The Planning Inspectorate

Appeal Decision

Site visit made on 27 June 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2023

Appeal Ref: APP/U1430/C/21/3288765
Land lying to the East of Beech House Lane (Known as plot 6B), Saleshurst, Robertsbridge, East Sussex, TN32 5PN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr D Abad against an enforcement notice issued by Rother District Council.
- The notice was issued on 21 October 2021.
- The breach of planning control as alleged in the notice is
  - (i) The installation of a 2-metre-high metal wire mesh and wooden post and rail perimeter boundary fence with 3 gates that encloses the Land and in the approximate position shown in black on the attached plans ("the Perimeter Fence");
  - (ii) the creation of two areas of hardsurfacing on the Land by the importation of hardcore, the location of both areas are as shown in the approximate positions coloured green on the attached plans ("the Hardsurfaced Areas");
  - (iii) the creation of two hardsurfaced tracks on the Land by the importation of hardcore, the location of both areas are as shown in the approximate positions coloured blue on the attached plans ("the Hardsurfaced Tracks");
  - (iv) iv) the excavation of a pit within the Land, in the location as shown in the approximate position coloured pink on the attached plans, and it being filled with a large plastic and metal caged storage container ("the Storage Container") and covered with concrete;
  - (v) the erection on the Land of:
    - a) two timber sheds, as shown in the approximate positions coloured orange on the attached plans ("the Sheds");
    - b) one metal/timber clad building as shown in the approximate position upon one of the Hardsurfaced Areas and coloured orange on the attached plan ("the Building"); and
    - c) six separate metal framed structures without material covers and two metal framed structures with material covers ("the Structures") all within the area as shown in the approximate position edged in orange;
  - (vi) the erection of various fencing and gates within the Land

    (items i) - vi) above shall herein be altogether referred to as "the Unauthorised Development").
- The requirements of the notice are:

  i) Dismantle the Perimeter Fence in its entirety.

  ii) Remove the entire Perimeter Fence from the Land and take to an authorised place of disposal together with all materials used to construct the Perimeter Fence including but not limited to the associated concrete post footings and chicken wire buried in the ground.

  iii) Dismantle and remove the Sheds, the Building and the Structures from the Land in their entirety.

  iv) Break up and remove from the Land, and take to an authorised place of disposal, the imported hardcore used to create the Hardsurfaced Areas.

  v) Cover with topsoil the areas where the Hardsurfaced Tracks have been removed and re-profile those areas of the Land to the ground level it was before the

Unauthorised Development took place and reseed these areas of the Land with mixed grass seed.
vi) Break up and remove from the Land, and take to an authorised place of disposal, the imported hardcore used to create Hardsurfaced Tracks.
vii) Cover with topsoil the areas where the Hardsurfaced Tracks have been removed and re-profile those areas of the Land to the ground level it was before the Unauthorised Development took place and reseed these areas of the Land with mixed grass seed.
viii) Remove from the Land the Storage Container, including all the concrete used to cover the Storage Container, and infill the pit with earth to match the profile level of the adjacent land before the Unauthorised Development took place.
ix) Dismantle and remove from the land, and take to an authorised place of disposal, all the various fencing and gates within the Land and all the materials used to create the fencing/gates, including but not limited to the timber and metal wire mesh.
x) Remove all non-agricultural items from the Land, namely but not limited to the mechanical digger, tools, building equipment, all waste and materials on the Land arising from compliance with steps i) to ix) and return the Land to its former condition before the Unauthorised Development took place.

- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice is corrected by:

    - removing the words 'and take to an authorised place of disposal' from requirements ii), iv), vi) and ix).

    - Deleting '(v)c) six separate metal framed structures without material covers and two metal framed structures with material covers ("the Structures") all within the area as shown in the approximate position edged in orange;' from the alleged breach of planning control and deleting 'and the structures' from part iii) of the requirements.

2. Subject to the corrections, the appeal is 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.

Preliminary Matters

3. The site is a roughly triangular shaped field, stated to be of approximately 0.8 hectare in size. The land slopes downwards towards the west and north to an area of woodland. In the lower part of the land are various buildings and animal shelters. The site is part of a larger area of land covered by a Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995. The Article 4(1) Direction removes permitted development rights for various classes of development, including the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

4. I saw that the two hard surfaced tracks shown in green on the plan attached to the Enforcement Notice have been largely removed. The hard surfaced area marked in green was still present, and a caravan has been placed upon it. The

caravan is not described in the alleged breach of planning control and is therefore not a matter that is before me. Within the area enclosed by the orange line on the enforcement notice plan, I saw that the items listed under part 3 (v)c) of the notice as metal framed structures have been removed from the site. The appellant advised that they blew away in high winds. They have been replaced with timber shelters. As the timber shelters are not described as part of the alleged breach of planning control, they are not a matter that is before me.

5. The Salehurst and Robertsbridge Neighbourhood Plan (NP) is a made NP that forms part of the development plan for the site and the NP was referred to in the Council's Appeal Statement. Copies of two relevant policies have been provided and they broadly reflect the policies cited in the reasons for issuing the notice.

Matters concerning the notice

6. I have a duty to ensure that the notice is in order. It is excessive to require that the hardcore and fencing are taken to an authorised place of disposal, as it is sufficient to require that they are removed from the land in order to remedy the breach of planning control. Wide powers to correct a notice are available to me under section 176(1) of the 1990 Act as amended. I am satisfied that it will not cause injustice to the appellant or the Council if I correct the notice accordingly.

The ground (c) appeal

7. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof lies with the appellant to make out their case, and the standard of proof is the balance of probabilities. The appellant considers that the hard surfacing is permitted development under Class B, Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), and that the temporary buildings and structures are permitted development under Class A, Part 4, Schedule 2 of the GPDO. In the alternative, the appellant argues that some of the structures are temporary or moveable and are not buildings.

Hard surfacing

8. Class B, Part 6, Schedule 2 of the GPDO sets out that the carrying out of various forms of development on agricultural land in an agricultural unit, including (e), the provision of a hard surface, where the development is reasonably necessary for the purposes of agriculture within the unit. Paragraph B.4 states that development is not permitted by Class B(e) if the area to be covered by the development would exceed 1,000 square metres[1], calculated as described in paragraph D.1(2)(a) of Part 6.

9. The Council has argued that as the site is within an Area of Outstanding Natural Beauty (AONB) it is therefore on Article 2(4) land and prior approval is required for the provision of a private way. However, Article 2(4) land is National Parks and adjoining land and the Broads and does not include AONBs. I have also seen no evidence to indicate that the areas of hard standing exceed 1000 square metres, as suggested by the Council.

[1] The previous limit of 465 square metres was replaced in 2018

10. 'Agriculture' is defined in section 336(1) of the 1990 Act:

> '"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly;'

11. 'Agricultural land' is defined in paragraph D.1(1) Interpretation of Classes A to C of Part 6 as:

> '…land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouse or garden;'

12. In order to benefit from permitted development rights under Part 6, it is therefore necessary for the activities to constitute agriculture on agricultural land that was being used for the purposes of a trade or business, before the development permitted by Part 6 was carried out.

13. The appellant asserts that he uses the land for the practice of producing fruit and vegetables, raising livestock and marketing the resulting products. The farming business currently generates hay, alpaca wool, fruit and vegetables, eggs and honey which are sold to local shops and small outlets in London as well as to friends and family. He states that a business is located on the land that is registered with Companies House. Customers are able to purchase produce through a website[2]. I saw the fruit trees and small numbers of chickens, ducks, pigs, alpacas, sheep, goats with kids, ponies and donkeys.

14. The business was initially self-funded but began to generate revenue from either April 2021 or June 2021, as stated in the appellant's final comments and statement of case respectively. The farm accommodates livestock for breeding and produce, honeybees for pollination and produce while the land is also used for crops and grazing. A supporting letter from the Great British Bee Project explains that they are working with the farm to breed and rear over two million bees within one year, which will be monitored and maintained on site before being taken to other low natural pollination areas of the UK. They estimate projective (sic) sales of over £40k per annum through by products such as honey, wax and pollen.

15. The Council states that the land was previously lying fallow with no active agricultural use. A Companies House search has revealed that the company that has been set up is not linked to the appeal site and does not appear to be related to an agricultural business. The website that has purportedly been set up does not appear to be connected to an actual business, although I acknowledge that it is referenced in the letter from the Great British Bee Project and linked to the appeal site address. Nonetheless, the fruit trees have only recently been planted and are unlikely to be productive for several years. The livestock are limited in number and appear to be at a scale that is more akin to a hobby than a business or trade. All these factors cast doubt on the appellant's assertion that a trade or business was taking place and lead me to

[2] www.loveyec.com

conclude that, on the balance of probabilities, there was no agricultural trade or business being carried on when the works were carried out.

16. I accept that it is not necessary for the farming enterprise to be making a profit, as established in case law[3]. Nonetheless, even if there was a trade or business taking place when the notice was served, there is no information before me to indicate that it was taking place when the hardstanding was laid as required by paragraph D.1(1). The appellant has not discharged the burden of proof in this regard and on the balance of probabilities I find that the site was not 'agricultural land' for the purposes of Part 6 and therefore the hard standing was not permitted development.

17. Although I have found that the site is not 'agricultural land', the Council has also argued that there is no agricultural justification for the development. In order to benefit from Class B of Part 6, the development must be reasonably necessary for the purposes of agriculture within the unit.

18. The hardstanding consisted of two tracks leading from the entrance to the site towards the lower part, running alongside the two side boundaries. The track alongside the northern boundary led towards an area where I saw that bees were being kept. The track along the southern boundary led towards the animal shelters. Both have now been removed. The appellant states that the hardstanding tracks were necessary due to the land type and because of vehicles continuously getting stuck in the soft ground leading to the animal enclosures.

19. I acknowledge that the land is likely to be too soft for vehicles during wet winter months. I also accept that an area of hardstanding by the main access to the site may be necessary for parking vehicles in order to tend animals. It is not clear to me however that the track leading to the area of beehives was necessary for vehicles, as it seems to me that bee tending is unlikely to require regular vehicle movements to and from the hives. It is also unclear that the southern access track was necessary in order to bring a vehicle directly to the animal shelters all year round. I am therefore unable to conclude that all of the areas of hardstanding were reasonably necessary for the purposes of agriculture within the unit. The areas of hardstanding are therefore not permitted development under Class B, Part 6 Schedule 2 of the GPDO and they constitute a breach of planning control.

Temporary buildings and structures

20. Class A, Part 4 of Schedule 2 of the GPDO allows the provision on land of temporary 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 permitted development right in Class A is subject to limitations in paragraph A.1 and conditions in paragraph A.2.

21. Case law has established that the size and means of construction of a building is highly relevant to Part 4, Class A permitted development rights. It also needs to be demonstrated that the use is temporary, and there is no intention that the development will be permanent. In this case, the evidence indicates that the intention is that the agricultural use is permanent, and that the buildings

[3] McKay & Walker v SSE & South Cambridgeshire DC [1989] JPL 590

and structures are required on a permanent basis. They cannot therefore benefit from the permitted development right under Class A Part 4.

22. The appellant also puts forward an alternative case, that some of the structures are temporary or portable and do not require planning permission. This relates to the two timber sheds, one metal clad building, two timber framed buildings with material covers, and six portable metal framed field shelters. The appellant states that the structures and buildings are not physically attached to the land and are designed to be moved, and that his intention is to move them. The appellant refers to the 'Woolgarston appeal'[4] but has not been able to provide me with a copy. I have not therefore been able to take it into account.

23. Three primary factors have been established through case law in the consideration of whether a temporary or moveable structure is a building. These are 1) size, 2) permanence and 3) physical attachment. This requires an assessment based on fact and degree, and none of the factors are necessarily decisive.

24. The Council's evidence and my observations on site indicate that at least one of the timber sheds is on a concrete base. Although they are small structures, they appear to be permanently sited on the land and are large enough to rest by their own weight on the site. They are not temporary structures. Although they do not appear to be attached to the ground, it is not clear that they are designed to be moved. I have seen no evidence that they have been moved nor that there is an intention to move them. They have resulted in a physical change in the characteristics of the land. The appellant has not discharged the burden of proof with regard to the two timber sheds being temporary structures.

25. The metal storage building is a considerably larger building and appears to have been placed on a concrete base. I have seen no evidence that it was designed to be moved, nor that there is an intention to move it. Whether or not it is fixed to ground, it is of a size to rest by its own weight and has resulted in a physical change in the characteristics of the land. I therefore conclude, on the balance of probabilities, that the metal storage building is a permanent building.

26. The metal framed structures used as animal shelters referred to in the notice were not present on site and had been replaced by timber field shelters. The photographs taken by the council indicate that the structures comprised metal hurdles with metal hoops to support a material cover. I was informed that the metal framed structures had blown away in high winds, and I was able to view the remains of one of them in the adjacent woodland. The appellant states that the metal framed structures are portable. While I accept that their location within the fenced pens reduced the ability to move the metal framed structures, the size of the pens would nonetheless have allowed their position to be moved. The fact that they appear to have blown away would serve to confirm that they were not physically attached nor were they of such a size as to be held in situ by their own weight.

27. The evidence leads me to conclude, on the balance of probabilities, and as a matter of fact and degree, that the metal framed structures used as animal shelters were not buildings but were temporary or moveable structures. I

[4] Ref APP/B1225/C/01/1057144

therefore conclude that the metal framed structures used as animal shelters were not a breach of planning control. To this limited extent, the appeal on ground (c) succeeds and I shall correct the notice accordingly.

The appeal on ground (a) and the deemed planning application

28. The ground of appeal is that planning permission should be granted for the matters stated in the notice, as corrected. Having regard to the reasons for issuing the notice, the main issue is the effect of the development on the character and appearance of the site and surrounding area, including the High Weald AONB.

29. The site is in a rural area in the AONB, where the National Planning Policy Framework (NPPF) requires that great weight is given to conserving landscape and scenic beauty. The defining features of the High Weald include the deeply incised, ridged and faulted landform, dispersed historic settlement, historic routeways, woodland and historic field systems. The site is characteristic in terms of its small size and irregular shape, bounded by hedgerows and woods, in an area that is typically used for livestock grazing. Its landform is also characteristic, being on a steep slope of a gill stream valley. It is close to and accessed from Beech House Lane, part of a network of historic routeways. The comments from the High Weald AONB Unit indicate that the historic characterisation of the site is medieval and it is in an area of dispersed historic settlement. Built development in the surrounding area consists mainly of scattered farmsteads and associated buildings.

30. The development of the site with tall and imposing gates and fences, areas of hardstanding and numerous small buildings and structures adjacent to the woodland, has resulted in a visually intrusive form of development. The fence is out of keeping with other forms of boundary demarcation in the area, where fields are generally enclosed by hedges or woodland, with low stock fencing being typical. Even though the site is not prominent in views from public viewpoints and the structures are on the lower part of the site, the overall effect is to detract from the contribution the site makes to the landscape and scenic beauty of the AONB. The use of fruit trees may assist in screening the fencing but as they are deciduous and relatively small when mature, the fence will nonetheless be apparent as an uncharacteristic form of boundary treatment. The suggested use of cherry laurel would result in a non-native evergreen hedge or tree belt that would have a suburban appearance. It would be out of character in this rural setting and would not overcome the harm caused by the fencing and gates.

31. I appreciate that the appellant is seeking to contribute to the rural economy through his investment in the site and his plans for the sale of produce, while ensuring the safety and security of livestock and equipment, as well as supporting the local environment through the breeding of bees. However, these factors do not outweigh the great weight that must be given to conserving the landscape and scenic beauty of the AONB.

32. I note the details of development[5] that has been permitted at Oak Farm Oast, to the south of the site, including an agricultural barn, stable block and equestrian manege that is of a greater scale than the appeal development. From the information that has been provided it is clear that weight was given

[5] Planning application references: RR/2020/1872/P, RR/2020/1993/P, RR/2021/270/P

to the business that would be supported by the development, while the development was considered to be in keeping with the existing property and preserving the rural character and appearance of the Beech House Lane street scene. It is not therefore comparable to the appeal development, which is harmful to the rural character of the area and the AONB.

33. I therefore conclude that the development is harmful to the character and appearance of the site and surrounding area, including the High Weald AONB. It is thus in conflict with policies OSS4, RA2, RA3, EN1 and EN5 of the Local Plan Core Strategy 2014 (CS), policies DEN1 and DEN2 of the Development and Site Allocations Local Plan 2019, and Policies EN3 and EN4 of the NP, insofar as they seek to ensure that new development is well designed and conserves and enhances the landscape and scenic beauty of the AONB. It is also in conflict with the NPPF. I note that support is given to key sectors in the District, including those that are directly related to sensitive land management under Policy EC5 of the CS but I have already found in relation to the ground (c) appeal that there is insufficient evidence to indicate that an agricultural trade or business has been taking place.

34. The appellant argues that the agricultural unit is more than 5 hectares, as he has the use of other plots in the locality. He could therefore benefit from permitted development rights under Class A, Part 6, Schedule 2 of the GPDO, which could allow a much larger building to meet his farming needs. I have not been advised of the status of the additional land and whether the appellant has any security of tenure. The additional land appears to be available to the appellant as temporary grazing/hay crop, rather than as a part of the agricultural unit. It is not therefore clear that is occupied by the appellant as a unit for purposes of agriculture. In any event, I have found that the appeal site is not 'agricultural land' for the purposes of Part 6, and therefore there is no fallback position of potential to erect a larger agricultural building on the site using permitted development rights. As the development as a whole is harmful, it is not the case that I can issue a split decision.

35. For the reasons set out above, the appeal on ground (a) should not succeed and I shall refuse the deemed planning application.

Appeal on ground (f)

36. The ground of appeal 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 constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The notice, as corrected, seeks to remedy the breach of planning control. Lesser steps would not achieve the purpose of the notice.

37. The appellant argues that the hard surfacing and sheds were permitted development and therefore it is excessive to require them to be removed. If the ground (c) appeal had succeeded in relation to the hard surfacing and sheds, the remedy would have been to correct the notice to remove them from the allegation. There are no lesser steps that would achieve the purpose of the notice at less disruption and cost to the appellant. The appeal on ground (f) therefore fails.

The appeal on ground (g)

38. The ground of appeal is that the period for compliance with the requirements of the notice is too short. The period for compliance is six months. The appellant states that twelve months are required to rehome the livestock and then carry out the works, in manner which does not cause mental, physical and financial hardship to the appellant, which would not be in the public interest. I consider that six months is a reasonable balance between the interests of the appellant and the need to bring the breach of planning control to a timely resolution. The appeal on ground (g) therefore fails.

Conclusion

39. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

N Thomas

INSPECTOR