

Appeal Decision

Site visit made on 21 September 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 1 November 2022

Appeal Ref: APP/Y9507/C/21/3280341

Land and buildings at Douglaslake Farm, Little Bognor Road, Fittleworth, Pulborough, West Sussex ("the Land") shown edged red on the plan attached to the notice ("the Plan")

- 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 Mark McDavid (A E Gadd & Sons) against an enforcement notice issued by South Downs National Park Authority.
 - The enforcement notice, Ref No FT/11, was issued on 28 June 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land and buildings to a use as storage and distribution centre (Use Class B8).
 - The requirements of the notice are to:
 - (i) Cease the use of the land and buildings as a storage and distribution centre, and
 - (ii) Remove all portable toilets and vehicles from the Land.
 - 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) (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered.
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Decision

1. It is directed that the enforcement notice be varied by adding the words "*that are associated with the use of the land and buildings as a storage and distribution centre*" to the end of the sentence in Section 5(ii). Subject to this variation, due to the appeal succeeding to this extent under ground (f), the appeal is otherwise 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.

Application for costs

2. An application for costs was made by Mr Mark McDavid (A E Gadd & Sons) against South Downs National Park Authority. This application is the subject of a separate Decision.

Ground (a) and the deemed planning application (DPA)

Main Issues

3. Although a number of other matters have been raised by parties, I consider that the main issues in the deemed planning application are those that are clearly stated in the notice as the reasons for its issue. These are the effect of the development upon the living conditions of adjacent residential occupiers and upon the character, appearance and relative tranquillity of the area.

Reasons

4. The appeal site (which includes 2 agricultural buildings, yard area and access) is situated within the South Downs National Park outside of a settlement boundary. It is bordered by open countryside as well as by residential properties to the north and south. The site was historically part of Douglaslake Farm, with the residential land directly to the north containing 2 Grade II listed buildings which had been part of that farm (Douglaslake Farmhouse itself, and its barn which is separately listed and runs along part of the boundary with the appeal site)¹.
5. Section 4 of the notice ("Reasons for Issuing this Notice") is clear that the targeted breach of planning control is the use of the land and buildings for the storage and distribution of portable toilets and associated activities, including their preparation and de-preparation.
6. The officer enforcement report says that there is concern at the levels of noise generated by the washing out of the toilet units and washing down of vehicles with a high-pressure jet wash, frequent manoeuvring, and loading and unloading of vehicles in the yard area in front of the buildings ('the barns'). The report states that the activities associated with the use primarily take place in the open and/or with the roller shutter doors to the barns open, and I have seen considerable evidence from neighbouring residents (including photographic evidence) which causes me to find that this is the case. This view is strengthened by consideration of the fact that the sole drainage arrangement² for capturing the wastewater resulting from the jet washing is not inside the buildings, but beyond the roller shutters within the yard. It does not seem surprising therefore that the photographs show operatives jet washing toilet units and vehicles near the yard drain, either in the open yard entirely or near the threshold of the buildings with the doors open, with accordingly no or very limited screening or noise attenuation afforded by the building when one considers the residential property to the north lying closely adjacent to the yard and the open doors of the barns.
7. Indeed, the noise survey report³ submitted by the appellant finds that "typical jet washing activities" inside - with the barn doors open - results in an excess of rating over background level of up to +5 dB when measured at the boundary of the residential property to the north⁴. As the report explains, a difference of around +5 dB is likely to be an indication of an *adverse impact*.
8. Further, in my view the noise survey report is likely to have under-estimated the impact of the development for the following reasons:
 - "Typical jet washing activities" are based on 3 toilets being cleaned per hour, yet I have seen very limited evidence from the appellant that this number is typical of the number of jet washing operations actually conducted (of toilets and vehicles). Conversely, and in the absence of

¹ I have applied the statutory duty in Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and had special regard to the desirability of preserving the settings of the listed buildings. However, the main parties agree that there is no harm in this respect from the development and I have seen nothing in evidence to cause me to disagree.

² The 'ACO' drain identified in the appellant's submissions, including Appendix 10 (Drainage Technical Note by Herrington Consulting Limited)

³ Phlorum Noise Assessment, October 2021.

⁴ When rated and assessed under BS 4142:2014+A1:2019 *Methods for rating and assessing industrial and commercial sound*

substantive evidence otherwise, the photographic evidence persuades me that significantly more toilet units are being cleaned in an hour of jet washing activity than the report suggests is typical. Further, for these reasons, I also find it more likely than not that actual use is closer to the “maximum number of jet wash activities” of 15 toilets per hour. Notably, the noise survey finds in these circumstances that even with the barn doors closed the assessment is that jet washing does not meet the noise target⁵.

- The noise survey report does not satisfy me that the use of the jet wash giving rise to the measurements sufficiently simulated the actual activities carried out on site. For instance, residents have referred to a noise contribution being made by the impact of the water jet upon and within the toilet units and the report is silent as to whether or not the jet washing used in the assessment incorporated this element;
- On 4 May 2021, the local Environmental Health Officer (EHO) visited the residential property to the south (Douglaslake Cottage) while jet washing of a toilet was taking place on the appeal site. The EHO assessed that “The jet wash activity was clearly noticeable and intermittent against the background sound climate”. This is despite the appellant’s noise survey concluding favourable results in relation to impact upon this property to the south (as compared to the property to the north). Further, this observation by the EHO is persuasive that a greater character correction (6dB rather than 3dB) should have been added to the Rating Level in the BS4142 assessment since it demonstrates that the impulsivity of the jet wash operation was “clearly perceptible” at a receptor location rather than “just perceptible” and I have seen very limited substantive evidence to support the latter basis.
- The noise survey has not included in its assessment of impact the loading and unloading of the toilet units from/to vehicles in the yard, despite this being a reason for enforcement and of clear concern to the local planning authority (LPA) and residents. This is not the same as the assessment made as regards the number and type of vehicle trips when compared to previous agricultural use. Even were I to accept that the new use has the argued minor beneficial noise effect in respect of trips made to and from the site when compared to previous agricultural use (while noting the comments of those opposed to the development as regards the data used to support the traffic assessment), it is a significant gap in the appellant’s evidence that the particular contribution of loading and unloading noise to planning impact has not been substantively assessed in the deemed application. In my view, and in the absence of such formal assessment, such an activity carried out in the yard on a routine basis so close to the boundary with the residential property would have an unacceptable adverse impact notwithstanding the previous use of the appeal site.

⁵ Noise target outlined in 3.1 of Phlorum Noise Assessment, October 2021. Excess of source rating over background sound levels should not exceed 0dB; BS4142 states that the lower the rating level is relative to the measured background sound level, the less likely it is that the specific sound source will have an adverse impact or a significant adverse impact.

9. For all of the above reasons, I find that the development causes an unacceptable adverse noise impact which significantly harms the living conditions of neighbours, and that this would occur whether or not jet washing takes place in the barn(s) with the doors closed.
10. The appellant has suggested that conditions could be imposed to mitigate noise, principally in securing either improvements to the sound insulation of the structure where the jet wash is used or the construction of an appropriate enclosure/screen around the jet wash activity. However, I have doubt about whether an effective structure, enclosure or screen of sufficient attenuative integrity could be provided given that it seems that the drainage arrangements necessitate that wastewater from jet washing must flow under a gap⁶ under the roller shutter door to reach the external ACO drain. In any respect, as I have said in earlier comments, the external position of the ACO drain makes it likely in my view (as seen in photographs) that operatives will for practical purposes use the jet washing equipment near to it either fully outside or at the threshold of the barn with the door open. Therefore, any sound insulation improvements would be compromised or else be entirely ineffectual. Further, I have seen no substantive proposals for internal drainage arrangements which might demonstrate that jet washing fully enclosed within the barn(s) would be feasible or practicable alongside sound insulation measures which would close gaps in the structure. The appellant has also suggested permission could be conditioned for the submission and approval of a Noise Management Plan to manage jet wash activities (such as limiting the number of washes per day/hour). However, even if I were satisfied that the conditions proposed by the appellant could make the development acceptable in respect to jet wash operations, they would not mitigate against the (substantively unaddressed) impact of loading and unloading of toilet units in the yard.
11. Notwithstanding the adjacent piece of land which I understand to be used for storage by a builder for materials and machinery, the South Downs National Park Authority Tranquillity Study 2017 and South Downs National Park Landscape Qualities Mapping show that Douglaslake Farm had (prior to the appeal development) *intermediate tranquillity* rather than a lower level of tranquillity as implied by the appellant. The South Downs Local Plan (Policy SD7) requires that development in intermediate tranquillity areas should conserve and enhance, and not cause harm to, relative tranquillity. Clearly, my finding as to adverse noise impact to neighbouring occupiers also leads to a finding that relative tranquillity in this part of the National Park has not been conserved or enhanced – but harmed. The 2017 Study explains that “*Tranquillity is a perceptual quality of the landscape. In making an assessment it is important to consider both visual and audible factors.*” One of the Negative Tranquillity Factors is Hearing, specifically in relation to sounds associated with human activity and development that drown out natural sounds such as bird song. The adverse noise impact resulting from the unnatural sound of power jet washing, which I agree with the EHO in these circumstances must be “clearly noticeable and intermittent against the background sound climate” provides this negative tranquillity factor, harming relative tranquillity. And, while visual screening around the site prevents harm to appearance, tranquillity is an integral landscape quality of this area of land within the National Park, and accordingly I find the development causes significant harm to its character.

⁶ As seen on my site visit and possibly the gaps referred to in 6.1 of the Phlorum Noise Assessment, October 2021.

12. Therefore, due to the totality of the planning harm I have found above, the development is in conflict with Policies SD1, SD2, SD4, SD5 and SD7 of the South Downs Local Plan 2014-2033 (2019) and Policy FITT1 of the Fittleworth Neighbourhood Plan 2018-2033 (2019). It is also in conflict for the same reasons with the National Planning Policy Framework, including Chapter 16 which seeks to conserve and enhance the natural environment.

Other Matters

13. I accept that the development constitutes a form of farm diversification (of Fitzleroi Farm) providing a long-term benefit to the appellant by delivering a regular, long term income stream and ensuring the continued viability of the farming partnership principally as a farming business. The development also seeks to optimise the use of former agricultural buildings at the appeal site, which appear to have been made redundant due to investment at the main farm site at Fitzleroi Farm. Also, permission for the development would allow the portable toilet companies to continue operating from the site who are providing employment opportunities and contributing to the local rural economy. However, all these benefits of the development do not outweigh the significant harm that I have found.
14. Since the issue of the notice, Natural England has published a statement regarding water supply issues in the Sussex North Water Resource Zone which are likely to impact the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar site. As a result, development within the Zone (in which the appeal site is located) needs to be subject to Appropriate Assessment and can only proceed if water neutrality can be achieved. However, there is no need to consider these implications in respect of the appeal development because it is unacceptable for other reasons (having failed on the Main Issues identified). Nor is it necessary, for the same reasons, for me to address further matters of concern to those opposing the development.

Conclusion on ground (a) and the DPA

15. The development does not comply with the development plan as a whole, and there are no other considerations which outweigh this finding. Accordingly I will not grant planning permission for the development, and ground (a) does not succeed.

Ground (f)

16. For an appeal to succeed on this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose.
17. It appears from the way the notice has been drafted that its purpose is to remedy the breach of planning control by requiring the unauthorised use to cease and by restoring the land to its condition before the breach took place. This is quite proper and not excessive in achieving the purpose of the notice.
18. The appellant says that it is onerous to require the cessation of the land and buildings as a storage and distribution centre. However, even were I to have found that the purpose of the notice was to remedy harm to amenity, the appellant has not demonstrated (for the reasons I gave in considering his ground (a) appeal) that the use of the appeal site as a storage and distribution centre does not cause harm to amenity or can be made acceptable in planning terms through the use of conditions.

19. However, technically the requirement of the notice to "Remove all portable toilets and vehicles from the Land" would prohibit vehicles on the land associated with its lawful agricultural use. It is therefore excessive and ground (f) succeeds to this extent only. Accordingly, I am varying the notice so that this requirement relates only to the removal of all portable toilets and vehicles associated with the unauthorised material change of use.

Ground (g)

20. For an appeal to be successful under this ground, I must be satisfied that the time given in the notice for compliance with its requirements falls short of reasonable.
21. The appellant says that the 3 months is insufficient but it seems to me that it is ample time for the unauthorised use to stop, and for the associated portable toilets and vehicles to be removed (both of which are of course inherently mobile items). While the appellant says that more time (6 months) is necessary to terminate contracts and relocate the business, no substantive evidence has been submitted as to the contracts to support the appellant's case and I otherwise find that 3 months is reasonable notice to the companies concerned.
22. Accordingly, ground (g) does not succeed

Conclusion

23. For the reasons given above I conclude that the appeal should not succeed other than to the extent I have indicated as regards grounds (f). I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR