



Appeal Decisions

Hearing held and site visit made on 8 May 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State 2

Decision date: 19TH JULY 2024

Appeal A Ref: APP/B1415/C/22/3313499

Appeal B Ref: APP/B1415/C/22/3313500

The land known as Land East of Links Cottage, 40 Tilekiln Lane, Hastings TN35 5EN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Royston Starling and Appeal B is made by Mr Kingsley Starling against an enforcement notice issued by Hastings Borough Council.
- The notice was issued on 22 November 2022.
- The breach of planning control as alleged in the notice is without planning permission, the laying of a membrane and the importation, deposition, and spreading of materials to form an area of hardstanding on the land.
- The requirements of the notice are to:
 - (i) Remove the hardstanding material from the land in its entirety either by hand tools or mechanical digger with a toothless bucket. This should be carried out so that the hardstanding is removed without digging into the soil beneath the membrane on which the hard standing material has been placed. If plant machinery (such as a digger and dumper truck) is used on site to remove the hardstanding material then this must not be driven over areas where hardstanding and membrane has been removed or driven off the hard standing in order to ensure there is no adverse impact caused by compression of the soft ground and to prevent potential damage in respect of archaeological artefacts believed to be present beneath the soil.
 - (ii) Remove the membrane material in its entirety by hand.
- The period for compliance with the requirements is: three (3) months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f), and Appeal B is proceeding on the ground set out in section 174(2)(f) 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 1990 Act.

Summary Decision: Appeal A is allowed, and the enforcement notice is quashed, and planning permission is granted in the terms set out in the Formal Decision.

Matters Concerning the Enforcement Notice

1. Before considering the grounds of appeal, I have a duty to put the Enforcement Notice (Notice) in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) includes to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
2. The Inspector's power to correct the Notice extends to the substitution of the plan. On the plan with the Notice, the Council had identified the planning unit and edged it in red. However, the plan does not provide any identification of the

hardstanding and the Notice does not describe the extent of the hardstanding in detail.

3. I canvassed the parties on making amendments to the plan to clearly identify the hardstanding. From a brief discussion at the hearing it was confirmed that the hardstanding consisted of an area within the corner of the site and up to the boundary with Tilekiln Lane. It was agreed that an aerial photograph from 2022 clearly identified the alleged hardstanding. The Council amended the plan by overlaying the aerial photograph onto the scaled (1:1250) site location plan, dated May 2024, which clearly shows the extent of the hardstanding at that time. The main parties agreed to the plan, which provided more certainty to the appellant on what needed to be removed to remedy the breach of planning control. In my judgment, the plan can be substituted without causing injustice to either party.
4. The alleged breach of planning control set out in paragraph 3 of the Notice includes the word 'deposition'. This can be deleted and substituted with the word 'depositing.' The words sound similar, but the definitions are not the same. It was agreed with the Council at the hearing that 'depositing' was more appropriate in the context of the allegation.
5. The Notice also contains superfluous words in the requirements, and no objection was raised to them being deleted. These include the words 'in its entirety', set out in each step of the requirements in paragraph 5. Also, in paragraph 5, step (i) the words 'in order to ensure there is no adverse impact caused by compression of the soft ground and to prevent potential damage in respect of archaeological artifacts believed to be present beneath the soil' can be deleted. Although I appreciate the Council is requiring the works to be carried out in a certain manner due to the archaeological constraints, the reasoning does not need to be included in the wording of the requirements.
6. The corrections and variations, set out below for clarity, do not alter the nature of the allegation or requirements and do not therefore cause any injustice to the Council or appellant.
7. In paragraph 3 delete the word '*deposition*' and substitute it with the word '*depositing.*' In paragraph 5 step (i) delete the words '*in its entirety*' and '*in order to ensure there is no adverse impact caused by compression of the soft ground and to prevent potential damage in respect of archaeological artifacts believed to be present beneath the soil.*' In paragraph 5 step (ii) delete the words '*in its entirety.*' Also, the substitution of the plan annexed to this decision for the plan attached to the Notice.

Preliminary Matters

8. As outlined above, it was confirmed that the works alleged to be a breach of planning control consisted of an area of hardstanding within the site and up to the boundary with Tilekiln Lane. For clarity, these works do not include the vehicle access opening onto Tilekiln Lane or a pile of hardcore stored within the site, but not formally laid. It was also noted during the hearing that a car was being stored on the site, but this was not affected by the Notice.
9. The Council advised during the hearing that the site does not sit adjacent to the Hastings Country Park as set out in their statement. However, it is within the

wider context and sits adjacent to the footpath that connects to it. I have assessed the appeal on this basis.

10. The appellant has submitted a layout plan to show his intentions in respect of a proposed market garden use. However, Section 177(1)(a) of the Town and Country Planning Act 1990 (1990 Act) only allows the grant of planning permission in respect of matters stated in the Notice as constituting a breach of planning control 'whether in relation to the whole or any part of those matters.' Consequently, as part of the ground (a) appeal, I cannot consider anything more than the operational development of the hardstanding alleged in the Notice.
11. On the 22 November 2023, all designated 'Areas of Outstanding Natural Beauty' in England and Wales became 'National Landscapes'. However, the legal designation and policy status is unchanged. I have therefore proceeded on this basis and will refer to the designation as the High Weald National Landscape. During the course of the appeal the revised National Planning Policy Framework December 2023 (the Framework) was also published. However, there are no substantive changes relevant to the appeal, and no prejudice would be caused by me having regard to it.

Appeal A on Ground (a) and the Deemed Planning Application

12. The **main issues** in this appeal are the effect of the development on:
 - The character and appearance of the area, including the setting of the High Weald National Landscape (NL).
 - Ecology and biodiversity.

Reasons

Character and Appearance

13. The appeal site is a small parcel of undeveloped land, which is accessed directly off Tilekiln Lane. The land is overgrown with self-seeded trees and vegetation, and borders the High Weald NL to the south.
14. The High Weald NL is designated for its rolling hills, small, irregular fields, abundant woods and hedges, scattered farmsteads and sunken lanes¹. Paragraph 182 of the Framework places importance on sites within the setting of a NL, indicating that development should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas. The High Weald NL Management Plan 2024-2029 outlines that 'poorly located or designed development within the setting can do harm, especially where long views from, or to, the designated landscape are identified as important, or where the landscape character of land within and adjoining the designated area is complementary².'
15. Tilekiln Lane is a narrow, steep sloping, no through private road with no footways and limited lighting. It includes a mix of bungalows and two storey dwellings on either side within spaced-out plots. The private gardens of the bungalows at 'the Heights', adjoin Tilekiln Lane as well as the appeal site, with mature protected trees³ lined along their boundaries. On the opposite side, the properties front the

¹ Paragraph 7.26 of the Hastings Planning Strategy 2015

² Page 69 of the Management Plan

³ Protected via a Tree Preservation Order 45

road, but are mostly at a lower level, front Tilekiln Lane and are visible at close range. The Land subject of the appeal, together with the low-density housing, narrow private road and line of protected trees results in a verdant character and appearance to the area, which as a setting contributes to the landscape and scenic beauty of the High Weald NL.

16. The hardstanding development adjoins Tilekiln Lane and extends several metres into the site, circling two semi mature trees. The appellants claim that due to the level difference, it was not possible to access the field and turn with their car and small trailer without the hardstanding. The hardstanding has been laid with a permeable membrane, recycled hard core and a light coloured gravel material.
17. The hardstanding has a gentle upward slope towards the opening, but within the site it is a largely flat and a moderately sized area in the corner of the field. I accept that the hardstanding changes the appearance of the undeveloped land, however, it is not excessive in width or length, and in my judgement simply provides the necessary area needed to drive onto the land and turn. Furthermore, the hardstanding is not finished in a bound material, but comprises broken up hardcore and gravel, which is more typical in a rural location such as this. The use of such materials has also allowed grass and vegetation to grow through, tempering its visual impact over time.
18. A Public Right of Way⁴ (PROW) begins to the south of the site within the High Weald NL and can be accessed via Tilekiln Lane. However, due to the topography of the area and intervening trees and vegetation, the development is concealed from mid to long range views around the site, including from the nearby PROW. As such, the development maintains a clear division between the countryside and the built-up area and has no adverse effect on the setting, or key viewpoints, of the High Weald NL.
19. Given the above, the hardstanding does not appear as an alien feature, which is at odds with the character and appearance of the site or its immediate surroundings. The appellant has also agreed to a landscaping condition, which will require planting and an appropriate boundary treatment at the opening. This would help to further integrate the development into the immediate surroundings, especially at close range from Tilekiln Lane.
20. Accordingly, the hardstanding does not adversely affect the character and appearance of the area, including the setting of the High Weald NL. The development is compliant with Policy DM1 of the Hastings Development Management Plan 2015 (Development Plan) and Policy ENV7 of the Hastings Local Plan 2014 (Local Plan). These policies require development to be well designed and, amongst other things, seek to ensure development protects and enhances local character including the visual effect of development from key viewpoints in areas of landscape value. They also require protection and enhancement of the town's landscape, the High Weald National Landscape and the clear division between the Hastings Country Park Nature Reserve, the countryside and the built-up area.
21. In reaching this conclusion, I have also given great weight to the conservation (and enhancement) of the landscape and scenic beauty of the NL in my decision. The development would be compliant with paragraph 182 of the Framework.

⁴ PROW reference HAS/382/1

Ecology and Biodiversity

22. Policy EN3 of the Local Plan indicates that the town's biodiversity and geological resources should be protected and advanced, and priority will be given to, amongst other things, nationally and locally protected sites around the town. It requires development to contribute to no net loss of biodiversity, requiring developers to demonstrate how their proposals will contribute positively to the natural environment, avoid harm to biodiversity, adequately mitigate for unavoidable damage, or as a last resort, compensate for it.
23. The Council's Statement of Case details that the site is adjacent to a Local Wildlife Site and a Local Nature Reserve and would be viewed in their settings. However, at the hearing it was agreed by the Council that the appeal site does not form part of these locally protected sites, and as ecological designations they do not have settings. Further to this, the site falls within a Site of Special Scientific Interest Impact Risk Zone, but the development does not meet the criteria for impacts that would likely lead to a significant effect.
24. As such, the development does not adversely impact on any nationally or locally protected sites and would be compliant with criterion (a) of Policy EN3 of the Local Plan. Nonetheless, the Council and several interested party representations set out that the development has had an adverse impact on ecology and biodiversity on the site.
25. Planning Practice Guidance (PPG) states that an ecological survey will be necessary in advance of a planning application if the type and location of development could have a significant impact on biodiversity and existing information is lacking or inadequate⁵. Having regard to the PPG advice and guidance, it is considered that where there is a reasonable likelihood of protected habitats and species being present, it is essential that their presence, and the extent to which they would be affected by the development, is established prior to any permission being granted.
26. The formation of the hardstanding on an undeveloped field and the removal of trees and vegetation to facilitate those works would have potentially impacted on protected species and their habitats. As such, it is still relevant for me to consider the ecology and biodiversity impacts of the development on the site. To address this issue, the appellant submitted a Preliminary Ecology Appraisal (PEA) with the appeal. The PEA is dated May 2020, and was initially submitted as part of a planning application to retain and extend the existing hardstanding as well as erect a building⁶. The planning application was subsequently withdrawn, but the appellant considers the PEA to be relevant to the issue being raised.
27. I acknowledge the Council's concerns regarding the age of the PEA, but it is difficult to set a specific time frame over which reports become invalid. The hardstanding was present at the time the PEA was undertaken, no further works have been carried out, and I have not been made aware of any significant changes to the land since that time. Also, no further works will be carried out as part of the development being considered as part of the ground (a) appeal. On this basis, I am satisfied that the PEA provides adequate baseline data on the ecology and biodiversity characteristics of the site and the impacts of the development. As such, an update to the PEA information is not required.

⁵ Paragraph: 018 Reference ID: 8-018-20190721

⁶ Council reference HS/FA/20/00356

28. The PEA indicates that protected species such as great crested newts, badgers, bats, owls and dormice are unlikely to be present on the site. However, there are suitable habitats for nesting birds and reptiles. No further surveys are recommended, but mitigation and enhancements are suggested to compensate for the unavoidable damage to the land. This includes limiting timings of any further construction activity, or taking care when clearing the land, to avoid impacts on the birds or reptiles. To compensate for the damage already caused, the appellant agreed to a condition requiring the submission of a scheme to implement the enhancements set out in section 9.0 of the PEA. The proposed enhancements include erecting bird and bat boxes, introducing wild areas and improving the habitat around the existing pond.
29. Overall, subject to a condition requiring the enhancements to be implemented, there is no conflict with Policy EN3 of the Local Plan, which seeks to protect and enhance any on site biodiversity, and where appropriate, provide sufficient mitigation and enhancement measures to compensate for unavoidable damage. This would also comply with the policies set out in paragraph 186 of the Framework.

Other Matters

30. I have had regard to the representations submitted, and the interested party comments made as part of the hearing. Aside from the main issues, concerns were also raised in respect of the formation of the vehicle access, the appellant running a market garden business and the resultant traffic, noise and disturbance. Also, the storage of a vehicle on the land, surface water drainage impacts, the sensitivity of the site as a tier 1 archaeological site as well as covenants on the land preventing certain development or uses.
31. I have had regard to the issues raised, but the development alleged does not involve an unauthorised vehicle access or the use of the land as a market garden. Also, the site does have an archaeological constraint, but as no further works are proposed there would be no potential impact on archaeological features. With respect to any covenants on the land, this is a matter that would fall outside of the remit of this decision. Planning permission would not, however, override any legal covenants, which may restrict the development of the land for these purposes. As such, I have given these matters limited weight in my decision.
32. Although the Council outlined that Hastings has a general issue with surface water flooding, the impacts of surface water flooding on adjoining land was not a reason for issuing the Notice. Neighbours set out that they had experienced surface water flooding during storm events, which they considered had been exacerbated by the development. The appellants highlighted that the membrane, hardcore and gravel are all permeable, and that a soakaway had been formed across the access into the site. They also claim that other factors, such as the infilling of a soakaway drain to the north on Tilekiln Lane, was contributing to surface water issues neighbours had experienced.
33. Paragraph 173 of the Framework requires local planning authorities to ensure that flood risk is not increased elsewhere. Aside from anecdotal evidence from the Council and interested parties, there is limited evidence to substantiate that the development has caused surface water flooding elsewhere. Furthermore, the development is small in scale, permeable and includes a soakaway to limit the amount of surface water run-off from the site. I am satisfied that subject to the

details of the soakaway being submitted via condition, and how it will be managed, the development is compliant with paragraph 173 of the Framework.

34. The appeal site is within proximity of 36 Tilekiln Lane, a Grade II Listed Building (Listed Building). The main parties agreed during the hearing that the development is within the setting of the Listed Building, which was adjudged to be the immediate area on Tilekiln Lane.
35. Based on my observations, and the evidence provided, the significance of the Listed building is largely defined by its age (17th Century) as well as its traditional timber framed design and materials. The setting of the Listed Building is a low-density residential area on Tilekiln Lane. The Listed Building is orientated to face Tilekiln Lane at an angle, with the trees and verdant character and appearance of the immediate area reflecting the rural beginnings of the Listed Building and contributing to its significance.
36. Due to the scale and nature of the development, it is not a prominent feature from the public vantage points outside of the heritage asset. Furthermore, the hardstanding is moderate in scale with a design and finish that does not appear as an alien feature or detract from the verdant character and appearance of Tilekiln Lane. Consequently, in my judgement, the development preserves the setting of the Listed Building and the contribution it makes to its significance. In coming to the above conclusion, I have had regard to my statutory duty set out in the Planning (Listed Buildings and Conservation Areas) Act 1990.

Conditions

37. The Council have suggested conditions, which were discussed with both parties at the hearing. I have considered the suggested conditions and amended them as necessary in the interests of precision and clarity to comply with advice in the Planning Practice Guidance (PPG).
38. A condition requiring an archaeological working programme to be agreed before any works were carried out was suggested by the Council. However, as the works have already been carried out and no further works are proposed, the condition is unenforceable and unnecessary to make the scheme acceptable. It was indicated that a condition restricting external lighting would be appropriate, given its location within the setting of the High Weald NL. However, upon review, any works to erect lighting that amounts to development would need planning permission on this site. As such, a condition restricting external lighting is not necessary to make the scheme acceptable.
39. The Council also suggested a landscape condition with surface water drainage details as well a separate ecology condition. In the interests of the landscape impact, ecological and biodiversity enhancements and surface water management, details of these matters are considered necessary to make the development acceptable.
40. Condition 1 is imposed is to ensure that the landscaping, ecological enhancements and surface water drainage required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place. It ensures that the development can be

enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

41. A condition requiring any trees or plants to be replaced that die within 5 years of the landscaping scheme being implemented is also considered necessary to protect the character of the site and its immediate context, which is the setting of the High Weald NL.

Appeal A: Conclusion on Ground (a) and the Deemed Planning Application

42. For the reasons given above, the development would comply with development plan as a whole and the Framework with respect to character and appearance as well as ecology and biodiversity. Appeal A succeeds on ground (a), and I shall grant planning permission for the development as described in the Notice as varied and corrected. The Notice will be corrected and quashed. Appeal A on ground (f) and Appeal B do not therefore need to be considered.

Formal Decisions

Appeal A

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

In paragraph 3 delete the word 'deposition' and substitute with the word 'depositing.'

And varied by:

In paragraph 5 step (i) delete the words 'in its entirety' and 'in order to ensure there is no adverse impact caused by compression of the soft ground and to prevent potential damage in respect of archaeological artifacts believed to be present beneath the soil.'

In paragraph 5 step (ii) delete the words 'in its entirety.'

The substitution of the plan annexed to this decision for the plan attached to the Notice.

44. Subject to the corrections and variations, Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended). Appeal A on ground (f) and Appeal B does not therefore need to be considered. Permission is granted for the development already carried out, namely the laying of a membrane and the importation, depositing, and spreading of materials to form an area of hardstanding on the land known as Land East of Links Cottage, 40 Tilekiln Lane, Hastings TN35 5EN as shown on the plan attached to the Notice and subject to the following conditions:

- 1) The hardstanding hereby permitted shall be removed either by hand tools or a mechanical digger with a toothless bucket within three months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within three months of the date of this decision, details of the following schemes shall have been submitted for the written approval of the local

planning authority, including a timetable for their implementation and their maintenance: -

- a. A scheme for landscaping together with a boundary treatment at the access to the site.
 - b. A scheme for the implementation of the biodiversity enhancements, which accord with those set out in Section 9.0 of the Preliminary Ecology Report prepared by Mayhew Consultancy LTD May 2020.
 - c. Details of the surface water scheme carried out on site.
- ii) If within eight months of the date of this decision the local planning authority refuse the above mentioned schemes or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved details for the schemes set out in part (i) shall have been carried out and completed in accordance with the approved timetables.

Upon implementation, the approved schemes specified in this condition shall thereafter be maintained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) Any trees or plants which within a period of 5 years from the completion of the landscaping scheme approved as part of condition 1, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

M. P. Howell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Royston Starling	Appellant (Appeal A)
Mr Kingston Starling	Appellant (Appeal B)

FOR THE LOCAL PLANNING AUTHORITY:

Emily Mephram	Hastings Borough Council- Senior Planner.
Neil Griffin	County Archaeologist, Advisor to Hastings Council.
Charlie McCloud	Hastings Borough Council- Enforcement Officer.
Eleanor Evans	Hastings Borough Council- Planning Services Manager.

INTERESTED PARTIES:

Ms Sue Miller	neighbouring resident
Ms Sally Parker	neighbouring resident
Alan Buffery	neighbouring resident
Julie Marriot	neighbouring resident

LIST OF DOCUMENTS AND PLANS SUBMITTED AT THE HEARING:

DOCUMENTS

- Review of Local Wildlife Sites in Hastings Borough (2020)
- The High Weald National Landscape (AONB) Management Plan 2024-2029.
- Preliminary Ecology Report (May 2020)- Prepared by The Mayhew Consultancy Ltd.
- Advice Notice on the lifespan of Ecological Reports and Surveys (CIEEM) April 2019.
- Arboricultural Report- May 2020- Prepared by The Mayhew Consultancy Ltd.
- Hastings Country Park Local Nature Reserve- Details from Hastings Council website.
- Annotated Map of Hastings Country Park Nature Reserve.
- The High Weald- The east Sussex County Landscape Assessment.
- Copy of the Official Listing for 36 Tilekiln Lane- Grade II Listed Building

PLANS

- Amended Enforcement Notice Plan- Overlay of 2022 Aerial Photo
- Aerial Photograph with site highlighted.
- Plans outlining the proximity of the site to allocations of the High Weald National Landscape, Local Nature Reserve, Local Wildlife Site and the Hastings Country Park.



The Planning Inspectorate

This is the annexed plan referred to in my decision dated: **19TH JULY 2024**
by M P Howell BA (Hons) Dip TP MRTPI

Appeal Refs. APP/B1415/C/22/3313499 and APP/B1415/C/22/3313500

