



Appeal Decision

Inquiry held on 14-17 November 2023

Site visit made on 15 November 2023

by Elizabeth C Ord LLB(Hons) LLM MA DipTUS

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Appeal Ref: APP/G2245/C/21/3274119

The Ice House, Penshurst Off Road Cycling Club, Grove Road, Penshurst, Kent, TN11 8DU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr William Michael Westphal against an enforcement notice issued by Sevenoaks District Council.
- The notice was issued on 30 March 2021.
- The breach of planning control as alleged in the notice is:
Without the benefit of planning permission, the carrying out of operational works involving the importation of and deposit of soil, hardcore, and waste materials to raise the levels of the land, including the formation of a boundary bunding, track and hardstanding together with associated re-grading and contouring of the land, the siting of two shipping containers, the formation of a bridge, the creation of a pond and the erection of boundary fencing.
- The requirements of the notice are to:
 1. Cease any importation of soils, hardcore, bricks, waste materials and any other material on the land;
 2. Remove two shipping containers from the site;
 3. Demolish the bridge structure and remove all resultant material from the land;
 4. Drain the pond of water and fill-in to ground level with inert soil;
 5. Re-grade and restore the land to its previous levels and condition before the breach took place by undertaking the following works:
 - a. Remove from the site the soil and waste material comprising the linear bund deposited along the southern side of the land, identified in an approximate position on Plan B attached to the notice as **Area A and shaded in blue**, so that the former undisturbed ground levels of the land on this boundary are fully revealed to expose either the vegetated or topsoil layer, or in their absence the undisturbed layer of subsoils, so that there are no waste materials or imported soils within the crown spread of the trees or the hedgerow vegetation, plus one metre. All works within 100mm of the topsoil layer shall be undertaken with hand tools only to ensure that the machinery does not damage the tree roots;
 - b. Removal of boundary fence that runs along the most southern-western point of **Area A as shaded in blue** on the attached Plan B;
 - c. The land within the approximate position on Plan B as indicated **as Area A and shaded in blue** shall be restored to previous contour and datum levels as shown in the attached plan labelled "**2018 Datum Levels**" with inert soil only;
 - d. Remove all the hardcore, waste materials and any other material used to extend any hardstanding to the north of the existing building as identified in the approximate position **as Area B and shaded in green** on the attached Plan B. Reinforce the trackway as identified in the approximate position **as Area C and shaded in orange** on the attached Plan B so that the former undisturbed ground levels of the land are fully revealed to expose either the vegetated or topsoil layer or absence (sic) the undisturbed layer of subsoils. All hardcore, waste materials and soil shall be removed from the land.

- e. Cultivate all parts of the land including areas A, B and C disturbed through the removal of soils, the deposit of waste, formation of hardstanding and associated activity so that there are no stones, bricks, blocks or concrete exceeding 75mm in any dimension at the surface. To grade the surface to a fine tilth so that the whole of these areas are finished to an even layer ready for seeding. During the spring or summer at a time appropriate for grass seeding reseed all the cultivated area with a grass mixture composed of 20% native wild flower and 80% slow growing grass seed mix so that a grassed finish to the land is re-established.
 - The periods for compliance with the requirements are:

Step 1	Immediately
Steps 2-4	3 months
Steps 5a & 5b	4 months
Steps 5c & 5d	6 months
Step 5e	12 months

from the date on which the notice takes effect.
 - The appeal proceeded on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
-

Decision

1. It is directed that the Enforcement Notice (the Notice) be varied and corrected as recorded in the Annex to this decision.
2. Subject to those corrections and variations, the Notice is upheld.

Applications for costs

3. The Council gave notice at the inquiry of its intention to make a written application for a partial award of costs. Case management timings were agreed and ordered, and the application is the subject of a separate decision.

Preliminary Matters

4. The Council confirmed at the inquiry that the purpose of the Notice was to remedy the breach.
5. The inquiry sat for three days in person and closings were heard remotely by Teams meeting on the fourth day.
6. I heard evidence on affirmation from the witnesses.
7. The inquiry was closed in writing after receiving the costs submissions from the parties.

The Enforcement Notice

8. At the start of the inquiry, the parties requested that I amend the Notice and confine my deliberations and decision to the agreed amended version. The requested amendments were:
 - 1) Section 5 (What You Are Required To Do) - remove requirements 3, 4, 5a and 5b. The reasons for this are that the bridge has been taken off site, the pond has an agreed ecological value and should remain, the boundary bunding is part of the original cycle track and, together with the boundary fence, lies outside the targeted areas being Areas A, B & C.

- 2) Overlay the plan of the 2018 Datum Levels, which is attached to the Notice, by the extent of Area A, and reference it at 5c. This is to make it abundantly clear what is required by 5c.
 - 3) Section 3 (The Breach Of Planning Control Alleged) and section 6 (Time For Compliance) - remove reference to the boundary bunding, the bridge, the pond and the fence, and the associated times for compliance, so that these sections accord with the amended requirements.
9. The parties agreed that the variations are sought on condition that the Council take no further enforcement action with respect to the matters identified for removal.
10. A correction was sought to section 4 (Reasons For Issuing This Notice) by changing "Kent Downs Area of Outstanding Natural Beauty" to "High Weald Area of Outstanding Natural Beauty", the latter being the relevant designated area.
11. I identified the following two further corrections needed in section 5, which I raised at the inquiry and which the parties agreed to:
- 1) 5d - requiring "reinforcement" of the Area C trackway. Reinforcement would amount to betterment, and that would be unreasonable. This was corrected to a requirement to "restore".
 - 2) 5e - requiring cultivation of "all parts of the land including" areas A, B and C "disturbed through the removal of soils, the deposit of waste, formation of hardstanding and associated activity". Apart from Areas A, B and C, the Council did not intend to enforce against any other parts of the site. Consequently, the reference to "all parts of the land including" needed to be removed. There is also a minor typographical error to correct, so that the paragraph flows grammatically.
12. As the above amendments provide clarity and reduce the scope of the works required, they will not cause injustice to the Appellant or the Council. Therefore, for the reasons given above, and on the understanding that no further enforcement action would be taken with respect to the matters removed, I considered the Notice as amended rather than the original Notice.

Main Issues

13. In accordance with the amended Notice, I have confined the scope of my considerations to:
- i) The importation of and deposit of soil, hardcore and waste materials to raise the levels of the land, including the formation of track and hardstanding together with associated re-grading and contouring of the land in Areas A, B and C; and
 - ii) The siting of two shipping containers.
14. The main issues are:
- Whether operational works involving the importation of and deposit of soil, hardcore, and waste materials to raise the levels of the land, including the formation of track and hardstanding together with

associated re-grading and contouring of the land, and the siting of two shipping containers, took place (ground b).

- Whether what happened constituted a breach of planning control (ground c).
 - Whether, at the time the Notice was issued, it was too late to take enforcement action against the matters stated in the Notice (ground d).
 - Whether the steps required by the Notice are excessive, and whether lesser steps would overcome the objections (ground f).
 - Whether the time for compliance with the Notice is too short (ground g).
15. In relation to the first three issues, the burden falls on the Appellant to prove his case on the balance of probability.

Reasons

Fact Finding

16. The appeal site (the site), known as the Lower Valley, lies in the Metropolitan Green Belt and the High Weald AONB. It consists of sloping land falling to a lower "bowl-shaped hollow", and contains trees, shrubs, grass, water bodies and a water tower, known as the Ice House. Man-made tracks and terraces can be seen over much of the site. It used to be part of a larger site, known as Penhurst Offroad Cycling Club (the PORC site), which was owned by the Appellant and used for cycling.
17. The PORC site benefited from several planning permissions. In 1993 temporary planning permission was granted to "Use for recreational purposes as a cycling track, together with new vehicular access, creation of car park and kiosk and installation of cesspool. In 1995 permission was granted to continue the use and retain the vehicular access, car park and kiosk. In 2007 permission was granted for a "recreation track".
18. Since the 1993 permission, and over a period of about 27 years, the Appellant undertook earthworks including re-grading the land to create cycle jumps and tracks, including a boundary track around the PORC site. Consequently, the land levels were altered over a significant time period to suit cycling requirements. Some of the engineered jumps contained substantial drops and much of the work was undertaken by heavy machinery such as tractors, diggers, dumpers and rollers. The Appellant put hardcore on the tracks since the 1990s and maintained/repared them with additional hardcore, as and when required.
19. Council enforcement officers visited the PORC site on occasions, but never suggested that there was a breach of the planning permission or that further planning permission was necessary for the works undertaken. The PORC site operated as a cycling facility for many years and no enforcement action was taken during this period.
20. In 2015 part of the PORC site, referred to as the "Kingdom" land, was sold, although the Appellant continued the cycling use on his retained land. No enforcement action was taken by the Council.

21. The area is prone to landslides, which have occurred over many years, and a particularly large landslide occurred in about 2016/2017. On my site visit, I noticed exposed rock faces, which revealed that the geology of the site included what appeared to be soft, friable rock. Significant areas of land slippages were apparent on site. A slope stability report from Southern Testing dated August 2021 (ST report), obtained on behalf of the Appellant, indicates the geology of the site consists of sand, sandstone, clay and stone and confirms instability of the land.
22. Between around 2016 and 2019 the Appellant cleared part of the site of large, rhododendrons, which exposed areas of bare earth. The Council said this caused instability, although nothing turns on it and no finding is necessary.
23. The Appellant carried out further earthworks on site, partly using spoil from the landslides. In particular, he created a bund along part of the southern boundary largely from landslide material, which had fallen down the slope. He constructed a perimeter fence on it, separating the site from the adjacent Kingdom land. The bund was intended to stop flooding from the more elevated Kingdom land.
24. Hardcore, including broken tiles, bricks and demolition soil, was brought onto the site from an area of the PORC site known as the Shimla land. Some of it was spread over the surface of the bund and along part of the boundary track. This track runs along the site's southern perimeter from west to east, curving northwards on a downwards slope in the east and further turning to follow the roughly northern site boundary.
25. On my site visit, I saw hardcore on the bund, and on the southern and eastern parts of the boundary track. It now appears largely overgrown with vegetation and is compacted and embedded into the land. I also noticed some waste material on the bund, which the Appellant said was the result of fly tipping. I accept this.
26. The bund and the southern boundary track appeared to contain most of the hardcore, although there was also hardcore covering Area C, which is the eastern part of the track. Whilst some of the hardcore on the bund lay immediately adjacent to Area A, very little was apparent within the bulge of Area A.
27. Landslides have affected part of Area A. Within the bulge of Area A, the Appellant undertook earthworks and regrading by cutting terraces into the slope/bank immediately behind the Ice House. He used heavy machinery and reinforced it with stone, saying it was in part to stabilise the land, whilst also creating cycle tracks. I accept his explanation.
28. On my site visit I saw loose stones/rocks within Area A, both gathered together and also strewn around the land. They were of the same type as I observed in the exposed rock faces. Therefore, I find that they were naturally occurring on site.
29. I noticed on my visit that the short arm of Area A was sloping land, which had been cut into, and contained some terracing similar to the bulge. Consequently, land levels had been altered. Whilst the area contained natural stone, there was little hardcore present.

30. The long arm of Area A contained a lower-level track, reinforced with hardcore. This can be seen in part in aerial imagery from 2012 and 2016, which shows the track in the far west continuing into the adjacent site to the west, then curving northwards then eastwards in a loop back into the site, outside Area A. As both these sites were previously part of the PORC site and used for cycling, it is likely this track was constructed as part of the original cycling facility, and I find it to be so. Furthermore, the Appellant gave evidence that he put hardcore and stone on the tracks when laid as a base, and I accept this.
31. The Appellant admitted that the works he carried out in Area A, which are subject to the Notice, occurred mainly around 2019 and 2020 as far as he could remember but, in any event, during the four years leading up to the Notice. I accept that.
32. Between 2019 and 2021 the Appellant placed hardstanding on Area B near the Ice House, which he said consisted predominantly of bricks and shingle. On my site visit I noted that the surface of Area B was mainly covered with bricks, although there was also other mixed hardcore, such as broken tiles and stone present.
33. From the aerial photographs of 2012 and 2016, it appears there was already some form of looped track passing through Area B. From its location it might have formed the other end of the track in Area A at that time, although it is unclear from the imagery due to tree cover. From later photographs the bricks can be seen laid on top of what looks like smaller hardcore, which would suggest some form of previous hardstanding. On balance, I find that part of Area B was previously part of an area of hardstanding containing hardcore adjacent to the Ice House.
34. LIDAR terrain modelling produced by the Council shows that the ground levels on the site changed between 2014 and 2018. Due to the landslides and works undertaken by the Appellant, I find that the land levels not only changed during this period, but also pre-2014 and post 2018.
35. The Appellant said he put hardstanding and brick onto the land pursuant to a planning officer telling him the Council would not enforce against the raising of land levels by less than 6 inches. Mr Mitchell gave evidence that this was not the Council's policy, and he himself never gave such advice, and knew of nobody else who did so. Whilst I accept that the Appellant genuinely believed he was operating within Council tolerances, I also find that the Council had no such official policy.
36. In 2019 the Appellant sold the "Shimla" land and the site became landlocked.
37. The Appellant brought two shipping containers onto the site in about late 2019/early 2020. He used them to store cycling equipment and paraphernalia associated with the club such as kitchen equipment and chairs and tables. He says that a planning officer from the Council visited the site during 2020 and told him the shipping containers could stay on the land, as they were being used in association with the cycle club for storage. The Appellant has been clear and consistent with his evidence in this regard, and I accept this was said to him.
38. Shortly thereafter, the Appellant's access onto the site was blocked and cycling has not occurred on the land since then.

39. The Notice was issued on 30 March 2021. Since that time the Appellant has not imported any more materials onto the site.

Discussion and Conclusions

40. The Council no longer seeks to enforce against the bund or the hardcore surface on the southern boundary track, despite it containing most of the hardcore. My conclusions are confined to Areas A, B and C. Many of the Council's photographs depicting earthworks and deposited hardcore are of parts of the site outside Areas A, B and C.
41. The Appellant does not challenge requirement 5.1 of the Notice to "cease any further importation of soils, hardcore, bricks, waste materials and any other material on to the site."
42. From the facts found above, I draw the following conclusions.

Whether the facts as alleged took place (ground b)

i) Operational works involving importation/deposit of soil/hardcore/waste materials to raise land levels, including the formation of track and hardstanding together with associated regrading/contouring of the land.

43. On the question of whether waste materials were used to raise land levels, the relevant planning definition of waste in this regard is any material which the producer or person in possession of it discards or intends or is required to discard.
44. Hardcore, containing soil, was imported onto the site from the Shimla part of the PORC site, which the Appellant owned at the time. It was his own material, which he was putting to use. He was not discarding it and there is no evidence that he was required to discard it. No other materials were imported. It is of little consequence whether the hardcore was waste or not and therefore, I will simply refer to the imported materials as hardcore. The fly tipped waste lies outside Areas A, B and C.

Area A

45. I have considered this area in three parts, namely, the long western arm, the middle bulge, and the short eastern arm.
46. Hardcore was deposited onto the long western arm of Area A. The purpose was to maintain the existing track, which already contained hardcore, and not to raise land levels. There was no formation of new track and any rise in land levels was de minimis, particularly as the hardcore compacted.
47. No significant hardcore was deposited within the bulge or short eastern arm of Area A. Whilst terraces were created altering land levels, they were constructed from existing soil and natural stone from the slope/bank into which they were cut.
48. Consequently, for Area A, there was no importation of soil/hardcore/waste to raise land levels. Therefore, the allegation did not take place.

Area B

49. A surface, mainly consisting of full bricks and sets, had been laid out in Area B. These materials would not commonly be classed as hardcore, although Area B already contained some hardcore from previous activities. The works were not undertaken to raise land levels and, in any event, any increase was de minimis.
50. Consequently, for Area B, there was no importation of soil/hardcore/waste to raise land levels. Therefore, the allegation did not take place.

Area C

51. Hardcore was deposited onto Area C to maintain the existing boundary track, which already contained hardcore. The works were not to raise the land levels and any increase in land levels was de minimis.
52. Consequently, for Area B, the allegation did not take place.

Conclusion

53. For Areas A, B and C, the appeal succeeds on ground b.

ii) The siting of two shipping containers

54. The Appellant placed two shipping containers on site and admitted doing so.
55. In closing submissions he confirmed that he no longer pursues the ground b) appeal with respect to the containers.

Whether there was a breach of planning control (ground c)

ii) Importation/deposit of soil/hardcore/waste materials and regrading

56. Whilst I have concluded that the appeal succeeds on ground b), in the event I am wrong, I have gone on to consider the ground c) arguments.
57. The Appellant does not argue estoppel with respect to any assurances given to him concerning deposited hardcore that raised land levels by less than 6 inches. He argues that there was no operational development and no engineering.
58. According to s.55(1) TCPA, operational development means the carrying out of building, engineering, mining or other operations, in, on, over or under land.
59. Operations comprise activities which result in some physical alterations to the land, which have some degree of permanence to the land. The terracing of the land in Area A clearly resulted in physical alterations. The works appeared to have been done with some permanence in mind as they were reasonably substantial and created an alteration to the form of the land. Whilst they were partly undertaken to stabilise the land, this is of little consequence, and their further purpose of creating cycling tracks supports a degree of permanence. Therefore, in my judgment, the definition of operations is met in this regard.
60. Whether these operations are engineering or other operations makes little difference. Engineering operations do not need to be undertaken by an engineer. In my view, the terracing appears to have been created with sufficient pre-planning, skill and precision to fall within the definition.
61. In any event, other operations include works, such as the formation of earth banks, where this was undertaken without the degree of pre-planning and skill

needed for engineering operations. The terracing, if not engineering operations, falls within this definition.

62. Either way, the terracing is development.

63. There was a suggestion that the land came within the s55(2) exception, in that it was used for agriculture or forestry and therefore the work did not involve development. There was no agriculture or forestry being undertaken on the land and the exception does not apply. In any event, the raising of ground levels, except if de-minimis, requires planning permission.

64. The Appellant relied on the fact he carried out some of the works to stabilise the land. However, this does not help him as planning permission is nonetheless required for such work.

Planning permission

65. It is not disputed that the 1993 permission for the PORC site, as extended by the 1995 permission, is extant. These are old permissions and lack the precision that is commonly found in more recent permissions. Whilst the Council seeks to narrowly restrict their ambit, I have considered their interpretation in a wider context, taking account of all relevant circumstances.

66. The 1993/95 permissions authorise a change of use of the PORC site to a cycling track, although they do not specifically authorise operational development for a cycling track. Whether such permission is to be implied is an objective test having regard to the natural and ordinary meaning of the words used and the overall purpose of the consent (*Trump International Gold Club Ltd. v Scottish Ministers* [2015] UKSC 74, [33]-[34]).

67. In considering the meaning and purpose of the permissions, I have had regard to their plans and conditions, and the activities that occurred over the subsequent years in reliance on their authority.

68. There are only two plans before me for the 1993/1995 permissions. One relates to a car park on the wider PORC site, albeit not within the appeal site, and therefore is of little assistance. The other shows the red line boundary of the PORC site, and also depicts what seems to be a separate cut-off chart of some kind with the words "proposed ground level" and "existing ground level" endorsed on it. The only other wording on the page that assists me, reads "Proposed Vehicular Access: Vertical Section Site Plan" in the bottom right-hand corner. From this, I deduce that the levels are referring to the vehicular access.

69. The red line boundary plan shows little else of use and does not mark the proposed location of any tracks. This does not mean, however, that such tracks were not authorised.

70. Turning next to the conditions, Condition 6 of the 1993 permission is of interest, which says:

"The following work shall not be carried out within the spread of the branches of any trees which are to be preserved except with the consent in writing of the District Planning Authority:-

1. Levels shall not be raised or lowered in relation to the existing ground level:

2.”

71. This would imply that, so long as the raising or lowering of ground levels did not take place within the spread of tree branches, they were permitted. This is likely to have been the case, as alteration of levels would probably be needed for the creation of track, without which the permitted use could not take place.
72. The Appellant was under the impression that he had permission to change land levels and create tracks and did so for about 27 years thereafter, relying on these permissions. These activities were done in the knowledge of the Council and without any enforcement action being threatened or taken, prior to the subject Notice.
73. From this evidence I find that, whilst the 1993/95 permissions are unclear, they contain sufficient information to broadly interpret them as allowing operational development for cycle tracks. Therefore, I conclude that this was their intention and such operational development is to be implied.
74. The next question is whether the permissions still cover the appeal site now that it has been separated from the larger PORC site.
75. A material change of use does not occur automatically upon the subdivision of a planning unit. Whilst a use which is authorised by a planning permission is capable of being extinguished by the creation of a new planning unit, this will depend on whether the character of the use changes in a fundamental way, such as when there is intensification.
76. In this case there is no intensification and no fundamental change in the character of the use. Therefore, I conclude that the site still benefits from the 1993/1995 planning permissions. These permissions authorise the creation/maintenance of track and therefore cover the works in Areas A and C.
77. Area B does not appear to be part of a cycle track now and the Appellant has not suggested it is. It appears as an area of largely brick hardstanding and, as such, is not covered by the permission to create cycle tracks. There is no permission for the works in Area B.
78. For completeness, I have also considered The Town and Country Planning (General Permitted Development)(England) Order 2015 (GDPO), Schedule 2, Part 9, Class E, which allows works that are required for the maintenance or improvement of a private way. The definition of a private way extends to a footway or passage and does not need to be a thoroughfare. I have established that the tracks are lawful and therefore, they fall to be considered under the GDPO.
79. The Appellant had been adding hardcore to the existing tracks since the 1990s in order to repair and maintain them. What he added to the tracks in Areas A and C in 2019/2020 was a continuation of this process. The hardcore compacted down and there was only a de minimis increase in land levels, if any. Consequently, the maintenance/repair works benefited from the permission given by the GDPO.
80. With respect to Area B, the brick covering extended further than the previous hardstanding, and to come within the GDPO exception, it would have to be confined to the existing area. Consequently, Area B is not covered.

Conclusion

81. With respect to Areas A and C, there was no breach of planning control, and the appeal would succeed on ground c).
82. With respect to Area B, there was a breach of planning control, and the appeal would fail on ground c).

ii) The siting of two shipping containers

83. The Appellant does not argue estoppel with respect to the alleged assurances he was given by the Council.
84. Therefore, the first matter to consider is whether the bringing onto site of the containers was operational development in the sense of building operations. The term "building" in s.336(1) TCPA has a wide definition which includes any structure or erection, and has been interpreted to include structures which would not ordinarily be described as buildings.
85. In considering whether a structure is a building, and in accordance with *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102, there are three primary factors to consider, namely size, permanence and physical attachment. It is a matter of fact and degree.
86. With respect to size, whilst a building would usually be constructed on site, structures that are constructed off site and brought onto the land are not excluded. The containers, albeit large, were constructed off site.
87. As for permanence, consideration needs to be given to the ability to move the containers, how long they have been in one position, and whether they are intended to be moved. Permanence does not mean that the state of affairs is to continue indefinitely. The containers have been in one position for some time and there was no evidence before me that there was any intention to move them. In my judgment, there was an obvious degree of permanence about them.
88. Turning to physical attachment, whilst the containers were not fixed to the ground, they are sufficiently heavy to rest on their own weight. Although they are not connected to utilities, they are not readily moveable and require heavy machinery to do so.
89. Considering these three factors, I conclude that the containers are buildings and bringing them onto site constitutes building operations.
90. Accordingly, planning permission is required for this operational development. There is no express planning permission in force and the building operation is not covered by the GPDO.
91. Whilst the containers were used to store cycle equipment and related paraphernalia, they also constitute significant building operations, which were not needed to create cycle track and which go beyond being ancillary to the use of the site as a cycle track.

Conclusion

92. Consequently, the shipping containers require planning permission and bringing them on site was a breach of planning control. Therefore, the appeal on ground c) fails.

Whether it was too late to take enforcement action (ground d)

93. The Notice relates to operational development and therefore the enforcement period is the four years prior to and including the issuing of the Notice. This is the period from 31 March 2017 to 30 March 2021.

i) Importation/deposit of soil/hardcore/waste materials and regrading

94. Given my conclusions above, I have not considered ground d) in this regard.

ii) The siting of two shipping containers

95. The Appellant clarified at the inquiry that there is no ground d) appeal with respect to the containers as he admitted placing them on the land in late 2019 to early 2020.

Whether the required steps are excessive (ground f) and whether the compliance time is too short (ground g)

i) Importation/deposit of soil/hardcore/waste materials and regrading

96. Given my conclusions above allowing the appeal, I have not gone on to consider compliance steps or timings for compliance with respect to these matters.

ii) The siting of two shipping containers

97. The Appellant accepted at the inquiry that there are no lesser steps than removal that would remedy the breach of planning control. He confirmed in closings that he does not appeal on ground f).
98. With respect to the time period for removing the containers, the Appellant is reliant on a neighbouring land owner allowing him to transport them over his land. Heavy machinery is required to undertake the task, and doing it during wet periods when the ground is soft is likely to damage the land. Consequently, the Appellant requests that he be given more time, in order to carry out the requirement during a dry period, in the summer.
99. The Council submits that the harm the containers are causing to the AONB and Metropolitan Green Belt should not continue past the generous compliance period in the notice. It says it is in the public interest to secure the earliest possible compliance.
100. Whilst I accept that the harm to the AONB and Green Belt should not extend any longer than necessary, the Appellant is reliant on his neighbour for compliance. It is unreasonable to require him to move the containers over someone else's land during the wet winter months when doing so in drier periods is likely to do less damage to the land.
101. Consequently, I vary the Notice by allowing the period of 6 months to remove the shipping containers off site.

Elizabeth C Ord LLB(Hons) LLM MA DipTUS

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Nick Grant of Counsel

He called:

Mr William Michael Westphal, the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Miss Melissa Murphy K.C.

She called:

Mr Sean Mitchell BSc(Hons), Dip.TP, MRTPI, Principal Planning Officer
(Development Management), Sevenoaks District Council.

INQUIRY DOCUMENTS

1. Council's statement and appendices
2. Appellant's statement and appendices
3. Statements from interested parties
4. Appellant's opening statement
5. Council's opening submissions
6. Signed statement of common ground
7. Enforcement Notice Plan B with locations and directions of Mr Mitchell's photographs endorsed
8. Appellant's comments on counsel's pre-inquiry statement of case
9. Appellant's letter of response to third party representations
10. Appellant's 11 page orientation document
11. Council's closing submissions and legal authorities
12. Appellant's closing submissions

ANNEX

Corrections and variations to the Notice

Section 3. THE BREACH OF PLANNING CONTROL ALLEGED

Delete all words other than:

“Without the benefit of planning permission, the siting of two shipping containers.”

Section 4. REASONS FOR ISSUING THIS NOTICE

Change “Kent Downs” to “High Weald”.

Section 5. WHAT YOU ARE REQUIRED TO DO

Delete all requirements except requirement 2, which reads “Remove two shipping containers from the site.

Section 6. TIME FOR COMPLIANCE

Delete the existing wording and substitute with:

“The time for removing the shipping containers from the site expires 6 months from the date on which this notice takes effect.”