
Appeal Decision

Site visit made on 14 June 2022

by Sandra Prail MBE, MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 13 July 2022

Appeal Ref: APP/U1430/C/21/3276006

Land at Big Wood, east of London Road, Battle, East Sussex, TN32 5LX

- 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 Jordan Meason against an enforcement notice issued by Rother District Council.
- The notice was issued on 28 April 2021.
- The breach of planning control as alleged in the notice is without planning permission (i) the carrying out of engineering operations on the land by the creation of an engineered track and hardstanding area on existing bare earth track on agricultural land including the importation of materials and shown in the approximate position hatched blue on the plan attached to the notice ('the Unauthorised Development') and (ii) the change of use of the land from agriculture to a mixed use of agriculture and the storage of two (2) x shipping containers (as shown in the approximate positions by black squares on the plan attached to the notice) and storage of building materials and plant machinery, all unconnected with the agricultural use of the land ('the Unauthorised Change of Use').
- The requirements of the notice are (i) break up and remove the Unauthorised Development from the land including the removal of all imported materials, which includes but is not limited to hardcore, rubble, planings and membrane material used to create the Unauthorised Development, (ii) cover with topsoil the areas from where the Unauthorised Development has been removed to marry in with the contours of the adjacent undisturbed land, (iii) cease the Unauthorised Change of Use and remove from the land the two (2) x shipping containers, the plant machinery and all stored building materials, all unconnected with the agricultural use of the land, (iv) remove from the land all other materials, rubbish, tools and equipment arising from compliance with steps (i), (ii) and (iii) above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld

Ground (b) appeal

1. This ground of appeal is that the matters alleged in the notice have not occurred. The onus of proof rests upon the Appellant and the test of evidence is the balance of probability.
2. The appeal site is an agricultural field with old agricultural buildings situated near the centre of the plot. There is no dispute that its authorised use is for agriculture.

3. The notice alleges two breaches of planning control. Firstly, engineering operations to create an engineered track and hardstanding area on existing bare earth track including the importation of materials. Secondly, a change of use from agricultural use to mixed use of agriculture and the storage of 2 shipping containers and building materials and plant and machinery unconnected with agricultural use of the land. I shall address each in turn.
4. Turning to the hardstanding and track. An 'engineering' operation is not specifically defined but it is well established that it involves a physical change of land usually through earth works, of a scale that is not considered de minimus. There is no necessity for the works to have been carried out by engineers.
5. As a matter of fact a track exists providing access from London Road. The issue in dispute is whether as a matter of fact the track exists as described by the notice. The Appellant says that there was a pre-existing hard surfaced track and that vegetation was removed and hardcore laid over a membrane with a surface finishing of aggregate/stone. I am provided with a letter from a contractor paid to help with the work and his invoice dated 2021 for the clearing of overgrown vegetation and returning the existing track and hardstanding to its original state. The Appellant also provides aerial photographs taken in 2009 and 2013 which show an access track to buildings on the land.
6. The Appellant's evidence does not need to be independently corroborated in order to be relied on but it does need to be precise and unambiguous. The Council's evidence comprising observations at various site visits and photographs taken at those visits cast doubt on the Appellant's version of events. The photographs appear to show an initial bare earth track and the importation of material to create the track shown on the plan attached to the notice. Whilst it is impossible to be clear on measurements the Council's evidence appears to show an enlargement of the original earth track. Coupled with the fact that the invoice before me is not specific about the exact nature and size of the track before the work was undertaken on balance I am satisfied that the track and hardstanding area as alleged in the notice exist as a matter of fact.
7. Turning to the alleged mixed use there is no dispute that two shipping containers have been placed on the land and I saw them at my site visit. The notice does not claim that they are structures comprising operational development but that the land is used for their storage and the storage of building materials and plant machinery all unconnected with the agricultural use of the land.
8. The Appellant claims that storage use of the site has been ancillary to the primary agricultural use of the land and therefore there has not been an unauthorised mixed use. He says that the containers were initially used for the storage of tools but since the arrival of cattle have been used more for tractor and agricultural machinery. He says that the containers provide temporary storage whilst he improves the land. He provides as supporting evidence correspondence concerning the keeping of cattle. But correspondence that indicates an agricultural use of the land is not inconsistent with the alleged mixed use. There is no photographic or other evidence before me from the Appellant as to what has been stored in the containers or generally on the site.

9. In contrast the Council provides photographs taken at various site visits that show significant quantities of building materials being stored on the site. These cast doubt on the Appellant's assertion that storage has been ancillary to agricultural use and there is no explanation before me indicating how the materials shown in the photographs have been used solely for agricultural purposes.
10. Insufficient evidence is before me to enable me to conclude with any certainty that a change of use to a mixed use has not occurred as a matter of fact. The burden of proof rests on the Appellant in this ground of appeal and it has not been discharged.
11. For the reasons given above, this ground of appeal does not succeed.

Ground (c) appeal

12. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning control. The meaning of development is set out in s55 of the 1990 Act (as amended) as the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any buildings or other land.
13. Turning first to the Unauthorised Development. The Appellant argues that the track and hardstanding benefits from permitted development rights. He seeks to rely upon Schedule 2 Part 9 Class E or Part 6 Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).
14. Part 9 Class E provides for carrying out on land within the boundaries of an unadopted street or private way of works required for the maintenance or improvement of the street or way. But this provision is not specific to agricultural land. Part 6 Class B(d) specifically concerns the provision, rearrangement or replacement of a private way on agricultural land (of not less than 0.4 but less than 5 hectares). There is no definition of private way and I have therefore applied a common sense interpretation. I consider that as the track links the highway to an agricultural parcel of land that it could reasonably be considered a private way. But Class B(d) development is subject to a condition that the developer must before beginning the development apply to the Council for a determination as to whether the prior approval of the Council is required for the siting and means of construction of the private way (known as prior notification) and no such application has been made. It follows that the track and hardstanding cannot benefit from Class B permitted development rights.
15. For the reasons given above I conclude that the track and hardstanding do not benefit from permitted development rights and therefore require planning permission.
16. Turning to the Unauthorised Change of Use. The Appellant does not argue that the storage of building materials and plant machinery benefits from permitted development rights. He argues that as the containers are temporary they benefit from permitted development rights by virtue of Part 4 Class A of the GPDO. This Class provides for the provision of land or buildings, moveable structures, works, plant or machinery required temporarily in connection with

and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land. The Appellant says that the containers are temporarily required only until the refurbishment of the site is complete.

17. I am not satisfied that the containers can reasonably be described as moveable structures. They are large metal units, anchored to the ground by their own weight and having been there for some time have a degree of permanency. Moreover there is no evidence before me to support the assertion of temporary need. There is no plan showing the timescale and detail of future agricultural use of the site. I am therefore not satisfied that the containers benefit from permitted development rights and the material change of use to a mixed use of agriculture and storage unconnected with agriculture requires planning permission.
18. For the reasons given above I conclude that this ground of appeal does not succeed.

Ground (a) appeal and deemed application

Main Issue

19. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the area with particular regard to its location in the High Weald Area of Outstanding Natural Beauty.
20. The appeal site lies outside any identified settlement boundary and falls within the countryside. It is located within the High Weald Area of Outstanding Natural Beauty (AONB) and within the Brede Valley Landscape Character Area.
21. The National Planning Policy Framework (the Framework) provides that great weight should be given to conserving and enhancing landscape and scenic beauty in an AONB. The development plan (including the Local Plan – Core Strategy, saved policies in the Rother District Local Plan 2006 and the Development and Site Allocation Local Plan) mirrors the Framework in seeking to ensure that development respects its setting and conserves and enhances the landscape and scenic beauty of nationally designated landscapes. Policy RA2 of the Core Strategy seeks to strictly limit new development in the countryside to that which supports local agriculture, economic or tourist needs and maintains and improves the rural character. Policy EN1 provides for ensuring the protection, and wherever possible enhancement of nationally designated and landscape features including the AONB. I have also taken into account as a material consideration the High Weald Management Plan.
22. Turning firstly to the track and hardstanding. The site is screened in part from public view by hedgerows but the absence of public view is not a justification for inappropriate development in an AONB. The track is visible from London Road and the expansion of a bare earth track to create a significant hardstanding area adversely affects the rural character of the site and fails to conserve or enhance the landscape and scenic beauty of the area. It creates a feature that visually dominates its setting and does not maintain or improve the rural character of the site. There is no agricultural justification before me for the extent of the works. I am not satisfied that access to the site, including in inclement weather, could not be provided without the identified harm. It erodes the landscape character of the AONB contrary to the Framework and

relevant development plan policies. There are no material considerations before me that justify development contrary to the development plan.

23. Turning to the mixed use of the site. The change of use from agriculture to a mixed use of agriculture and storage creates a material change in the character of the land. Storage of large quantities of building material or machinery unconnected with agriculture creates visual harm that is not in keeping with the rural character and appearance of the area. The storage use of the land including the shipping containers does not support the agricultural use of the site and such use does not maintain and improve the site's rural character. Use of agricultural land for purposes unconnected with agriculture is not supported by development plan policy. The mixed use for storage causes harm to the character of the area, fails to enhance the landscape quality of the AONB and is contrary to the Framework and development plan policies.
24. I have considered whether conditions could overcome the identified harm. I have considered the Planning Practice Guidance. The Appellant requests temporary planning permission for 2-3 years for the containers. But there is no detailed justification for this timescale. A temporary planning permission based on a speculative timetable would not be reasonable.
25. I have considered the benefits to the Appellant and the wider economy including the desire to improve the site. I note the comments of interested parties both for and against the development. But I am not satisfied that the works of refurbishment to the site and its full return to agricultural use could not be secured without the breach of planning control.
26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

27. 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.

S. Prail

Inspector