



Appeal Decisions

Hearing Held on 7 February 2023

Site visit made on 7 February 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2023

Appeal A: APP/U1105/C/22/3298710

Appeal B: APP/U1105/C/22/3298711

Stopgate Farm, Yarcombe, Honiton, Devon EX14 9NB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr A Barnes (Appeal A) and Mrs Susan Barnes (Appeal B) against an enforcement notice issued by East Devon District Council.
 - The enforcement notice was issued on 9 May 2022.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission the construction of a cement silo, water silo, site office and hardstanding resulting in the development of a concrete batching plant (use class B2).
 - The requirements of the notice are: I. Permanently remove from the Land the cement silo. II. Permanently remove from the Land the water silo. III. Permanently remove from the Land the site office. IV. Permanently remove from the Land the hardstanding. V. Permanently remove from the Land all building materials and rubble associated with compliance with steps (I), (II), (III) and (IV) from the Land and restore the Land to its condition before the breach took place.
 - The period for compliance with the requirements is six months.
 - The appeals are proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/U1105/W/22/3295861

Stopgate Farm, Yarcombe, Honiton, Devon EX14 9NB

- 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 Barnes against the decision of East Devon District Council.
 - The application Ref 21/0876/FUL, dated 23 March 2021, was refused by notice dated 3 December 2021.
 - The development proposed is: Retention of a cement silo, water silo, site office and additional concrete area.
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Appeal D: APP/U1105/W/22/3308364

Stopgate Farm, Yarcombe, Honiton, Devon EX14 9NB

- 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 A and S Barnes against the decision of East Devon District Council.
 - The application Ref 21/2332/FUL, dated 31 August 2021 was refused by notice dated 6 April 2022.
 - The development proposed is: New farm access.
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Summary of Decisions

Appeals A and B

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

Appeal C

2. The appeal is dismissed.

Appeal D

3. The appeal is dismissed.

Preliminary Matters

4. A Hearing was convened principally to hear highways evidence in respect of Appeal D, but in the event an element of discussion took place about all the appeals. My decisions are therefore based upon the written evidence before me, the oral evidence, and my site visit. The parties agreed this during the Hearing and therefore injustice does not arise from this blended procedural approach.
5. The appellant has proposed an alternative sinuous route for the access track (Appeal D) following discussion with an Officer at the Council. This was with a view to addressing the concerns raised in respect of the Blackdown Hills Area of Outstanding Natural Beauty (the AONB). However, that revised route takes the track outside of the appeal application site as denoted on the originally submitted plans. It also does not align with the proposed access point onto the A303, even though that is the appellants intention. The plans provided are also very limited in detail and so it would not be appropriate to leave the submission of accurate and detailed drawings to planning conditions. Moreover, consultees have not had an opportunity to formally comment on the proposal. Accordingly, the proposed sinuous route amounts to a different scheme and injustice would arise from considering it for the purposes of this appeal.

The refusals of planning permission - Appeals C and D

Main Issues

6. The main issues are:
 - the effect of the proposed access on highway safety;
 - whether the cement batching plant is suitable for a countryside location having regard to local and national planning policy;
 - the effect of the developments on the landscape and scenic beauty of the AONB; and,
 - whether there has been the loss of the best and most versatile agricultural land.

Reasons

7. The site is located in the countryside and is part of a wider agricultural enterprise extending to approximately 450 acres. It is located within the AONB and at an elevated level from surrounding public vantage points.
8. The developments before me relate to a cement silo, water silo, site office and additional concrete area (the cement batching plant), which have already been constructed, as well as a proposed new farm access onto the A303 with associated track.

Highway safety

9. The site is accessed a short distance along a narrow single-track lane. A highways sign at the junction with the A303 states the lane is unsuitable for motor vehicles.
10. The A303 is part of the strategic road network. The proposal was described as a new farm access, which would also necessitate a private track from the farmyard, across a field, to a new access point onto the A303.
11. The appellant's highways evidence contained a table of the typical daily movements associated with the activities taking place from the site. During the Hearing I asked for a break-down of the figures to account for each of those activities. Whilst I accept there are seasonal fluctuations, and therefore the figures are based on estimates, as opposed to survey data, despite observing the appellant's best efforts, I am not convinced that a rather ad-hoc approach to estimating the figures is sufficiently reliable and therefore indicative of the vehicle movements taking place. Even if they were reliable, a significant proportion of the vehicle movements are then not related to agricultural activity. It was therefore agreed during the Hearing that it was not merely a farm access, but an access to a site where it is evident that farm diversification and wider agricultural activities take place.
12. A principal concern of the appellant centres on the left-turn manoeuvre. This is where tractors or HGV's are accessing the site from the Honiton direction. A swept-path analysis evidence that those vehicles need to enter the lane of oncoming traffic to execute the manoeuvre. The parties however agree that there is no record of accidents associated with this manoeuvre or the junction itself, although the appellant considers it to be a ticking time bomb. Whether or not that is the case, planning permissions have been granted for non-agricultural activities at the site seemingly without highways objections and the cement batching plant has operated without the benefit of planning permission, which I was told amounted to a further 5 to 6 HGV's, in addition to those disclosed by the highways evidence.
13. The parties disagreed as to whether the access could be constructed in accordance with National Highways design requirements. Whilst I do not consider the section of the A303 concerned to comprise any sharp bends, there is a change in the elevation of the road which would make it harder for cars exiting the proposed access to see oncoming traffic from the Honiton direction. Moreover, whilst I appreciate that a speed-survey has been undertaken, albeit during a period of lockdown, the absence of a swept-path analysis for the proposed access does not enable me to make comparison and thus whether the

left-turn manoeuvre would also necessitate entering the lane of oncoming traffic. I therefore cannot accept there would be a net overall improvement in safety for vehicle manoeuvres.

14. Opportunities for exploring improvements to the existing junction with the A303 are also not at a particularly advanced stage. The appellant considers this would involve third-party land, but I have no technical drawings to demonstrate this would be the case. I was also advised the lane was under the jurisdiction of Devon County Council Highways department, and that they were yet to have fully engaged with such a process.
15. An existing narrow field access was also brought to my attention (the 180m access) and that this could be utilised as the appellant's fall-back position. This is located 180m further along in the Honiton direction. I was however advised that there was no certification for such a proposal given a track would be required, and that there would first be a need for an application of prior notification followed by planning permission for a section closest to the A303. There is some inevitability therefore that I afford this fall-back position very limited weight.
16. Drawing these points together, I am therefore not persuaded on the evidence before me that there is a need for a new access onto this part of the strategic road network which would then improve highway safety. The appellant's case is undermined by the reliability of his vehicle movement figures and that opportunities to improve the existing junction with the A303 have not been exhausted. It is also not merely a farm access as had been originally presented. Moreover, I am not convinced that the new access would not increase the potential for collisions, given the absence of a swept-path analysis, the elevational changes and that any dangers perceived with the existing junction would remain, as it would remain open to other road users. The stopping-up of the 180m access would also not address my concerns.
17. Whilst I appreciate the appellant considers there to be benefits to highway safety for him as a user of the proposed access and highlights the highways sign and that the existing lane is narrow, it is necessary to consider the totality of the situation for all road users. For the aforementioned reasons, I am however not convinced the proposed access would not be detrimental to the safe and satisfactory operation of the highway network.
18. I conclude the proposed access would be harmful to highway safety in contravention of Policies TC7, D7 and Strategy 7 of the adopted East Devon Local Plan 2013-2031 (the LP). These policies, amongst other things, require new development to not be detrimental to the safe and satisfactory operation of the highway network. For the same reasons it would contravene the considering development proposals objectives of the National Planning Policy Framework (the Framework) and DfT Circular 02/2013. This is a planning harm to which I attach considerable weight.

Location

19. For the purposes of the LP, the site is located in the countryside. The cement batching plant itself is accessed via the farmyard.

20. It however does not form part of a farm diversification scheme, indeed, the firm operating from the site is said to cover Devon, Somerset and Dorset, which is not disputed by the appellant. It is therefore not a form of rural diversification supported by Policy E4 of the LP. This is because even though the appellant considers the policy to be positively worded, a cement batching plant falls outside the scope of a traditional agricultural related economic activity. It is therefore not complementary with the agricultural operations on the farm that I was also able to observe during my site visit.
21. Policy E5 of the LP seeks to promote small scale economic development in rural areas. Development will only be permitted where it involves the conversion of existing buildings, or, if new buildings are involved, on previously developed land, or, if on a greenfield site, is well related in scale and form and in sustainability terms to the village or surrounding areas.
22. However, the cement batching plant does not involve the conversion of existing buildings and is not located on previously developed land¹. Moreover, given the sites location, being some distance from the very small village of Yarcombe, it accordingly relates poorly to both it and surrounding areas, and access to the site is heavily reliant on the private car. Strategy 7 of the LP is then only engaged if development is in accordance with a specific policy that explicitly permits such development.
23. The LP approach is therefore to locate most employment development within or close to settlements, which is broadly consistent with the supporting prosperous rural economy objectives of the Framework. The sustainable growth and expansion of all types of business in rural areas is then only supported through the conversion of existing buildings or well-designed new buildings, neither of which is applicable here. Furthermore, the Framework encourages the use of sites that are physically well related to existing settlements where suitable opportunities exist.
24. To that effect, the Council's Employment Land Review² indicates that there is land available on existing employment sites that would be suitable for a cement batching plant. Whilst the appellant disputes the general suitability of those sites and believes that planning permission would be required, it nevertheless provides evidence of other sites around settlements and there is little before me to demonstrate that a search for other suitable sites has been exhausted by the appellant.
25. Whilst I acknowledge there has already been planning permission granted for a non-agricultural use at the farm, being a steel-fabrication workshop, that permission related to the use of an existing farm building which is said to represent less than 2% of the total floor-area of such buildings at the farm. This figure is not disputed by the appellant. Accordingly, this does not assist the appellant in retaining a cement batching plant in an open farmyard, despite its relatively small scale and that he considers it to not be detrimental to his agricultural operations. Whilst I then recognise concrete might be used in relation to agricultural developments, I do not accept that this generality supports the retention of a cement batching plant at the site.

¹ As defined in the Annex 2 Glossary of the Framework

² Spring 2022

26. I conclude the site is not in a suitable location for a cement batching plant having regard to local and national planning policy. The cement batching plant therefore conflicts with Policies E4 and E5 as well as Strategy 7 of the LP and the supporting prosperous rural economy objectives of the Framework. This is a planning harm to which I attach considerable weight.

AONB

27. The defining quality of the AONB is its open landscape and the irregular field boundaries and copses that lie within. I could see during my site visit that the site is situated in a particularly open and attractive area of rural countryside. It is also set at an elevated level from some surrounding public vantage points. The site is widely visible and is prominent within the landscape.
28. Great weight should be given to conserving and enhancing the landscape and scenic beauty of an AONB, which has the highest status of protection in relation to these issues.

Cement batching plant

29. The cement batching plant is located to the west of a group of agricultural buildings. It is therefore not grouped within the main body of existing buildings at the farm. Whilst there is no change to the pattern of the field and the developments do not appear considerable in scale when viewed in the context of the farmyard, the introduction of the developments associated with the cement batching plant do not form part of the recognisable pattern of elements that make up the landscape. Whilst a silo might in itself be associated with a farmyard, the cement batching plant that I observed during my site visit is not routinely seen in a farm setting. Despite their relative smaller scale, I do not accept that the developments are insignificant. Accordingly, the cement batching plant introduces structures and associated activities which are at odds with this rural setting. They therefore do not fit well.
30. Whilst mitigation is proposed in the form of landscaping, which might provide some amelioration in wider views, it would do little to conserve or enhance the intrinsic landscape and scenic beauty of the AONB and so would remain incongruous.
31. I conclude the cement batching plant is harmful and neither conserves nor enhances the landscape and scenic beauty of the AONB and so contravenes Policy D1 and Strategy 46 of the LP, which, amongst other things, requires development to respect the key characteristics and special qualities of the area and help conserve and enhance the quality and local distinctiveness of the AONB. For the same reasons the developments contravene Policy NE1 of the Yarcombe Marsh Neighbourhood Plan 2014-2031 and the conserving and enhancing the natural environment objectives of the Framework. This is a planning harm to which I attach considerable weight.

Access

32. The proposed access and associated track would be located in a prominent location between the A303 and farmyard. The creation of the access with visibility splays onto the A303 would inevitably open the frontage.

33. The associated track would then be of considerable length. Whilst I appreciate it might be seen as part of a rural working landscape, it would dissect an otherwise open and expansive field. This would then not result in an irregular field pattern or boundary, but a straight line. I therefore cannot reconcile that a straight track of considerable length dissecting an open undeveloped field such as this would conserve or enhance the landscape and scenic beauty of the AONB. Moreover, it would be used daily by a number of large HGV's, making it even more conspicuous.
34. Whilst landscaping might assist in ameliorating in some views from public vantage points, I do not accept that it would help assimilate a straight track across this field into the landscape. Again, it would do little to conserve or enhance the intrinsic landscape and scenic beauty of the AONB. Some native copse planting is also proposed, but I do not consider that the appeal application is such that it provides an opportunity for this planting, as it could be done regardless, rather, it is merely offered as a compensatory measure, and which I find does not outweigh the harm I have identified. This is particularly the case given my findings in respect of the need for the new access.
35. I conclude the new access would be harmful and neither conserves nor enhances the landscape and scenic beauty of the AONB and so contravenes Policies D1, D7 and Strategy 7 and 46 of the LP, which, amongst other things, require development to be well integrated with its surroundings and not harm the distinctive landscape. For the same reasons the developments contravene Policy NE1 of the Yarcombe Marsh Neighbourhood Plan 2014-2031 and the conserving and enhancing the natural environment objectives of the Framework. This is a planning harm to which I attach considerable weight.

Agricultural land

36. There was some concern that there had been the encroachment of the cement batching plant into the adjoining field. During my site visit I was able to see that only part of the appeal application site was devoted to the cement batching plant, with the remainder used to store aggregate for the farm. Notwithstanding this, I was also able to see that if there had been any encroachment, it was negligible.
37. Furthermore, neither of the parties are able to provide evidence that the field is classified within subgrade 3a – good quality agricultural land, and therefore comprises the best and most versatile agricultural land.
38. I conclude that there has not been the loss of the best and most versatile agricultural land in contravention of Policy EN13 of the LP. This policy seeks to protect the best and most versatile agricultural land from development not associated with agriculture or forestry. For the same reasons the development does not contravene the conserving and enhancing the natural environment objectives of the Framework. The absence of this planning harm attracts neutral weight.

Other considerations

39. There is only very limited evidence before me in respect of drainage considerations for the developments. However, I consider these matters could

adequately be left to suitably worded planning conditions without contravening Policies EN14 and EN22 of the LP or the objectives of the Framework. This is a consideration to which I attach neutral weight.

Planning balance

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
41. I have found the proposed access to be harmful to highway safety and that the development would be harmful to the landscape and scenic beauty of the AONB. These are planning harms which both attract considerable weight. There are no other considerations which then outweigh these harms.
42. I have also found the site is not in a suitable location for a cement batching plant and that it is harmful to the landscape and scenic beauty of the AONB. These are planning harms which both attract considerable weight. That there has not been the loss of the best and most versatile agricultural land attracts neutral weight. There are no other considerations which then outweigh these harms.

Conclusion

43. For these reasons and having regard to all other relevant matters raised, I conclude the appeals against the refusals of planning permission should fail.

The ground (g) appeal – Appeals A and B

44. The appellants contend that the time given to comply with the requirements of the enforcement notice are too short and that 12 months would be necessary.
45. There is an existing concreting firm trading from the site. Other potential sites for relocation are then outside of the control of the firm or appellant and it is said that planning permission would also likely be required. There is therefore uncertainty in this regard and the period required. Accordingly, I therefore consider that 9 months strikes the appropriate balance and ensures the breach of planning control is not unnecessarily perpetuated.
46. The appeal on ground (g) therefore succeeds to this extent.

Overall Conclusion

47. Accordingly, I shall uphold the enforcement notice subject to a variation (Appeals A and B). The appeals against the refusals of planning permission are dismissed (Appeals C and D).

Formal Decisions

Appeals A and B

48. It is directed that the enforcement notice be varied by:
- substituting '*NINE months*' as the time for compliance.

49. Subject to this variation the appeals are dismissed and the enforcement notice is upheld.

Appeal C

50. The appeal is dismissed.

Appeal D

51. The appeal is dismissed.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Martin Brady	Trace Design
Barry Jones	Planning Consultant
Glen Crocker	Planning Consultant
Mike Barnes	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Digby	Senior Planning Officer
Lisa McCaffrey	National Highways
Jack Mason	National Highways

INTERESTED PERSONS:

Callum Muir	Assistant Planning Officer
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DOCUMENTS

1. Email trail as well as plans pursuant to sinuous access route
2. EDDC Landscape and Green Infrastructure Officer response to planning application