



Appeal Decision

Hearing Held on 9 October 2018

Site visit made on 9 October 2018

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2018

Appeal Ref: APP/G1440/C/17/3185589

Land at Upper Lodge Farm, The Broyle, Ringmer BN8 5AP

- 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 Mr John Farnes against an enforcement notice issued by East Sussex County Council.
 - The enforcement notice was issued on 29 August 2017.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised change of use of land from agricultural to the use of land for the importation, deposit, storage and processing of waste UPVC window frames and component parts.
 - The requirements of the notice are:
 1. Cease the importation of all waste UPVC window frames and component parts.
 2. Cease the use of the land for the importation, deposit, storage and processing of waste materials and return the land for agricultural purposes by carrying out the following works on the land:
 - (i) Remove from the land all waste materials that have been deposited on the land so that the original undisturbed natural contours of the land are exposed.
 - (ii) Remove from the land any plant machinery and equipment and any other materials that are associated with the waste use of the site.
 - The period for compliance with the requirements is:
 1. One day after the notice takes effect
 2. Four weeks after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld

Procedural Matters

1. The enforcement notice as drafted contains at paragraph 5 definitions of the terms 'waste materials' and 'plant machinery and equipment' for the purposes of the notice. I have not reproduced those definitions above but my Decision should be read in the context of those definitions.
2. As part of his evidence, the appellant explains the difficulties of operating an agricultural use on the land as a result, in part, of the poor soil conditions. The appellant proposes a number of alternative uses for the land, including an industrial development, a shopping complex and/or a residential scheme. However, where an appeal is made on ground (a), Section 177(5) of the Town and Country Planning Act 1990 provides that the deemed planning application

can only relate to the matters stated in the notice: in other words, in this case, the use of land for the importation, deposit, storage and processing of waste UPVC window frames and component parts. The various proposals put forward by the appellant for the wider development of the site are therefore not before me and I make no comment on them.

The appeal on ground (a) and the deemed planning application

3. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated two substantive reasons for issuing the enforcement notice, from which the following main issues raised are the effect of the breach of planning control on:

- the character of the surrounding countryside
- the effect on the usability of the Public Right of Way
- the living conditions of the occupiers of surrounding residential properties, specifically in relation to noise disturbance, and
- the effectiveness of the farm to function as an agricultural unit.

Character of the surrounding countryside

4. The appeal site forms part of a larger agricultural unit known as Upper Lodge Farm. The main buildings associated with the farm are grouped together towards the southern end of the holding and comprise three broadly rectangular buildings sited parallel to each other. The appeal site includes the western half of the southernmost of this group of three buildings.
5. At the time of my site visit, the area around the group of buildings exhibited a somewhat untidy appearance, with a variety of vehicles, structures and farming paraphernalia in evidence. I also noted that the other half of the building to which the notice relates was being used to accommodate vehicles that did not appear to have any connection with an agricultural use. Nevertheless, the building directly adjacent to the appeal site was being used to accommodate livestock and the area retained the overall character of an agricultural use. Furthermore, away from the group of buildings the land is open and offers long-ranging views over the surrounding countryside, including of an extensive area of woodland to the north. These views serve to reinforce the agricultural character of the farm.
6. The processing of the waste takes place within the building and therefore has only a limited visual impact of the character of the area. Before being processed, the material is stored on a triangular parcel of land to the side of the building. At the time of my site visit, the amount of material stored there was limited and the space was relatively tidy.
7. However, I have been provided with photographic evidence that clearly shows the material to be processed spread over a much greater area and stacked considerably higher than was the case at the time of my site visit. Moreover, having regard to the photographs provided and the written statements of those who have witnessed the stored waste in position, including local residents and the Rights of Way Access Officer at East Sussex County Council, it appears that the situation at the time of my site visit was atypical and that the photographic

evidence is to be preferred as representing a more typical representation of the amount of waste stored on the site.

8. The waste stored on the site largely takes the form of UPVC window frames. This material, by reason of its form and modern plastic-like appearance, has no association with an agricultural use and is alien to the character of the agricultural unit as well as the wider countryside in which the farm is located. Notwithstanding that the agricultural unit exhibits a generally untidy appearance, by reason of the quantity and alien appearance of the waste material stored, I consider that the importation, deposit and storage of waste is harmful to the character of the agricultural unit and wider countryside.
9. I conclude that the breach of planning control that has occurred unacceptably harms the character of the surrounding countryside. I therefore conclude that the development is contrary to Policy WMP 25 of the East Sussex, South Downs and Brighton and Hove Waste and Minerals Plan, as well as Policy ST3 of the Lewes District Local Plan. These policies require, amongst other things, that development should respect the character of the local area.

Usability of the Public Right of Way

10. Public Footpath Ringmer 26 runs along the western boundary of the appeal site. There is some dispute regarding the width of this footpath. The Rights of Way Access Officer at East Sussex County Council considers that the width is 2.5 metres, although I have not been provided with a copy of the Definitive Statement for the route to substantiate that. The appellant considers that the width is approximately one metre, and that the width is already restricted by the vegetation that adjoins the footpath. In the absence of the Definitive Statement, I am not in a position to reach an informed conclusion as to the width of the public footpath at this point and shall therefore focus on the practical implications for those seeking to use the public footpath.
11. The Rights of Way Access Officer at East Sussex County Council explains that complaints have been received from users of this footpath alleging that the footpath had been obstructed by waste material associated with the breach of planning control. Photographs taken by the Rights of Way Access Officer in August 2018 show the stored waste extending close to the vegetation on the western boundary. Irrespective of the actual width of the public footpath then available, the photographs show a narrow gap between the stored waste and the vegetation.
12. Because of the height to which the waste was stacked, as shown on the photographs taken by the Rights of Way Access Officer, the narrow gap created constitutes both a physical and psychological barrier to those seeking to use the public footpath. Indeed, the appellant himself remarks that the footpath is not well used. Given that residents have expressed a clear intention of using the footpath, I cannot discount the possibility that the lack of use is a direct result of the physical and psychological barrier posed by the stored waste.
13. The evidence provided by the Rights of Way Access Officer is supported by evidence from local residents. Photographs taken by a local resident in July 2018 show the footpath similarly obstructed, with pieces of waste material lying on the footpath. The availability of photographs taken on a different day to those of the Rights of Way Access Officer tends to suggest that the obstruction of the footpath is not an isolated occurrence.

14. Moreover, the photographs taken by local residents also show shards of glass lying on the footpath. The presence of this broken glass is identified in representations from local residents as being a disincentive to using the public footpath. The appellant explains that staff are instructed to remove any residual pieces of glass following a delivery of waste material and there was no evidence of broken glass on the footpath at the time of my site visit. Nevertheless, on the photographic and documentary evidence before me, I consider that the storage of the waste represents a risk to users of the footpath in terms of trip hazards, from broken glass and from falling debris.
15. I conclude that the breach of planning control that has occurred unacceptably reduces the usability of the Public Right of Way. I therefore conclude that the development is contrary to Policy WMP 25 of the East Sussex, South Downs and Brighton and Hove Waste and Minerals Plan which requires, amongst other things, that development should have no unacceptable effect on the use of existing public rights of way.

Living conditions

16. The occupiers of several of the surrounding residential properties have objected to the use of the appeal site for the importation, deposit, storage and processing of waste UPVC windows on the grounds of noise disturbance. The concerns expressed are in two parts: the noise generated by the processing of the waste material within the building, and noise generated by vehicles delivering waste material to the site.
17. In support of their objections, the occupiers of Upper Lodge have compiled a detailed log of noise events that they experienced over a period of ten months beginning in May 2017. In their log, the occupiers describe the noise experienced within their home resulting from the use as a continuous generator/machine noise. Examination of the log reveals a pattern of noise events involving this generator/machine noise that is entirely consistent with the pattern of work outlined by the appellant in describing the processing of waste UPVC window frames.
18. The appellant explains that the generator responsible for this noise has been moved within the building from a position against the flank wall closest to Upper Lodge to a purpose-built self-contained room on the other side of the building. This was the position at the time of my site visit. Other changes, including the redirection of the exhaust and softer mountings, have also been made. The appellant contends that these changes have dealt with the noise issue.
19. My difficulty is that neither the appellant nor the County Council have commissioned technical reports to substantiate their respective positions. I therefore have no objective expert analysis of the noise environment upon which to make an informed assessment of the noise impact on the occupiers of Upper Lodge. I was, however, able to hear the noise emitted by the generator during my site visit. The occupiers of Upper Lodge strongly contended that the noise levels that I experienced were lower than those usually associated with the operation of the generator, although I have no means of verifying that.
20. Even so, the noise emitted by the generator was clearly audible from within the house itself, albeit in the form of an ever-present background noise rather than an overbearing intrusive noise. In my view, even at that level the noise is

distracting and in itself detracts from the quiet enjoyment of the occupier's home. Moreover, from within the garden, the noise is unduly intrusive and detracts significantly from the amenity value of that space. In both respects, the industrial nature of the noise is a significant factor, insofar as it can be clearly distinguished from the normal sounds associated with an agricultural use and the countryside.

21. The occupiers of Upper Lodge also refer to other noises associated with the use, including grinding and crashing noises. Aside from the running of the generator, the use was not operating at the time of my visit and I did not experience these noises. In the absence of any technical evidence, I am therefore not able to reach any firm conclusions on these other noises.
22. The other source of noise disturbance alleged by the occupiers of surrounding residential properties is that generated by vehicles delivering waste material to the site. The waste material is delivered by articulated lorries that typically arrive at around 07:00 to 08:00. In addition to engine noise, the occupiers of these properties complain of reversing alarms causing noise disturbance.
23. Although I again have no technical evidence in relation to the noise generated by these vehicles, the noise associated with this activity is generally familiar. I can therefore envisage that the noises associated with lorries arriving and departing would be disturbing to the occupiers of surrounding residential properties, particularly when it occurs during the early morning.
24. I conclude that the breach of planning control that has occurred unacceptably harms the living conditions of the occupiers of surrounding residential properties, specifically in relation to noise disturbance. I therefore conclude that the development is contrary to Policy WMP 25 of the East Sussex, South Downs and Brighton and Hove Waste and Minerals Plan, as well as Policy ST3 of the Lewes District Local Plan 2003 in this respect also. These policies require, amongst other things, that development should not adversely affect the local acoustic environment and should respect the amenities of adjoining properties in terms of noise.

Function as an agricultural unit

25. The concern of the County Council is that activities associated with the importation, deposit, storage and processing of waste UPVC window frames take place in close proximity to the adjacent barn, which is used to accommodate livestock. The County Council is therefore concerned that noise and dust emissions from those activities would constitute potential hazards to the livestock on the farm, and would therefore compromise the ability of the farm to function as an agricultural unit.
26. I can understand that the proximity of the waste processing operation, including vehicle movements in close proximity to the barn, could potentially affect the wellbeing of the farm animals housed in the barn. However, the County Council has produced no expert evidence to substantiate its concerns. In the absence of that evidence, I am not able to reach an informed conclusion as to whether the effects of the waste processing operation on the farm animals would be so serious as to compromise the functioning of the agricultural unit.

27. Furthermore, I take the appellant's point that he would not knowingly sanction an activity that might put the farm animals at risk or compromise the functioning of the farm. The appellant has also ensured that suitable protection for livestock is in place. In the absence of compelling evidence to the contrary, I accept the appellant's position in this respect.
28. I conclude that the breach of planning control that has occurred would not compromise the functioning of the farm. I therefore conclude that the development does not conflict with Policy CT1 of the Lewes District Local Plan 2003 which, amongst other things, seeks to retain agricultural activities in the countryside.

Other considerations

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control that has occurred fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
30. The appellant explains that the waste facility on the appeal site is geo-centric to the arisings, which typically occur within a 30 mile radius of the site. The loads arriving to be processed are relatively small, usually between ½ and 1 tonne loads per site per week across some 50 sites. The quantity of waste arriving to be processed on the site is therefore typically about 20 tonne per week, perhaps rising to 30 tonne on occasions. Up to 8 people are employed on the site, comprising 5 operatives and 3 drivers.
31. The appellant considers that the appeal site is also well located in relation to the main waste treatment facilities. The primary waste treatment facility used by the appellant's operation is based at Dartford, Kent, but local metal recyclers in Hailsham, Lewes and Shoreham are also used. Due to the road access, the appellant therefore considers the appeal site to be in the ideal location, both in terms of the delivery of unprocessed waste to the site and the collection of processed waste from the site.
32. The recovered UPVC windows frames go for incineration and therefore back into the materials chain. The appellant considers that the recovery and recycling of the UPVC window frames, as opposed to the alternative of sending them to landfill, is an environmental benefit accruing from the waste processing operation and is entirely consistent with the wider objective of completely eliminating waste. I accept entirely that the reuse of existing resources provided by the waste processing operation is a benefit that arises from the development subject to the enforcement notice, and is consistent with the objective of transitioning to a low carbon future set out in the National Planning Policy Framework, July 2018 (Framework). The employment of up to 8 people is also a benefit that arises directly from the development.
33. Nevertheless, the benefits that arise in this respect must be considered against the background of the waste hierarchy established by the East Sussex, South Downs and Brighton and Hove Waste and Minerals Plan. That plan identifies

broad 'Areas of Focus', considered to provide the most sustainable locations for waste management on the basis that they are likely to be close to arisings, have good transport networks and complement existing industries or facilities. The appeal site is not located within a broad 'Area of Focus'.

34. I recognise that the waste processing operation at the appeal site is, in waste industry terms, of a relatively small scale. Nevertheless, although within a 30 mile radius and with the exception of Uckfield, the appeal site could not be reasonably described as being close to the primary collection points, identified by the appellant as being Eastbourne, Littlehampton and Crawley. Similarly, although it was not disputed that the site in Dartford is the closest treatment facility, given the actual separation distance involved I would not describe the appeal site as complementing that facility. For these reasons, I consider that the appeal site is not in a suitable location for a waste processing facility of even a relatively small scale when considered against the waste hierarchy established by the East Sussex, South Downs and Brighton and Hove Waste and Minerals Plan.
35. Accordingly, given the location of the appeal site outside of an 'Area of Focus', I attach only moderate weight to the benefits arising from the development in terms of meeting the objective of transitioning to a low carbon future set out in the Framework and the employment of up to 8 people on the site. I have taken into account other potential benefits arising from the development, including the support for farm diversification, but none of the other benefits put forward by the appellant carry significant weight.
36. I have also considered whether the harms arising from the development could be mitigated by the imposition of conditions. However, I am not persuaded that the conditions put forward, including restrictions on the hours of operation/delivery of waste materials or sound attenuation measures beyond those already put in place, would satisfactorily and permanently overcome all the harms that I have identified above.

Conclusion on the ground (a) appeal and the deemed planning application

37. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, the appeal on ground (a) fails.

Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

39. The appeal is dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Martin Osment LLD
MIEEE EPOC MCIWM

Scott Terrier and Company

Mr D. Trigwell

Ms Sarah Farnes

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jeremy Patterson

Planning Officer

Ms Sarah Iles

Team Manager – Planning Policy and
Development Management

Mr Robert Shapter

Monitoring & Enforcement Officer

INTERESTED PERSONS

Mr Dominic Buckwell

Occupier, Upper Lodge

Mrs Corina Buckwell

Occupier, Upper Lodge

Mr J Denis

Ringmer Parish Council

DOCUMENTS SUBMITTED AT THE HEARING

- 1/ Copy of Policy 6.1 of the Ringmer Neighbourhood Plan, August 2014.
- 2/ Aerial photograph of the appeal site taken in 1987.
- 3/ Waste Key Diagram to the East Sussex, South Downs and Brighton and Hove Waste and Minerals Plan (colour copy subsequent sent electronically).