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## Appeal Decision

Site visit made on 9 August 2021

**by Paul T Hocking BA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 August 2021**

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**Appeal Ref: APP/Q1445/C/21/3271966**

**Benfield Valley Golf Course, Hangleton Lane, Hove BN3 8EB**

- 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 Lawrence Boon of Benfield Valley Investments Ltd against an enforcement notice issued by Brighton & Hove City Council.
  - The enforcement notice was issued on 12 February 2021.
  - The breach of planning control as alleged in the notice is: Without planning permission, the deposit of chalk spoil and aggregate creating hardstanding, mounds and chalk bunds at the Property in the area shown coloured green on the plan attached to the notice.
  - The requirements of the notice are: Completely remove from the Property the chalk spoil heap and aggregate mounds. Completely remove from the Property the chalk bunds deposited. Completely remove from the Property the newly created hardstanding area. Return the land to its former condition and character, including reinstating any appropriate vegetation lost as a result of the deposit of chalk spoil, bunds and extending of the car park.
  - The period for compliance with the requirements is 3 months.
  - The appeal 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.
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### Summary of Decision

1. The appeal is dismissed and the enforcement notice upheld with a variation.

### Preliminary Matters

2. The deemed planning application concerns the operational development attacked by the enforcement notice, namely the deposit of chalk spoil and aggregate creating hardstanding, mounds and chalk bunds (the works). The appellant puts forward that there is a planning application currently with the Council, and he therefore wishes to utilise the materials at the site and undertake further works to deliver that scheme. However, whilst that planning permission<sup>1</sup> has since been granted, it amounts to a different scheme to the deemed planning application. Accordingly, I can only consider the appellants arguments insofar as they are relevant to the development attacked by the notice for the works. The planning permission for an alternative scheme may then provide the appellant with a differing option for some of the materials and works already undertaken to that before me.

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<sup>1</sup> Ref BH2021/00795

3. The parties have been provided with an opportunity to make comments on the latest version of the National Planning Policy Framework (the Framework), and I have accordingly taken any relevant comments into account for the purposes of my assessment.

### **The ground (a) appeal**

#### **Main Issues**

4. The main issues are whether or not the works:
  - i. harm the character and appearance of the area, having particular regard to the setting of designated heritage assets; and,
  - ii. harm a Site of Nature Conservation Importance (SNCI).

#### **Reasons**

5. The site relates to a parcel of land used predominantly as a car park. It is surrounded by some mature trees and vegetation. The site is within a SNCI and adjoins Benfield Barn, a Grade II listed building along with associated Conservation Area (the CA).

#### *Character and appearance*

6. I could see during my site visit that the car park had been extensively re-surfaced with a dark hardcore material. Whilst the parties then differ in their views as to the extent, the car park has also been extended. There were then piles of dark hardcore material and/or road planings and chalk bunds. There were also significant mounds of chalk in the area closest to Benfield Barn and the golf course.
7. In determining this appeal, I have duties to pay special attention to the desirability of preserving or enhancing the significance of designated heritage assets. As designated heritage assets, Benfield Barn and the CA are irreplaceable, and so any harm or loss requires clear and convincing justification. The Framework advises that any harm which is less than substantial must be weighed against any public benefits that are advanced.
8. The works attacked by the notice predominantly encroach closer to Benfield Barn and the CA. The significance of the barn lies in its construction and use of materials. The significance of the small CA around it is its leafy setting and rural farm atmosphere. It is then almost completely surrounded by open land despite the more recently built-up area and by-pass. It therefore forms a green wedge.
9. The CA adjoins the car park and the introduction of mounds of chalk, along with the formality of the extended car park surface treatment, owing to its dark colour and delineation, significantly detracts from the leafy and rural qualities and setting of the CA. Moreover, the utilitarian materials and ad-hoc appearance of the works adversely affects the setting of the listed building. It does not complement the wider setting and qualities of the building as the works are particularly harsh and conspicuous. In my view it results in a commercial or industrial setting. The works therefore fail to preserve or enhance the character or appearance of the setting of these designated heritage assets, and, owing to their appearance, result in a loss of visual amenity to existing users.

10. I appreciate that tree works had to be undertaken in order to remove diseased trees, and therefore the site is more open than was previously the case. However, the works, in particular the chalk mounds, do not reflect the landscape character of the area, having been an area of open space comprising vegetation with a rural character in an otherwise urban area. It is incongruous and detracts from the open spatial qualities of the area.
11. The original area of car park has been extensively resurfaced with road planings, with a chalk base, and, extended. Given the extent of works undertaken, I do not accept that this was merely a repair or maintenance operation.
12. I conclude that the works are harmful to the character and appearance of the area in contravention of Policies CP16, SA4, HE3, HE6 and QD27 of the Brighton & Hove City Plan Part One as well as Policies NC9 and NC11 of the Brighton & Hove Local Plan 2005 (the LP). These policies, amongst other things, require development to safeguard open spaces, protect the wider landscape, not have an adverse impact on the setting of a listed building, preserve or enhance the character or appearance of the CA, not result in a loss of amenity to existing users, remain as open space and improves public access.
13. In the terms of the Framework, the works results in less than substantial harm to the heritage assets and must therefore be weighed against any public benefit that would arise from it. There is however little evidence of a public benefit to persuade me that the works and harm to significance that I have identified, are outweighed.

#### *Nature conservation*

14. The SNCI is a locally designated wildlife site that supports a number of protected species. The depositing of the materials, in particular the chalk mounds, in what were woodland and scrub areas, significantly reduces the area of available habitat.
15. Whilst I appreciate the appellant has undertaken a preliminary ecological appraisal, that largely relates to a different scheme. It also notes some impacts arising from the works already undertaken. In taking a precautionary approach, I am not persuaded on the evidence before me that the depositing of a significant quantity of materials would not likely have an adverse impact on nature conservation interests or that damage is otherwise minimised owing to its location, design and construction.
16. I conclude that the works are harmful to the SNCI in contravention of Policy NC4 of the LP which requires, amongst other things, that development should not have a likely adverse impact or that damage is otherwise minimised.

#### *Conclusion*

17. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) should fail.

#### **The ground (f) appeal**

18. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to

explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.

19. The appellant contends that he should not be made to remove other materials or previously existing hardstanding. However, the notice clearly only requires the removal of the recently imported materials and newly created hardstanding and then the reinstatement of any appropriate vegetation. Trees that have since been removed as the result of emergency tree works are not required by the notice to be replaced and the appellant is likely best placed to know the previous condition of the land and the extent of the original car park, albeit photographic evidence is also available.
20. It is also contended that some of the bunds and hardstanding are within the area of the original car park. Given materials have been brought to the site that amount to a breach of planning control, it is not excessive to require their removal, irrespective of their precise location in relation to the original car park. Whilst some of the materials could then be used to resurface the car park or for other matters, that relates to a different scheme, and it is not excessive for the notice to require their removal in order to remedy the breach. I am therefore not persuaded on the evidence before me that the alternative steps proposed by the appellant are appropriate. The planning permission may then provide an alternative scheme for the use of the materials at the site, but those logistics remain a matter for the parties.
21. The appeal on ground (f) therefore fails.

### **The ground (g) appeal**

22. The appellant contends that a period of 6 months is required given the quantity of material at the site, and to allow for adequate weather conditions as well as times of the year for planting. A period of 6 months therefore strikes an appropriate balance that would then not unduly perpetuate the breach of planning control. It may also enable some of the materials to be used in the alternative scheme without having to remove them from the site.
23. The appeal on ground (g) therefore succeeds.

### **Overall Conclusion**

24. For the reasons given above I conclude that the appeal should not succeed other than on ground (g). I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

### **Formal Decision**

25. It is directed that the enforcement notice be varied by:
- substituting '6 months' as the period for compliance.
26. Subject to this variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Paul T Hocking*

INSPECTOR