



Appeal Decisions

Site visit made on 27 April 2021

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 08 July 2021

Appeal Refs: APP/X1355/C/21/3266257 (Appeal A) & APP/X1355/C/21/3266258 (Appeal B)

Dales Land J59, St Andrews Way, Newton Aycliffe, Durham DL5 6NB

- 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 Dale Robinson (Appeal A) and Joy Forrest (Appeal B) against an enforcement notice issued by Durham County Council.
- The enforcement notice is dated 20 November 2020.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land to a mixed use involving:
 - storage purposes, including vehicles, caravans, containers, trailer bodies, port-a-cabins, reclaimed construction materials, domestic items, waste electrical equipment, scrap materials and waste;
 - reclamation yard for processing reclaimed construction materials with incidental retail;
 - waste transfer station for processing of waste;
 - ancillary residential use for security provisions facilitated by a static caravan unit, and
 - incidental keeping/breeding of birds/poultry;And the incidental operational development involving:
 - engineering operations to regrade the land and provide level areas for buildings and storage areas,
 - formation of hard standings,
 - the erection of buildings,
 - erection of gates and alterations to the means of enclosure of the site.
- The requirements of the notice are: A - Discontinue the use of the Land, by:
 - a) Permanently cease the use of the Land as a reclamation yard;
 - b) Permanently cease the importation of waste onto the Land;
 - c) Permanently cease the processing of waste on the Land;
 - d) Permanently cease the use of the Land for residential purposes, and remove the caravan units and all domestic items;
 - e) Permanently cease the use of the Land for the keeping/breeding of birds/poultry;
 - f) Permanently cease the use of the Land for storage; removing from the land all stored items, objects, plant and equipment, tools and machinery, materials, scrap materials/metals, waste / rubbish, waste electrical equipment, domestic items, furniture, hot tub, cycles, scooters, sports equipment, construction materials, timber, metal, rubble, bricks, stone, plastic, glass, wire and cables, sleepers, window frame units, IBC tanks, fuel tanks and containers, oil drums, bins, barrels/kegs, containers, cabinets, plastic barriers, heras fencing, metal and timber fencing panels and gates, pallets, crates, metal frames, metal steps/stairs and staging, scaffolding, gas canisters, paint cans/pots/containers, skips, generators, portable generator housings, lights, vehicles of any classification, vehicle parts, tyres, trailers, vehicle ramps, parts of vehicle transporters, trailer bodies, port-a-cabins, rail carriages, storage containers, caravans.
- B - Restore the Land to its condition prior to development taking place by undertaking the following actions, ensuring that the works described do not interfere with, pollute or alter any watercourse or stream:

- a) Dismantle in their entirety and permanently remove from the Land all buildings and structures and remove from the land the resultant materials and building debris. (for the avoidance of doubt, the buildings erected on the site since 2016 and to be removed are shown in the images attached to this notice as existing at the time the notice was served)
 - b) Dismantle in their entirety and remove from the Land the entrance gates, and metal panels affixed to or forming the means of enclosure to the whole site, removing all resultant materials, waste and construction debris.
 - c) Remove from the Land all areas of hard surface, removing the resultant materials and debris.
 - d) Remove from the Land all waste disposal/treatment system, plant and equipment.
 - e) Re-instate the areas of the Land affected by engineering works and alterations to the landform and areas of hard standings, by removing all built up areas and mounds of earth and re-distribute the materials across the excavated areas, to re-instate the levels of the land ensuring that the land is evenly graded tying in with surrounding existing site levels and hedge line/boundary fence features on the southern boundary of the Land (bounding St Andrews Way) and the site levels of the bridleway and hedge line and original fence features on the northern boundary and re-instated topography.
 - f) Apply topsoil and cultivate the re-instated soils to foster natural regeneration.
- The period for compliance with the requirements is 26 weeks.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (b) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, Appeal A on ground (a) and 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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Decisions

1. The appeals are dismissed, the enforcement notice is upheld, and the deemed planning application is refused.

The appeals on ground (b)

2. The appeal on ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
3. On this ground, the appellants take issue with the Council's use of the word 'waste', stating that the site is used only for storage and is not a waste site in any shape or form. They say that all the materials on site are to be reused, resold and repurposed, and therefore cannot be categorised as waste.
4. Whilst I take these views into account, this argument comes down to a matter of semantics and terminology. However the materials in question are described, there appears to be no suggestion that the allegations have not been carried out at the appeal site. Therefore, a disagreement over whether the materials should be called 'waste' or something else is insufficient for the appeal on ground (b) to succeed and for the notice to be quashed.
5. The appeals on ground (b) therefore fail.

The appeals on ground (d)

6. Ground (d) is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. As the enforcement notice is dated 20 November 2020, the appellants need to show that the unauthorised use commenced on or before 20 November 2010 and has been continuous for planning purposes for a period of ten years. The

onus of proof is on the appellants, and the standard of evidence is on balance of probabilities.

7. The Council state that they became aware of new development on the site in March 2016. Conversely, the appellants state that the site has been in existence with its operations as a storage yard visible for more than ten years. They have submitted a number of aerial photos with the intention of showing the change of use to storage yard from the previous agricultural use.
8. The first image (Figure 1) dates from 2001. This shows a swathe of green land to the west, with what appears to be a group of animals in roughly the centre of the site. There is a clear line running almost north to south which may be a fence. To the east of this line, there appear to be a number of fairly small structures arranged informally on grassed land with an unmade access leading in from the east. However, given the lack of detail, it is not possible to make out the exact nature of the use of the structures from this image.
9. The second image (Figure 2) dates from 2005. It shows largely the same layout, although if anything, the number of structures in the eastern segment seems to have reduced, and the dirt access is less visible. Again, it is very difficult to ascertain from this picture whether or not the buildings have an agricultural purpose.
10. Dating from 2006, the third image shows a similar layout, with the west of the site undeveloped. The number of buildings looks to be the same or less, although some structures may be concealed under trees. The access track can also be discerned. Despite the appellants' assertions, it is virtually impossible to draw any clear conclusions from any of these images as to the nature of the land use on the given dates.
11. A Planning Contravention Notice Reply Form dated 21 October 2020 and signed by Mr Frederick Jason Forrest has been submitted with the appeal. In answer to the questions asking for confirmation as to when the various activities referred to started on site, Mr Forrest replies that he does not know. There is no further information in the Reply Form that supports the appellant's case on ground (d).
12. The appellants also refer to the statement from previous site owner/manager Mr J Forrest. Mr Forrest states that the land has been farmed since 1972. However, it was decided that the land was not practical to farm anymore and so it was let out for grazing. Another party, Mr John Kinsella, used the land up until 2008, keeping animals, numerous buildings, and a caravan that he stayed in.
13. Even if I were to accept that the unauthorised use was shown in these images, they still only cover a period of around five years. Whilst I take all this evidence into account, it falls significantly short of demonstrating that, on balance of probabilities, the alleged unauthorised mixed use of the site has been ongoing without interruption for a ten year period prior to the date of the notice.
14. The appeals on ground (d) therefore fail.

Appeal A on ground (a) and deemed planning application

15. The appeal on ground (a) is that planning permission should be granted for what is alleged in the notice.

Main Issues

16. The main issues are the effect of the development on:

- The character and appearance of the surrounding area, including the public right of way;
- Highway safety in the area;
- Water contamination in the area; and;
- The future operations of Aycliffe Quarry.

Reasons

Character and appearance

17. The appeal site is bounded by the B6444 to the south. To the north, along the full length of the site, runs a public right of way known as the Long Tens Lane Bridleway, which joins the A167 to the east of the site. It is located adjacent to a former quarry site that has now been remediated.
18. The Council state that the land is located in the countryside, as it is detached from the built development of Aycliffe. The appellant argues that the land cannot be considered as open countryside as it is adjacent to the quarry, and is dominated by the road network and other industrial development in the vicinity.
19. On my visit, I walked along the footpath to the south, and I saw that the site was largely hidden from public view by mature vegetation and tree cover. As I carried out my visit in the spring season, when the trees and bushes were coming into leaf, there can be little doubt that the site was better hidden than it would be in winter. However, there is little evidence to show the visual impact of the site from the south during the autumn and winter, and so I am not able to take a definitive view on its harm or otherwise from this vantage point.
20. However, I also walked the entire length of the bridleway to the north, from the A167 to the point where it rejoins the road at the roundabout to the west of the site. I saw that the westerly portion of the site, given over to grazing, had little adverse impact on views from the bridleway. Nonetheless, at the east end, the visual effect of the appeal site was much greater.
21. Although the road network does not have much of a countryside atmosphere, the bridleway is entirely different. I found it to be very secluded and quiet, with little sense of the other developments in the area. The tall boundaries of the appeal site give the path a substantial sense of enclosure at the eastern end that detract from its intimate scale and rural ambience. The buildings and structures that are visible from the path promote an industrial character that is very much at odds with the character of the bridleway. The fact that the bridleway remains open and accessible does not mitigate these fundamental changes to the views from it, and to the experience of those using it.

22. I have taken into account the planning permission (ref: 7/1999/0193/DM) for a hotel adjacent to the site. However, this permission has long since lapsed. Furthermore, it was granted almost two decades ago, under a different policy context, which greatly limits the weight I can afford it.
23. Drawing these factors together, I conclude that the development unacceptably harms the character and appearance of the surrounding area, with specific reference to the bridleway. It therefore conflicts with Policy 6 of the County Durham Plan (CDP) insofar as it seeks to protect open land of recreational value, and CDP Policy 10, insofar as it resists development that gives rise to unacceptable harm to the intrinsic character, beauty and tranquillity of the countryside.

Highway safety

24. CDP Policy 21 sets out that all development should deliver sustainable transport by ensuring that any vehicular traffic generated by new development can be safely accommodated on the local and strategic highway network. CDP Policy 10 requires that development should not be prejudicial to highway safety or have a severe residual cumulative impact on network capacity. Policy W31 of the County Durham Waste Local Plan (CDWLP) sets out that waste development will only be permitted if the traffic generated by the development can be accommodated safely on the highway network.
25. The development is served by a single vehicular access on to the A167. This access is opposite a protected right turn lane that allows vehicles to turn on to Lime Lane.
26. The Council's Highway Officer advises that the existing vehicular access is deemed adequate for the manoeuvring of most vehicles into the site. However, it is considered that, while entering the site from the north bound approach would be acceptable, entering from the south bound would result in crossing a protected right turn lane. Exiting the site to the south would also require crossing the protected right turn lane. The Council state that the protected northbound right turn lane on the A167 is mainly used by HGV vehicles accessing a quarry further to the east.
27. On balance, it is the Council's view that the potential conflict between southbound motor vehicles wishing to enter and exit the site with users of the northbound protected right turn is such that the hazard to road users is unacceptable. The appellant argues that the access has been used by farm traffic since 1972. He says that the current use of the site gives rise to infrequent, minor and limited use of the access, and is comparable to the levels of use of the previous farming activities.
28. I note that the Council refer to 'potential' conflict, whereas they state that they have been aware of new development taking place on the land since March 2016. That being the case, any additional impacts on the road network have been under way for several years. Nonetheless, the Council have produced little substantive evidence to quantify the additional comings and goings associated with the change of use, and how that materially differs from the previous agricultural use. For example, there is no comparative data in terms of accident reports for the area for the timescales in question.

29. It is clear that the need for vehicles to cross the protected right-hand in order to turn south is not ideal. However, the access to the appeal site has been in existence for some time, and there is insufficient evidence for me to be certain that the unauthorised uses have led to a material increase in harm to highway safety. As a result, I am unable to conclude that the development gives rise to unacceptable conflict with CDP Policies 10 or 21, or with CDWLP Policy W31.

Water contamination

30. The appeal site lies on land above the principal aquifer in the area and is located within Ground Water Protection Zone III. The Council's Strategic Flood Risk Assessment also identifies that parts of the site are at risk of surface water flooding while there is an overland flood flow route across the site.
31. The Council are concerned that, by the nature of the materials stored on site, there is a likelihood of the presence of pollutants and hazardous waste, for example, oil from vehicles and the storage of paint. They also refer to the storage of unidentified liquids in containers without adequate bunds or treatments to prevent contamination in the event of spillage. Furthermore, no provision has been made for dealing with wastewater from the on-site residence or the workers' facilities.
32. Consequently, the Council contend that there is a risk of contamination of groundwater resources through infiltration and surface water run off potentially impacting the downstream aquatic environment. I note that the site is located approximately 170m from the River Skerne.
33. In addition, the land has been re-graded by the removal of topsoil and the formation of hardstanding through ground compaction, the importation of construction rubble and road plainings. The Council are concerned that the source of these new materials has not been identified.
34. Although there are no nearby residential properties that would be directly affected by the development, the Council contend that there is evidence of the burning of materials to extract metals and for the disposal of waste. These activities generate odours impacting on the air quality in the immediate vicinity to the site.
35. CDP Policy 35 relates to water management, and for all new development, requires that there shall be no net increase in surface water runoff for the lifetime of the development. CDP Policy 36 relates to water infrastructure. With regard to the disposal of foul water, it sets out a hierarchy of drainage options that must be considered and discounted for foul water in relation to development proposals.
36. CDWLP Policy W26 sets out that proposals for waste development which do not involve landfill or landraise will not be permitted unless it can be demonstrated that there will be no significant adverse impact or significant deterioration to the quality of surface or groundwater resources and the flow of surface or groundwater at or in the vicinity of the site.
37. In response, the appellant states that the site is used primarily for the storage of inert material rather than specific wastes and that the yard creates very limited effects on receptors in terms of pollution impacts. He goes on to say that no sensitive receptors in the vicinity have been identified by the Council where the site could have any significant impact, for example, ecological sites,

watercourses or other examples. He states that surface water is managed on site with regards to CDP Policy 35.

38. On my reading of the policies detailed above, the onus is clearly on the developer to show that they have addressed the policy requirements and to demonstrate that harmful impacts will not arise from the development in question. Whilst I have taken the appellant's comments into account, they fall far short of meeting these specific policy requirements.
39. That being the case, I conclude that it has not been adequately demonstrated that CDP Policies 35 & 36 and CDWLP Policy W26 have been satisfied.

The future operations of Aycliffe Quarry

40. The appeal site lies within the mineral safeguarding area of Aycliffe Quarry. CDP Policy 56 states that non-mineral development that would lead to the sterilisation of mineral resources within a mineral safeguarding area will not be permitted unless there is an overriding need for the development which outweighs the need to safeguard the mineral. Policy 56 also sets out that all non-mineral development should be accompanied with an assessment of the effect of the development on the mineral resource.
41. In the context of the unauthorised development, the Council consider the residential element to be a sensitive receptor which could result in tighter future working restrictions on the quarry through measures imposed through environmental protection legislation. Furthermore, were the residential use to be permitted, its presence would need to be taken into account in considering future applications for development at the quarry.
42. In response, the appellant states that the site adjacent is not the actual quarry but is instead a fenced storage yard with adequate separation distances to the appeal site. He contends that it is unclear how CDP Policy 56 is affected in relation to safeguarding mineral resources.
43. However, he does not dispute that the appeal site lies within the mineral safeguarding area. There is no evidence that the development is exempt or temporary in nature, and all other non-mineral developments within a mineral safeguarding area, which by definition includes the appeal development, must be accompanied by a mineral assessment of the effect of the development in the mineral resource beneath or adjacent to the site of the development.
44. The onus lies on the developer to demonstrate that a development satisfies the requirements of CDP Policy 56. The appellant has not submitted the required mineral assessment for a site within the mineral safeguarding area, and so I cannot be certain that the development satisfies CDP Policy 56.

Suggested conditions

45. I have had regard to the appellant's suggested list of conditions to mitigate the impact of the development. The Council have also provided a list of conditions in the event of the appeal being allowed.
46. However, a number of issues arise. Firstly, the appellant's conditions are imprecise. For example, he has not provided a plan of the 'westerly part of the site' he refers to. Secondly, it seems to me that these conditions would result in a new form of development, if it was to become 'a small storage facility'.

Ultimately, this would be problematic as such a scheme would be materially different to the scheme that constitutes the breach of planning control, for which deemed planning permission is sought. It is likely that the Council's conditions would also result in a different scheme, and may not satisfactorily address the concerns above in any event.

47. The suggested conditions have therefore not led me to a different conclusion on the main issues above.

Conclusion on ground (a)

48. Although I have not found harm to highway safety, I have found that the development unacceptably harms the character and appearance of the area. In addition, a number of policies seek information that has not been provided and so I cannot be certain that those policy requirements have been satisfied. For those reasons, the appeal on ground (a) fails and the deemed planning application is refused.

Overall Conclusion

49. The appeals are dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR