
Appeal Decisions

Site visit made on 15 November 2022

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 January 2023

Appeal A Ref: APP/Y9507/W/22/3296210

Link Farm, Wiggonholt, Pulborough, West Sussex RH20 2EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Alan Barrett against the decision of South Downs National Park Authority (the NPA).
 - The application Ref SDNP/20/05471/FUL, dated 4 December 2020, was refused by notice dated 11 March 2022.
 - The development proposed is described as a retrospective application for the continued storage of bricks.
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Appeal B Ref: APP/Y9507/C/22/3302386

Link Farm, Wiggonholt, Pulborough, West Sussex RH20 2EL

- 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 Alan Barrett against an enforcement notice issued by South Downs National Park Authority (the NPA).
 - The enforcement notice, numbered SDNP/20/00601/COU, was issued on 13 June 2022.
 - The breach of planning control as alleged in the notice is within the last 10 years and without planning permission, the change of use of the land for the continued use for the storage of bricks on the Land.
 - The requirements of the notice are: (1) Cease the use of the Land for the storage of bricks. (2) Remove all the bricks from the Land. (3) Remove from the Land all materials and debris resulting from the compliance of the above steps. (5) (sic) Restore the Land to its former condition before the breach took place.
 - The period for compliance with the requirements is three months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Appeal A is dismissed. The Notice in Appeal B is corrected by amending the fourth requirement to '(4)' rather than '(5)' as it was incorrectly numbered. The Notice is varied by stating that the period for compliance with the requirements is six (6) months, rather than three (3) months as originally specified. Subject to this the notice is upheld, the appeal is dismissed, and the deemed planning application is refused.

Appeal A

Main Issues

2. The main issues are whether:

- the open storage of bricks on the site conserves or enhances the natural beauty, wildlife or cultural heritage of the National Park,
- this storage use would be an appropriate commercial use in terms of relevant policies within the development plan, and
- this use has the potential to adversely affect protected species or ancient woodland in the Arun Valley Ramsar, Special Area of Conservation (SAC), Special Protection Area (SPA), Amberley Wild Brook Site of Special Scientific Interest (SSSI) or The Mens SAC.

Reasons

Effect on the National Park

3. The site is flat, being essentially within the wider river valleys of the Chilt and Arun to the north and west respectively. Although it is screened from the road by a landscaped bund it can be glimpsed from longer distance views, notably the higher ground at Marehill to the north and from the public right of way that traverses the golf course at West Sussex Golf Club to the southeast.
4. I noticed at my visit that the brick storage appears to be taking place on a larger area than that purely shown on the site and block plans in that this storage also seems to occur further to the west and south. This brick storage is to some extent shielded by wider views from the west by hay storage and by the fact that the land closer to the River Arun including the line of the public footpath to the west of the appellant's land is at a lower level than his land, including the site.
5. However, the site and the whole of the farm (as covered by the enforcement notice relating to Appeal B) lies within the National Park. Paragraph 176 of the National Planning Policy Framework (NPPF) states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks. This policy is echoed locally in Policies SD4 (Landscape Character) and SD5 (Design) of the South Downs Local Plan 2014-33 (SDLP), which together require development to conserve and enhance the distinctive character of the existing landscape.
6. Whilst the brick storage must be assessed in the context of the existing and long-standing open hay storage and distribution business taking place on the wider site, it is of a completely different nature. Whilst the latter has some connection to the countryside in that hay is produced in the countryside and haystacks are a common rural site, the commercial open storage and distribution of bricks on pallets has no particular need for a rural location, still less one in a National Park. It is a commercial use that one would expect to take place in a built-up urban area, such as on an industrial/trading estate; it is incongruous, inappropriate and unnecessary in this location. I saw at my visit that these bricks are predominantly shrink-wrapped and stored on pallets, one on top of another, up to about 6m high, and can be clearly seen from the majority of the wider site under the appellant's ownership.
7. Consequently, whilst views into the site from surrounding countryside are limited and certainly not prominent, within the wider site they are prominent, even if to some extent shielded by similar blocks of hay storage. There is no doubt that such commercial storage and distribution of bricks does not conserve or enhance the existing landscape, and certainly does not conserve

the scenic beauty, wildlife or cultural heritage of this part of the National Park (NP).

8. For these reasons the proposal would harm the local landscape and be contrary to Policies SD4 and SD5 of the SDLP and to NPPF paragraph 176.

The brick storage use in relation to Local Plan policies

9. SDLP Policy SD25 (Development Strategy) states that only exceptionally will development be permitted outside settlement boundaries where it complies with relevant policies in the plan, responds to the context of the relevant broad area or river corridor and also complies with at least one of four criteria.
10. The first of these is that the site is allocated for development or safeguarded for the proposed use – that is not the case here. The second is that there is an essential need for a countryside location; although there may well be a demand for bricks for development within the NP, for the reasons set out above there is no need for a brick storage and distribution business to be sited within the NP, including on this site. The third of these criteria is irrelevant because the proposal is not for community infrastructure. The fourth is that the site is an appropriate reuse of a previously developed site; although it is somewhat unclear whether the hay storage use is authorised to take place on this particular site, even assuming it is I have outlined above why brick storage and distribution is a fundamentally different use from hay storage and distribution. So, even if the site has been previously developed, that does not justify the commercial storage of bricks on it.
11. In any case, the proposed use does not comply with the first part of the policy in that it fails to comply with relevant policies in the SDLP and does not respond to the context of the area including the Arun river valley for the reasons set out above, and so fails to comply with Policy SD25 in totality, irrespective that it fails to meet any of the subsequent four criteria indicated above.
12. SDLP Policy SD34 (Sustaining the Local Economy) states that development proposals that foster the economic and social well-being of local communities with the NP will be permitted provided that they meet at least one of a series of criteria a) to g) as follows:
 - a) Promote and protect businesses linked to the NP's key sectors of farming, forestry and tourism. Brick storage is not linked to any of these sectors, albeit I accept that income from this business helps to 'diversify' this agricultural holding.
 - b) Promote and protect green businesses linked to ecosystem services. This is not a green business. It is argued by the appellant that it is a type of 'recycling' process in that some of the bricks are brick makers' 'end of lines' or are remaindered from other building sites. Whilst this may be the case, nearly all the bricks I saw were shrink-wrapped bundles of new bricks on pallets and so it would be inaccurate to say that the brick storage operation here amounts to recycling and, consequently, cannot be described as a green business.
 - c) Support rural supply chains across the NP and its environs and encourage closer ties between rural businesses. This is not a bona fide rural business and so it does not support such rural supply chains.

- d) Provide for and support small and micro businesses through the provision of small, flexible, start-up and move-on business units including incubator uses. Whilst some of the other business units on the wider farm holding could be said to potentially meet this criteria, the open storage of bricks clearly does not.
 - e) Provide flexibility for established business to secure future resilience and protect local jobs. I understand the brick storage business is run by a tenant separately from the appellant's own businesses, and so has no meaningful relationship to jobs in his businesses, some of which encompass agriculture and agricultural contracting.
 - f) Intensify the commercial use of an employment site and make a more efficient use of brownfield land. Whilst this may be the case, the proposed use does so in an unsustainable way because it would harm the local countryside in the NP.
 - g) Promote smart economic growth and advances in IT, particularly superfast broadband. The proposed use would not do this.
13. Whilst there is some agriculture taking place on the appellant's wider holding, there is no evidence that the brick storage operation would support agricultural development or diversification other than in generating a rental income for the appellant. As such the proposed development comes nowhere near meeting any of the criteria in Policy SD34.
14. For these reasons this brick storage use would clearly not be an appropriate commercial use in terms of relevant policies within the development plan.

Potential effect on protected species and ancient woodland

15. There is no ancient woodland on the site; in fact, there are few trees on it at all as far as I could tell from my visit. However, the site is located within 5km of the Arun Valley SPA (approximately 250m to the west) and Amberley Wild Brook SSSI, and within 6.5km of The Mens SAC. No preliminary ecological appraisal of the proposed use was submitted with the application in terms of assessing whether there has or would be impacts on protected or priority species and habitats within any of these nationally designated nature conservancy areas, albeit I understand that the NPA did not request this before it validated the application.
16. SDLP Policy SD9 (Biodiversity and Geodiversity) states that proposals will be permitted where they conserve and enhance biodiversity and geodiversity, giving particular regard to ecological networks and areas with high potential for priority habitat restoration or creation and that prior to determination, up-to-date ecological information should be provided which shows that development would essentially as a minimum conserve and protect relevant biodiversity. Clearly, in the absence of any submitted ecological appraisal of the proposed use it is impossible to confirm that Policy SD9 would be complied with.
17. SDLP Policy SD10 sets out that within 6.5km of The Mens SAC and 5km of the Arun Valley SPA development proposals must, through necessary surveys, assess whether key features such as foraging habitat or commuting routes for Barbastelle and Bechstein Bats in respect of the former and the suitability of land for wintering Bewick Swans in the latter have been established. No such

surveys have been provided here and so it is impossible to ascertain whether Policy SD10 would be complied with.

18. For the above reasons, and utilising the precautionary principle, it must be concluded that the proposed use fails to comply with SDLP Policies SD9 and SD10 and that the effect of protected species would be likely to be harmful, in the absence of any evidence to the contrary.

Conclusion on Appeal A

19. As set out above, the proposed brick storage use would harm the local landscape and be contrary to Policies SD4 and SD5 of the SDLP and to NPPF paragraph 176. It would not be an appropriate commercial use in terms of relevant policies within the development plan, and it fails to comply with SDLP Policies SD9 and SD10. The effect on protected species would be likely to be harmful in contravention of SDLP Policies SD9 and SD10, in the absence of any evidence to the contrary. For these reasons Appeal A is dismissed.

Appeal B

Ground (a)

20. Ground (a) is that planning permission should be granted for what is alleged in the notice. For all the reasons set out above in relation to Appeal A, planning permission should not be granted.

Ground (b)

21. Ground (b) is that the breach of planning control alleged in the notice has not occurred as a matter of fact.
22. The argument the appellant advances on this ground is that the plan attached to the notice is unclear because it does not identify the exact location of the brick storage, unlike the plan attached to the planning application in Appeal A.
23. That is an argument essentially challenging the legality of the notice, rather than an argument under ground (b) because the appellant does not deny that brick storage is taking place on the land the subject of the notice.
24. Notwithstanding that, it is common practice in enforcement notices that the plan attached to the notice covers the whole of the area owned or controlled by the alleged breacher simply to avoid the use the subject of the alleged breach being moved to a different area within the breacher's ownership but outside the scope of the notice, and the breach consequently freely continuing. That is exactly what has occurred here, as I detail above: brick storage is occurring not just on the site the subject of the planning application but on the appellant's wider site within the red line of the notice's plan. In that sense, the NPA was sensible in drawing the site plan to encompass the whole of the appellant's land ownership here. There is no breach of the Enforcement Regulations in this respect and nothing illegal about the notice. The NPA is simply following good sensible practice.

Ground (e)

25. Ground (e) is that the notice was not properly served on everyone with an interest in the land. The appellant argues that the tenant, who runs the brick storage commercial operation, was not served with a copy of the notice.

26. Notices were served on both the owner and occupier of the land and the details of the notice have been placed on the planning enforcement register. Even if, despite this, the tenant who runs the brick storage operation did not see the notice – which I find to be very doubtful – the tenant has not been prejudiced because the appellant has fully argued all the relevant grounds at appeal, and hence there has been no injustice to the tenant.

Ground (f)

27. Ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters.
28. The appellant argues that the steps required to restore the land to its former condition before the breach took place are vague and he is uncertain as to what he should do.
29. I note that the appellant claims that he is authorised to store hay on the land that is currently being used to store bricks. Assuming this to be correct, whether or not he chooses to do that now or simply leave that part of the land vacant is entirely up to him. In either case it is quite clear what the appellant has to do to comply with the last requirement (now requirement 4) of the notice.

Ground (g)

30. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed.
31. The appellant requests a period of 6 months, rather than the 3 months set out for compliance in the notice purely down to logistics in that he claims it will not be possible to find an alternative site within 3 months. Notwithstanding that he or the tenant should have used the time since they received the notice to at least investigate alternative sites to conduct the business in case the appeal was to fail, I have some sympathy with this argument. 3 months is not very long to find another acceptable site especially since planning permission may well be required again. I agree with the appellant that 6 months would be a more reasonable compliance period in this respect.
32. The appeal under ground (g) therefore succeeds.

Conclusion on Appeal B

33. Although the appeal under ground (g) is successful in varying the compliance period from 3 to 6 months, subject to this and the minor correction listed in paragraph 1, the notice is upheld and the deemed planning application is refused.

Overall Conclusion

34. For the above reasons both appeals are dismissed.

Nick Fagan

INSPECTOR