



Appeal Decision

Site visit made on 8 November 2022

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

an Inspector appointed by the Secretary of State

Decision date: 16 November 2022

Appeal Ref: APP/C1435/C/21/3283745

Land at Oaklands Farm, Newick Lane, Heathfield, East Sussex shown edged red on the plan attached to the notice ("the Land")

- 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 Michael Jaques against an enforcement notice issued by Wealden District Council.
 - The enforcement notice was issued on 2 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of agricultural building on the Land ("the Building") and the Land from agriculture to a mixed use for agriculture, as a ground workers' commercial storage yard and depot, and the associated storage of ground workers' plant, vehicles, machinery, materials, tools and equipment.
 - The requirements of the notice are to:
 - (i) Stop using the Building and the Land as a ground workers' commercial storage yard and depot.
 - (ii) Stop using the Building and the Land for the storage of ground workers' plant, vehicles, machinery, materials, tools, and equipment.
 - (iii) Remove all plant, vehicles, machinery, materials, tools, equipment and stockpiles of materials associated with the said unauthorised use from the Building and the Land.
 - (iv) Remove from the Building and the Land all tools, rubbish, rubble, debris and equipment arising from compliance with the above requirements.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) 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 as amended falls to be considered.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.
2. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. On 26 November 2019 the Council refused a retrospective planning application¹ seeking permission for largely the same development as is the target of the enforcement notice in the appeal before me. However, for the avoidance of doubt, I am not determining an appeal against the 2019 refusal.

¹ WD/2019/1978/FR; "Retrospective application for change of use of land and barn from agriculture to a mixed use for agriculture and contractor's yard and storage of plant/machinery. Retention of two storey office/staff room within the barn"

4. The appellant says that the enforcement notice plan is incorrect in that the Council has incorporated a larger area of land within the area subject to enforcement than the 2019 application site. However, there are no ground (b) or ground (c) appeals and the appellant is not arguing that the matters stated in the notice have not occurred within the red line of the enforcement plan nor that there hasn't been a material change of use of that land. Accordingly, the enforcement plan does not require correction.
5. The appellant says that the notice should not have been issued. However, it is not within my jurisdiction to address and/or determine whether it was expedient for the Council to issue the notice, since case law² has confirmed that such challenges must be pursued by way of judicial review.
6. In 2013 the Council determined³ that the steel frame hay and straw barn on the appeal site was reasonably necessary for the purposes of agriculture, under Schedule 2 Part 6 Class A of the Town and Country Planning (General Permitted Development) Order 1995.

Ground (a) and the deemed planning application

Main Issues

7. The main issues in the appeal are the effect of the development on:
 - the character and appearance of the area; and
 - highway safety.

Reasons

Character and appearance

8. Notwithstanding the appellant's submissions that the barn can be used to contain various items associated with the material change of use, it is a fact of the development that groundworks vehicles, machinery, equipment and materials are strewn around an extensive external area around the building. To the observer, particularly one experiencing unobstructed views from the public right of way passing to the north-east, the result is an ugly and intense cluster of items and materials (including large heaps of groundworking materials and drainage pipes clearly beyond a normal agricultural purpose) jarringly juxtaposed against an otherwise agricultural vista within the open countryside incorporating Oaklands Farm to the north.
9. While I acknowledge the proximity of other non-agricultural uses, including the adjacent Heathfield recycling centre, the field parcel in which the appeal site is located is separated (and reasonably well-screened) by trees and vegetation from those uses and appreciated within the visual context of a rural landscape within the High Weald Area of Outstanding Natural Beauty.
10. For the above reasons, the development causes significant harm to the character and appearance of the area. Accordingly it is in conflict with Saved Policies GD2, EN6, EN27, DC 7 and BS9 of the Wealden Local Plan (1998) (LP) and Spatial Planning Objective SPO1 of the Wealden District Core Strategy Local Plan (2013) (CS).

² Britannia Assets v SSCLG & Medway Council [2011] EWHC 1908 (Admin)

³ WD/2013/7051/AD

11. For the same reasons, the development is also in conflict with the design principles of the National Planning Policy Framework (the Framework).

Highway safety

12. Access to and from the appeal site is by way of Newick Lane, a country lane with a 60mph speed limit. The appellant's submissions say that "it is impossible to reach the national speed limit along this part of Newick Lane". However, despite the report⁴ commissioned by the appellant from a highways consultant, no speed survey or data has been submitted. The appellant's submissions further invited me to make my own assessment upon my site visit – I found traffic on the lane, travelling in both directions past the site access, to be fast. Indeed, fast moving traffic caused me some difficulty pulling out from the site in my car onto the lane while taking into account restricted sight lines at the junction as a result of a raised bank and trees.
13. Therefore my own assessment, as invited, accords with the letter of 4 November 2019 from the Highways Authority (upon which I place substantial weight) which states that "the achievable visibility splays at the junction of the access on Newick Lane fall significantly below those required". While the appellant says that his highways report shows that there is potential to achieve the required visibility sight lines, it is not clear how that would be achieved (particularly in the absence of a speed survey) and while I read that he has already undertaken improvements to sight lines at the entrance it is clear from my site visit that they are insufficient.
14. It is also clear to me from the sizeable number of vehicles present on the site that the material change of use represented by the development represents an intensification of the vehicular use of the site (notwithstanding that the larger vehicles for which the appellant holds a Goods Vehicle Operator Licence appear to have been absent on my site visit). Accordingly, I agree with the Highways Authority that the resulting increase of use of a substandard access is a cause for concern, particularly since the additional trips may involve large, slower moving vehicles.
15. Moreover, I note that the appellant's own highways report states that the development results in trips to and from the site from large vehicles including a 7.5 tonne HGV, an 8-wheel 24ft rigid HGV and a standard pick-up associated with the groundwork business. Further, while the report provides a number for the assumed operational vehicular movements associated with the previous lawful agricultural use (157 total trips per week) it does not seek to similarly quantify – and therefore effectively compare – the quantum of vehicle movements associated with the material change of use (through records and logs, for instance). I therefore place very limited weight upon its conclusion that "a very limited number of trips occur".
16. For the above reasons, the appeal development leads to an increased traffic hazard on Newick Lane and thereby an unacceptable impact on highway safety. Accordingly, it is in conflict with Saved Policies GD2, DC7 and TR3 of the LP and Spatial Planning Objective SPO12 of the CS.
17. Consequently the development is also in conflict with the Framework, particularly paragraph 110 which requires safe and suitable access to a site.

⁴ *Land Adjacent To Oaklands Farm, Newick Lane, Heathfield, East Sussex, TN21 8PU Statement to Address Transport Implications* [TD-285-EN-RP-01 Revision 01 August 2019]; Transport Dynamics

Other Matters

18. The development provides an economic benefit through the diversification of a rural business. However, that does not outweigh the harm caused by the development.

Ground (a) and DPA Conclusion

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

Ground (f)

20. For an appeal to be successful under this ground, I must be satisfied that the steps required by the notice are excessive in achieving its purpose.
21. It appears from the way the notice has been drafted that its purpose is to remedy the breach of planning control by requiring cessation of the unauthorised use, and for the pre-development condition of the land to be restored by the removal from the site of associated plant, vehicles, machinery, materials, tools, equipment and stockpiles of materials. These requirements are quite proper and not excessive.
22. The notice requirements do not require the removal from the site of plant, vehicles, machinery, materials, tools, equipment and stockpiles of materials associated with the lawful agricultural use of the site. So, while ground (f) fails, the appellant might be reassured in this regard.

Conclusions

23. 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.

Andrew Walker

INSPECTOR