



Appeal Decisions

Site visit made on 24 July 2024

by Mrs H M Higenbottam BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2025

Appeal A Ref: APP/A2280/C/24/3336196

Appeal B Ref: APP/A2280/C/24/3336197

The Furrows Factory Farm, Wouldham Road, ROCHESTER ME1 3TL

- Appeal A and B are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr John Treeby and Appeal B is made by Ms Jill Good against an enforcement notice issued by Medway Council
 - The notice was issued on 22 November 2023.
 - The breach of planning control as alleged in the notice is:
“Without planning permission, the material change of use of the land for waste deposit, the installation of hardstanding, and engineering operations including land raising and reprofiling.”
 - The requirements of the notice are:
 - (i) Cease the use of the Land for the deposit of waste.
 - (ii) Remove the deposited waste from the Land.
 - (iii) Remove all materials forming the hardstanding and all the resultant debris from the Land
 - (iv) Restore the Land to its condition before the Unauthorised Development took place.
 - The period for compliance with the requirements is: 3 months.
 - Appeal A and Appeal B are proceeding on the grounds set out in section 174(2) (b), (f) and (g), and in addition Appeal A is also proceeding on ground (a) of section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by the deletion of the words ‘and falls within the setting of the Grade II listed Ringshill Farm and Ringshill Farm Barn’ in paragraph 4 (ii). Subject to this correction the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. Subject to the correction set out in the decision for Appeal A the appeal is dismissed, and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by The Medway Council against Mr John Treeby and Ms Jill Good. This application is the subject of a separate decision.

Preliminary Matters

4. In the reasons for service of the Notice, paragraph 4 (iii) there is reference to the effect of the development on the setting of the Grade II listed Ringshill Farm and

Ringshill Farm Barn. The Council state that this was an error. I will correct the reasons for service to remove reference to this. This will cause no injustice or prejudice to either party.

5. The revised National Planning Policy Framework (revised Framework) was published on 12 December 2024. I have had regard to the revised Framework and found there is no need for comments to be sought on the relevance of the revised Framework to these cases as there has been no change in the national approach to the appeal development.

Appeal A and B on ground (b)

6. This ground of appeal is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The burden of proof is on the appellants and the relevant test is the '*balance of probabilities*'.
7. The appellants state that the appeal site forms part of the residential curtilage of the property 'The Furrows'. The Furrows forms part of the wider site known as 'Factory Farm'.
8. The access to the appeal site is stated to have been used to serve the back entrance to The Furrows for well over 10 years and the appellants state this is seen in the aerial photographs. They further state that there was an existing hardstanding within the appeal site, but it had been overgrown and the Police advised that it should be hard surfaced again and blocked off. They explain that the ground was dug over and a small amount of material was brought in to level the ground. The appellants state it has not and will not be used as a waste deposit site.
9. The appellants further state that they did create a driveway, which was to enable them to apply for a large shed to store agricultural equipment in to support the management of the land. They state that this planning application has been delayed due to ill health.
10. The Council dispute whether or not the appeal site is within the curtilage of The Furrows. Moreover, it carried out a site visit on 7 July 2023 and took photographs. It was noted that a significant volume of waste made up of processed trommel fines containing plastics, soils, timber, glass, organics and aggregates had been deposited and spread across the site the subject of the appeal. The Council also noted that the land had been raised and reprofiled. The waste was not present on the appeal site when the Environment Agency visited on 1 June 2023 or when a complaint was received on 16 February 2023.
11. The aerial photographs and site visit photographs support the Council's evidence.
12. The appellants accept that a driveway has been created and that there is a hardstanding on the land. I am satisfied that waste has been deposited on the appeal site and that the levels of the land have been raised and reprofiled. I therefore find that as a matter of fact, what has been alleged in the Notice has taken place.

Appeal A on ground (a)

13. The main issue in relation to the ground (a) appeal is:

- Whether the development conserves and enhances the natural beauty of the Kent Downs Area of outstanding Natural Beauty (AONB) which is a National Landscape and the North Downs Special Landscape Area (SLA).
14. The deemed planning application, which is derived from the description of the development in the allegation, is for waste deposit, the installation of a hardstanding, and engineering operations including land raising and reprofiling. However, the appellant refers only to the access track and hardstanding in their ground (a) submission.
 15. The waste on the site exceeds the height of the land adjoining it (photographs in LPA 4, 5 and 6). The surface of the appeal site has been scraped off, raised and reprofiled and a hardstanding has been installed using processed and compacted aggregates. As such, it is not clear the extent of what the appellant is seeking in referring to access track and hardstanding as it is all interrelated on the site.
 16. Aerial photographs show that the land was undeveloped and laid to grass, with some photographs showing bare earth or sparser grass in areas. A hedge is maintained in more recent years between the appeal site and the property known as The Furrows.
 17. The Framework requires that great weight is given to conserving and enhancing the landscape and scenic beauty of the National Landscapes which have the highest status of protection in relation to these issues. Policy BNE32 of the Medway Local Plan requires that development should conserve the natural beauty, wildlife and cultural heritage of the area.
 18. The appellant owns the property The Furrows which is a residential property abutting the western boundary of the appeal site.
 19. The appellant has referred to the appeal site as being part of the curtilage of The Furrows. There is a mature hedge along the western boundary of the appeal site as well as fencing. In my view, the boundary vegetation and fencing physically separates the appeal site from The Furrows plot. The appeal site has its own Land Registry title number and was purchased in 2008 as a separate parcel of land by the appellants of Appeal A and B.
 20. The Council state the appeal site was used for agriculture prior to the breach of planning control alleged in the Notice. There is no substantiated evidence that the appeal site has been utilised for anything other than agriculture prior to the alleged breach of planning control cited in the Notice. In my view, the appeal site is physically and functionally separate to the residential property known as The Furrows. As such, it is a separate planning unit and, in my view, it does not form part of the curtilage of The Furrows.
 21. The importation of waste, reprofiling of the land, creation of the installation of a hardstanding have all introduced significant visually harmful elements into what was once a paddock/grassed area. As such, the development fails to conserve or enhance the landscape and scenic beauty of the National Landscape and as such it is contrary to LP Policy BNE32 and the Framework. It is also contrary to LP Policy BNE25 which states development in the countryside will only be permitted if it maintains the character, amenity and functioning of the countryside and requires a countryside location.

Other matters

22. The appellant puts forward personal circumstances relating to events at his home The Furrows. While I understand that these events have resulted in the appellant seeking to reduce access via adjacent land to The Furrows, he also states that the access and hardstanding is necessary to serve a building, the erection of which has not been demonstrated to be lawful. In my view, the personal circumstances of the appellant do not outweigh the harms I have identified to landscape and scenic beauty of the AONB.

Appeal A and B on ground (f)

23. This ground of appeal is that the requirements of the Notice are excessive, and lesser steps would overcome the objections. The purpose of the Notice is to remedy the breach of planning control.
24. The appellants refer to the requirement to remove all deposited waste from the land and states the requirement does not specify the amount. The requirements require removal of the waste that has been brought onto the land and to restore the land to its condition prior to the unauthorised development taking place. The appellant will be the people with the best knowledge of what that previous condition was, and the courts have held that this is reasonable.
25. In appealing on ground (f) the appellants must specify specific lesser steps which, in their view, would remedy the breach of planning control. The appellant has failed to do so. Therefore, in the absence of cogent evidence to the contrary, I conclude that the requirements of the enforcement notice are not excessive. Accordingly, the appeal on ground (f) fails.

Appeal A and B on ground (g)

26. This ground of appeal is that the time given to comply with the Notice is too short. The Council have given three months for compliance. The appellants seek an extension of the compliance period to six months.
27. The extended compliance period sought is to allow the appellants to pursue planning applications to obtain permission to secure the property. The track and hardstanding are stated to be required to enable Mr Treeby to erect a building, which is stated to be permitted development. The appellants state that they would be willing to apply for a Lawful Development Certificate for the proposed building. Alternatively, a planning application could be submitted, and they consider six months would be required to prepare the application and to make alternative arrangements to secure the property.
28. In my view, three months would be adequate to physically comply with the enforcement notice. While I appreciate the appellants wish to pursue further development of the land, I see no justification to allow additional compliance time on the basis of the evidence before me. This is the case having regard to the continuing harm caused by the development to National Landscape. The further development and the stated desire or need for the track and hardstanding to facilitate that potential or possible development do not support an extension of the compliance period which I consider to be a reasonable period in which to carry out the requirements.
29. The appeal on ground (g) fails.

Conclusion

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

Hilda Higenbottam

INSPECTOR