



Appeal Decisions

Hearing held on 21 November 2023

Site visit made on 21 November 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2024

Appeal Refs: APP/Z3825/C/22/3290675 and APP/Z3825/C/22/3290676 (Appeal A)

Land at Stonehouse Farm, Handcross Road, Plummers Plain, Horsham, West Sussex RH13 6NZ (shown edged red on the attached plan)

- 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 appeals are made by Mrs Caroline Cooper and Mr Gayne Cooper against an enforcement notice issued by Horsham District Council.
 - The enforcement notice was issued on 10 December 2021.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the land from agriculture to the stationing of a caravan for residential occupation the approximate location of which is shown edged blue on the attached plan.
 - The requirements of the notice are :
 - (1) Cease the use of the Land for the stationing of the caravan for residential purposes;
 - (2) Remove the caravan from the Land;
 - (3) Remove from the Land all materials and debris resulting from compliance with the steps 1 and 2 above;
 - (4) Restore the Land to its former condition before the breach took place.
 - The period for compliance with the requirements is Eight (8) months for Step 1, Nine (9) months for Step 2 and Ten (10) months for Steps 3 and 4, from the date this Notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2) a, f and g of the Town and Country Planning Act 1990 as amended. An application for planning permission is therefore deemed to have been made under section 177(5) of the Act.
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Appeals Refs: APP/Z3825/C/22/3290669 and APP/Z3825/C/22/3290670 (Appeal B)

Land at Stonehouse Farm, Handcross Road, Plummers Plain, Horsham, West Sussex RH13 6NZ (next to the anaerobic digester and dairy building, and shown edged red on the attached plan)

- 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 Mrs Caroline Cooper and Mr Gayne Cooper against an enforcement notice issued by Horsham District Council.
- The enforcement notice was issued on 10 December 2021.
- The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the land from agriculture to the stationing of a caravan for residential occupation the approximate location of which is shown edged blue on the attached plan.
- The requirements of the notice are:

- (1) Cease the use of the Land for the stationing of the caravan for residential purposes;
 - (2) Remove the caravan from the Land;
 - (3) Remove from the Land all materials and debris resulting from compliance with steps 1 and 2 above;
 - (4) Restore the Land to its former condition before the breach took place.
- The period for compliance with the requirements is Eight (8) months for Step 1, Nine (9) months for Step 2 and Ten (10) months for Steps 3 and 4, from the date this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) b, c, f and g of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/Z3825/W/22/3311244 (Appeal C)
Stonehouse Farm, Handcross Road, Plummers Plain, Horsham, West Sussex RH13 6NZ

- 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 Gayne Cooper against the decision of Horsham District Council.
 - The application Ref DC/22/0829, dated 27 April 2022, was refused by notice dated 20 October 2022.
 - The development proposed is described as '*Retrospective application for Replacement Agricultural Building*'.
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Formal Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by the deletion of the text under 'The matters which appear to constitute the breach of planning control' and its substitution with the following:

'Without planning permission, the breach of condition 1 of planning permission ref DC/14/2276, dated 8 January 2015, relating to the retention of a mobile home for a further period of three years whilst the dwelling approved under application DC/13/0134 is constructed (for use by herdsman).'
2. The period for compliance be varied to 10 (ten) months from the date of this decision, for all steps.
3. Subject to this variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Appeal B

4. The enforcement notice is invalid and will be quashed.

Appeal C

5. The appeal is dismissed.

Procedural Matters

6. At the Hearing the appellant withdrew the ground (c) appeal for Appeal B that had been lodged at the outset of the appeal process.

7. Following the Hearing PINS wrote to the main parties regarding the possible invalidity of the two enforcement notices at issue. Both parties responded and, on this basis, I came to the decision that one notice was capable of correction whereas the other was invalid.

Background

8. When Stonehouse Farm and Jacksons Farm were amalgamated in 2022 they became one single concern. The new owners, the current appellants, went under the commercial name, Hammer Valley Farm Ltd and a Five Year Plan for the farm's development was drawn up in July 2022.
9. Two of the three appeals relate to enforcement notices against mobile homes on different parts of the site; one positioned off Hammerpond Road on the former Jacksons Farm, and the other set well into the site. The planning appeal involves an application made retrospectively, and refused, for a replacement agricultural building located amongst a cluster of buildings close to the farm's main entrance off Handcross Road.

Matters concerning the enforcement notices

10. An enforcement notice is required to specify whether, in the opinion of the local planning authority, the breach of planning control is within s171A(1)(a) or s171A(1)(b) of the 1990 Act ie whether the allegation is one of development without planning permission, or a breach of condition or limitation on a planning permission. In this case it is clear that the Council is seeking to enforce against the residential use of the land due to the stationing of a caravan for such purposes, and has described this as a change of use.
11. However, the continuation of a use after the expiry of a temporary planning permission granted for a limited period, which has the effect of limiting the duration of the planning permission, does not constitute development. Here, Appeal A is a case in point. An enforcement notice directed against the continuing use should therefore instead allege a breach of condition that required the use to cease at a specified time.
12. The Courts have given wide powers to the Secretary of State and Inspectors to amend enforcement notices and there is an expectation that, where at all possible, they will do so. I am able to correct any defect or error in an enforcement notice provided I am satisfied that the correction could be made without injustice to either party. In this particular instance I consider that the necessary correction can be made without being prejudicial to either main party's case as I consider the amendment would do more than correct a procedural error.
13. I note the appellants point that the location address given on the enforcement notice should refer to Jacksons Farm rather than Stonehouse Farm. However, Jacksons Farm is annotated on the plan attached, and the farms have merged.
14. In the circumstances, therefore, I shall amend the enforcement notice, the subject of Appeal A, accordingly.
15. I now turn to the enforcement notice, the subject of Appeal B. If an enforcement notice does not comply with the various statutory requirements set out in s173 of the 1990 Act, as amended, then it will be a nullity and

cannot be saved by the curative powers contained in s176(1) It does appear, though, here that the document contains all the relevant entries so as not to disqualify it at the outset. However, the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 under Part 2, 4C specifies that notices shall also show the precise boundaries of the land to which it relates, whether by plan or otherwise.

16. In the case of this enforcement notice the plan attached to the notice issued, although titled 'Land at Stonehouse Farm' has no street name present and the reference to the land being *next to the anaerobic digester and dairy building* is somewhat vague. A smaller scale plan covering the whole of the farm could have been attached to supplement the plan showing the caravan targeted which would have provided some context.
17. Instead, the indication that the above buildings are shown edged red with the approximate location of a caravan edged blue is less than precise and, moreover, there are no annotations or reference points on the single plan attached to the notice. If the mobile home was moved there could easily be some confusion as to the enforcement notice's requirements.
18. The actual planning unit is not obvious from the enforcement notice and, as such, the absence of an adequately detailed plan attachment is a particular failing. In its letter of 23 February 2024 the Council attempted to clarify matters by producing an annotated aerial photograph to illustrate the contextual setting but this did not form part of the enforcement notice when issued. A more definite and, if possible, an unequivocal wording of the notice is therefore required.
19. Under the provisions of section 176(1) of the 1990 Act as amended it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing. However, I cannot here be certain that no injustice would be caused if I were to attempt to make the significant corrections necessary.
20. In such circumstances it is not open to me to make good the enforcement notice's shortcomings in accordance with my powers under s176(1)(a) of the 1990 Act as amended since injustice would likely be caused were I to do so.
21. The enforcement notice is therefore invalid and will be quashed. Accordingly, Appeal B falls away.

Appeal A

The appeal on ground (a) – the deemed planning application (DPA)

The Current Planning Position

22. In 2014 planning permission (ref DC/14/2276) was sought to retain a mobile home on the land which had been occupied by an agricultural worker. The application was made subsequent to permission having been granted for the erection of an agricultural workers dwelling, as it would provide accommodation during the construction period.

23. Planning permission was granted in January 2015 for the mobile home but subject to a time limitation condition that it be removed on or before 8 January 2018 or within 3 months of the date of the approved agricultural workers dwelling being occupied, whichever is the sooner.
24. In 2020 an application (ref DC/20/1948) was submitted to retain the mobile home for an additional 3 year period. However, a subsequent site visit by a Council official revealed that the agricultural workers dwelling had proceeded no further than the laying of foundations, and certain pre-commencement conditions imposed had not been discharged. Moreover, there was no compelling evidence to demonstrate that the works undertaken had been undertaken before the expiry date of the permission granted.
25. I understand that the above planning permission was not subsequently furthered.
26. The Council considered that it had not been demonstrated that the mobile home was required in association with the farm's agricultural operations and this, amongst other reasons, caused a refusal of planning permission for the further retention of the mobile home.
27. However, it remained on the land and in December 2021 the Council saw it expedient to issue the enforcement notice requiring for its removal.

Main Issues

28. The main issues in this appeal are:
 - 1) whether there is a recognised functional need for the mobile home;
 - 2) whether the location of the mobile home would accord with the Council's spatial policy; and
 - 3) the development's effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of water abstraction.

Reasons

Functional need

29. Policy 20 of the local development plan, the Horsham District Planning Framework (LP), is concerned with rural workers' accommodation. It says that outside the defined built-up area, new housing for rural workers will be supported providing that there is a functional need for the dwelling, and the occupation of the dwelling is to support the established business use. Further, evidence is submitted to demonstrate the viability of the rural business for which the housing is required.
30. The appellant says that Hammer Valley Farm Limited is transitioning to a new farming system and expanding a beef and sheep enterprise, based around extensive grazing of herbal leys, with plans to introduce a small herd of pigs. In 2022 it was intended to increase livestock numbers to 100 ewes, 40 British Longhorn suckler cows and 20 breeding sows, with associated progeny. However, at the Hearing the appellants indicated that this has since been scaled back.

31. The main parties appear to agree that the holding is of a sufficient size to support the grazing and forage requirements of the intended farming system, and that the business is financially viable. It is also intended to enliven and modify the Five Year Plan.
32. In this respect the appellants say that the farm has a functional need for a temporary agricultural worker's dwelling at Stonehouse Farm and has a labour requirement necessitating a full time worker. It should, though, be noted that, in June 2022, a lawful development certificate was issued for the stationing of a mobile home for residential purposes on another part of the site.
33. Indeed, from the evidence put to the Hearing it would seem that the farm's operations and needs are somewhat fragmented which, due to an apparent uncertainty currently, strongly suggests there is a clear need for a co-ordinated management plan for the wider site. In illustration, I noted at my site visit that the aged agricultural buildings in proximity to the mobile home are empty, even derelict.
34. Such a management plan, if produced, could likely demonstrate a more compelling need for a second mobile home and justify the development. This is not the case currently and, in the absence of any clear indication of an essential need for the mobile home, planning permission, even for a temporary period, is not justified. Further, the government's planning practice guidance comments that it will rarely be justifiable to grant a second temporary permission.
35. Overall, from the limitations of the evidence put to me and my observations at the site visit, I am not convinced that there is an essential need for a rural worker to live at the site continuously, and the proposal would materially conflict with the requirements of LP policy 20.

Location

36. The mobile home would represent a use of the land, and I would not consider it to be an isolated home in the countryside as is discussed in paragraph 84 of the latest iteration of the National Planning Policy Framework (the Framework). Here, the mobile home would facilitate a rural enterprise and I see no conflict with the aims and objectives of LP policies 1, 2, 4 and 26.

Effects from water abstraction in terms of its neutrality

37. Horsham District is situated in an area of serious water stress, as identified by the Environment Agency Water Stressed Areas Classification. The District's water supply is from Southern Water, and is sourced from abstraction points in the Arun Valley. This is a Special Protection Area/Special Area of Conservation and Ramsar site.
38. The basis of water neutrality is that there is no increase from the existing nutrient contribution at a Habitats site as a result of a plan or project. Where a Habitats site is already unfavourable, there is the potential that making a fresh decision under the Habitats Regulation Assessment (HRA) process to sustain the current nutrient contribution could mean that development may inadvertently undermine the achievement of the restore objective by others.

39. In September 2021 the Council received a Position Statement from Natural England (NE) which shows that water abstraction for drinking water supplies is having a negative impact on the wildlife sites in the Arun Valley. Accordingly, NE has advised that any new development taking place must not add to this negative impact, and to prevent any further such impact all new development should demonstrate water neutrality. This advice was further updated in March 2022 to reinforce the directive.
40. Accordingly, the correct approach to be taken is that the development needs to be assessed against the requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017. The consideration of any measures to avoid or reduce the harmful effects upon the Arun Valley and achieve water neutrality can only be taken into account at the Appropriate Assessment stage of Habitats Regulation Assessment. The general advice is that mitigation within such a development site should ideally be considered first to minimise the contribution from the development itself. Where it is not possible to provide or secure the necessary mitigation in this way, then mitigation on land outside the development can be considered.
41. Attempts to secure a water neutrality strategy by way of a condition imposed on a planning permission is not considered to be acceptable by Horsham District Council nor Natural England as it does not provide for the necessary certainty that the impacts of a development can be mitigated. Any grant of planning permission absent of the up-front certainty that the impact on the Arun Valley can be mitigated would therefore be contrary to the Habitat Regulations.
42. Paragraph 180 of the Framework is clear that planning permission should be refused for development that would result in significant harm to biodiversity and/or result in the loss or deterioration of irreplaceable habitats. No means of strategic mitigation currently exists.
43. The appellants have not produced any Water Neutrality Statement yet all development that consumes mains water are therefore now required to demonstrate water neutrality, including mobile homes used for residential purposes. Further, all developments that may affect water consumption need to be screened to ascertain whether the development, individually or in combination with other projects, would result in a significant effect on the Arun Valley sites, in terms of assessing whether the groundwater abstraction for water supply to the site is contributing to the situation.
44. In this particular instance the appellant has not addressed the issue in any meaningful way and no water neutrality statement has been prepared to reflect water usage from the other parts of the site where the uses of land are lawful, in order to provide a baseline. In the absence of any mitigation measures, the possibility exists that the development would have an adverse effect on the Arun protected sites, either alone, or in combination with other projects.
45. In conclusion on this main issue, the development does not enjoy planning permission, and neither is it immune from planning control. The proposal is contrary to LP policy 31 and also relevant advice within paragraph 180 of the Framework. Accordingly, I have concluded that NE's contemporary advice should be adhered to and mitigation measures identified by the appellants to allow for an Appropriate Assessment to take place.

Planning Balance

46. Irrespective of my findings on the first two main issues it is clear that, until the water neutrality issue is addressed and mitigation measures put forward, this matter overrides and the use would be considered unacceptable. This could be incorporated within a farm management plan but, until such time as a co-ordinated approach is adopted, I must conclude that the development cannot be approved.

Conclusions

47. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the DPA.

The appeal on ground (f)

48. An appeal on ground (f) is that the compliance steps stipulated go beyond what is necessary to remedy the harm caused by the alleged breach. In this instance the appellants make the point that the mobile home is positioned on a concrete apron which was previously linked to the adjoining livestock buildings. The Council agrees this point.

49. However, a reading of the enforcement notice's requirements require only that the caravan be removed from the land and all resultant materials and debris be similarly removed. There is no specific requirement that the concrete apron be broken up and, on this basis, the appellants' concerns are unfounded.

50. No correction to the enforcement notice is thereby required and the appeal fails.

The appeal on ground (g)

51. An appeal on ground (g) is that the time period for compliance stipulated in the enforcement notice is unreasonably short and should be extended.

52. Here, the appellants are requesting an extension to 12 months. To my mind this would be tantamount to granting a temporary planning permission but I am satisfied that the time period for compliance with all steps should be set at 10 months. This would potentially allow the appellants to properly approach the 'need' issue and, if so, address the matter of water neutrality.

53. The appeal, therefore, succeeds to this extent.

Appeal C

Main Issues

54. The main issues regarding the replacement agricultural building are:

- 1) Whether there is an essential need for the replacement agricultural building in association with the agricultural operations of the farm;
- 2) If so, the effect on the character and appearance of the surrounding area by way of the size of the new building; and

- 3) The development's effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of water abstraction.

Reasons

Background

55. This sizeable agricultural building has been erected on the site of old dilapidated farm buildings which were recently demolished. The appellants say that the new building was required for the storage of modern farm machinery and also to allow for an ancillary workshop for its repair. A submitted drawing, (ref NB-P03) shows the building's footprint and its elevations.
56. Planning permission was subsequently refused on the basis that the building was not necessary to support the needs of agriculture, nor essential to its countryside location, and it amounted to an overdevelopment of the site.
57. Council officials carried out a site visit during the summer of 2023 which showed the building had internal facilities different to that shown on the submitted drawings as kitchen, shower and toilet facilities had been incorporated. As this would necessitate connection to the mains the matter of water neutrality, as discussed earlier, has therefore become an issue on this individual appeal.

Essential need

58. The appellants mention that the building has been properly designed for its purpose and its scale would sustain a modern farming enterprise.
59. The Council commissioned independent agricultural consultants to assess the need for, and suitability of, the building for its intended purpose and their representative visited the site in July 2022 in this regard. The consultant found that the agricultural storage building is to a size, scale and design which provides easy access to allow the safe movement into the building of large, bulky and heavy machinery associated with an anaerobic digester (AD) plant situated on a different part of the site.
60. At the time of my site visit I noted that the AD had been decommissioned, although there is an intention to bring it back into use to generate 'green' electricity and the consultant considered that the building would provide an associated secure area for the storage of all the machinery, spares and equipment.
61. Overall, the findings were put to the Council with the conclusion that the replacement agricultural storage building and workshop is reasonably required for the purposes of agriculture on the holding.
62. I must agree with this assessment and I find no conflict with the aims and objectives of LP policy 10, which supports rural economic development and LP policy 26, which serves to protect the countryside.

Character and appearance

63. I accept that the building is substantial in size, but form follows function and function follows form. Besides, the building is situated amongst a cluster of other large farm related buildings and it is not an isolated entity.
64. I must conclude that it a high quality building, specifically designed for its intended purposes and, when fully functional, would be beneficial to the rural economy. This is consistent with relevant advice within the Framework.
65. Accordingly, I find no material conflict with LP policies 25, 32 and 33 close and I am satisfied that, in physical terms, it represents an appropriate form of development.

Effects from water abstraction in terms of its neutrality

66. The inherent considerations here are identical to those already discussed as part of the DPA relating to the mobile home, and it is not necessary that I repeat these here.
67. In summary, though, no water neutrality statement nor any details of such have been provided in respect of the replacement agricultural building and, in the absence of this, no appropriate assessment has been carried out by the competent authority. Consequently, no mitigation measures can be formulated.
68. The relevance and advantages of a robust farm management plan again here comes to the fore.
69. The proposal is, therefore, in conflict with NE's current advice and is contrary to LP policy 31 and also relevant advice within paragraph 180 of the Framework.

Conclusions

70. Whilst I have found the proposal would not result in any significant harm on the first two main issues, the failure of the appellants to address the matter of water neutrality and the potential impacts of such, outweigh the planning benefits arising.
71. For the above reasons, and having had regard to all matters raised, I have to conclude that the appeal be dismissed.

Timothy C King

INSPECTOR