

Appeal Decisions

Site visit made on 17 September 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 4 October 2024

Appeal A Ref: APP/Y2620/C/23/3317025

Appeal B Ref: APP/Y2620/C/23/3317026

Appeal C Ref: APP/Y2620/C/23/3317027

Land At North of (A148), East Beckham, Sheringham, Norfolk NR26 8TW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Eamon Denny of Denny's Construction Ltd, appeal B by Mrs Susan Denny and appeal C by Mr Tom Denny against an enforcement notice issued by North Norfolk District Council.
- The notice was issued on 24 January 2023.
- The breach of planning control as alleged in the notice is without planning permission:
 - (i) Material change of use of the land from agriculture to the storing of and use of large machinery for the purpose of concrete crushing and the storage of concrete and rubble.
 - (ii) Operational development due to the creation of a gravel track and earth bund.
- The requirements of the notice are to:
 - (i) Permanently cease the concrete crushing activity on the Land.
 - (ii) Permanently remove all machinery, equipment and material used or stored for concrete crushing activity.
 - (iii) Permanently remove the concrete and rubble stored on the land.
 - (iv) Permanently remove the earth bund.
 - (v) Permanently remove the gravel track.
 - (vi) Return the land to its condition prior to when the breach took place.
- The period for compliance with the requirements is 4 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (as amended) (TCPA). Appeals B and C are proceeding on the grounds set out in section 174(2)(f) and (g) of the TCPA. 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 TCPA.

Summary Decisions: The appeals are dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellants have accepted that the use of land for storing of and use of large machinery for the purpose of concrete crushing and the storage of concrete and rubble does not have planning permission and they have ceased the use. They are not seeking planning permission for the change of use of

the land and are seeking to appeal solely in relation to the operational development.

2. Areas of Outstanding Natural Beauty were renamed National Landscapes during the course of the appeals. The statutory duty under section 85 of the Countryside and Rights of Way Act 2000 as amended (CRoW Act) requires me to seek to further the purpose of conserving and enhancing the natural beauty of the National Landscape. I will take this into account in coming to my decision.

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

Main issue

3. The appellants are not seeking to pursue the appeal as it relates to the use of the land. However, they suggest that the gravel track and earth bund are needed for agriculture. Section 177(1) of the TCPA provides that planning permission may be granted in relation to the whole or any part of the matters alleged in the notice. It is, therefore, possible for me to consider only the operational development alleged in the notice as an obvious alternative to the complete cessation of the use and removal of the operational development. As the appellant has requested I only consider the gravel track and earth bund and that comprises an obvious alternative that would overcome the planning difficulties at less cost and disruption than total removal, I will consider the appeal on ground (a) on that basis.
4. Consequently, I consider the main issue is the effect of the gravel track and earth bund on the natural beauty of the Norfolk Coast National Landscape.

Reasons

5. The gravel track leads from the road around the side of the field to a hard surfaced area at the rear of the site on which the storage use described in the notice took place. That area is surrounded with a bund, similar to other bunds around an area of outside storage to the side of the site and on the boundary with the neighbouring land. The track and bund are visible from Holt Road and the junction with the A148, the surrounding fields and woodland including Hilltop Outdoor Education Centre. Over the road is Sheringham Recycling Centre.
6. The National Landscape comprises a diverse landscape on the Norfolk coast. Prior to the development the land comprised an open field with woodland and other open fields surrounding. As a result, it contributed to the landscape and scenic beauty of this part of the National Landscape.
7. The track has introduced a hard surface to the landscape. Whilst those effects have reduced with the removal of the unauthorised use, it nevertheless intrudes into the landscape and scenic beauty that adversely affects that natural beauty of the area.
8. Planting has covered the bund that results in a soft impact that reflects to some extent the surrounding woodland, green fields and other bunds in the area. Nevertheless, it is not a natural feature and intrudes into the surrounding landscape.

9. For these reasons, I conclude that the gravel track and earth bund do not conserve or enhance the natural beauty of the Norfolk Coast National Landscape.
10. I note that in the original appeal documentation it was requested that only the track and small section of the hardstanding at the rear of the site be retained, with the remaining hardstanding and bunds removed. I consider that is an obvious alternative comprising part of the development described in the breach of planning control in the enforcement notice. It would overcome the planning difficulties at less cost and disruption than total removal. Whilst this would reduce the effect of the development on the landscape, some harm would remain. That would not conserve or enhance the natural beauty of the Norfolk Coast National Landscape.
11. As a result, the gravel track and earth bund conflict with Policies SS1, SS2, EN1, EN2 and EN4 of the North Norfolk Core Strategy that seek development not to have an adverse effect on the Norfolk Coast National Landscape and protect, conserve and, where possible, enhance the local distinctiveness of the area. The conflict with these policies is sufficient to conclude there is conflict with the development plan as a whole. In addition, the development conflicts with the Framework that seeks to protect and enhance valued landscapes.

Other matters

12. I note reference to a new recycling centre proposed to be located within the field and adjacent to the road. I have limited information relating to when or whether it will be constructed, or where it is in the planning process. It would be located over the road from the existing recycling centre, such that it would result in less encroachment into the National Landscape than the proposal. I consider that it would not affect my conclusions relating to the track and bund subject of the enforcement notice.
13. The agricultural use of the land comprises the keeping of cattle and sheep. It is suggested that the farmer wishes to use the former storage area for agricultural storage of equipment and to service the animals. The track would be used for vehicular access around the field that would reduce ground damage within the field and mud being taken onto the road. It is suggested that these needs should comprise material considerations of sufficient weight to outweigh any conflict with the development plan.
14. The information submitted in support of the appeal provides little detail as to how the track and area within the bund would be used in practice. It is unclear how much other land the farmer has access to or how many animals would be kept on the land. Details as to how much space is required for equipment storage and how it would be used as part of the agricultural enterprise, or what servicing of the animals would take place is unclear. As a result, I do not understand how much, if any, of the hard surfaced area is required for these purposes. Whilst the track would reduce damage to the ground of vehicles moving around, and mud being taken onto the road, it is unclear how often vehicles need to visit and access the rear part of the site. I accept that the bund may assist with security, although it is unclear how necessary it is or whether such a large bund is required.

15. For these reasons, I conclude that the weight to be attached to these factors is not sufficient to outweigh the harm to the National Landscape and conflict with the development plan, whether the track and bund were retained in whole or in part.
16. I note reference to a new recycling centre proposed to be located within the field and adjacent to the road. I have limited information relating to when or whether it will be constructed, or where it is in the planning process. It would be located over the road from the existing recycling centre, such that it may result in less encroachment into the National Landscape than the proposal. I consider that it would not affect my conclusions relating to the track and bund subject of the enforcement notice.

Conclusion

17. For the reasons set out above, I conclude that on balance the development does not accord with the development plan and there are not sufficient material considerations to outweigh that conflict. The appeal on ground (a) therefore fails.

The Appeals on Ground (f)

18. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to return the land to its condition prior to when the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
19. I have concluded that I should not grant planning permission for any part to remain under the ground (a) appeal. As a result, I will not amend the notice under this ground to allow any part of the development to remain.
20. For these reasons, I conclude that the appeal under ground (f) should fail.

The Appeals on Ground (g)

21. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
22. The appellant has suggested that a period of 12 months is required to allow the track and bund be removed. This would need to be removed in sequence such that vehicles could use the track to access the site. The material removed may need to be stored elsewhere before being recycled, whereas it would be easier for the appellant if it were removed straight from the site to be recycled.
23. I note that the use has ceased and the concrete and rubble stored has been removed, such that the remaining requirements are to remove the track and earth bund. Taking account that material may need to be removed to another site before being recycled, I consider that it would be reasonable to extend the period for compliance to six months to reduce the potential need to double handle the material.

24. For these reasons, I conclude that the appeal under ground (g) should succeed and I will vary the notice to allow six months for the track and bund be removed.

Formal Decisions

25. It is directed that the enforcement notice is varied by the deletion of the words "four months" and their substitution with the words "six months" in (6) Time for Compliance.

26. Subject to the variation, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the TCPA as amended.

AJ Steen

INSPECTOR