second requirement would require the removal of lighting that has been installed for the mixed use. The varied requirements would not prevent the lawful agricultural use in the building or the land.
48. For the reasons given above I conclude the requirements may be interpreted as being excessive and as such, for clarity, I will vary the enforcement notice accordingly prior to upholding it. The appeals under ground (f) succeed to that extent.

Appeals A, B and C on ground (g)

49. This ground of appeal is that the time given to comply with the Notice is too short. The Council have given 14 days for compliance. The appellants state that this is insufficient time to look for alternative premises for the mechanics business to relocate to. The appellant requests a period of 12 months for compliance.
50. The appellants have provided some evidence of contact with agents for commercial premises. No suitable premises were identified for the mechanics use to relocate to. The Council maintained that the 14 day compliance period was adequate to cease the use and comply with the requirements. However, it considered that a three month compliance period would allow time to look for alternative premises.
51. The mechanics use provides employment and services to its customers. While it would be possible to cease the use within 14 days, I consider it reasonable to allow time for the appellants to look for alternative premises, which, if successful, would retain the employment and service for its customers. In my view, a three month period would not allow a reasonable period to look for, enter into a tenancy agreement and relocate the business. I consider that a period of 9 months would be a reasonable period for this to take place. I will therefore vary the enforcement notice accordingly prior to upholding it. The appeals under ground (g) succeed to that extent.

Conclusions

Appeals A, B and C

52. For the reasons given above I conclude the appeals should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application

Appeals D, E and F

53. For the reasons given above I conclude that Appeal D should succeed on ground (a) and planning permission will be granted. The appeals on grounds (f) and (g) do not therefore need to be considered.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Quartermain	Associate Solicitor, Thrings LLP agent for the appellants
Mr Glasson BA (Hons) MRTPI FBIAC	Director David Glasson Planning Ltd consultant for the appellants
Mr Steele BA Dip Landscape Architecture	Steele Landscape Design consultant for the appellants
Mr Lopes	Appellant
Mr Davies	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Clarke Dip TP	Senior Planning Officer Investigation and Enforcement Mid Sussex District Council
Mr Lane MSc	Planning Officer Investigation and Enforcement Mid Sussex District Council