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## Appeal Decisions

Site visit made on 11 August 2020

**by Hilary Orr MSc, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 August 2020**

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### **Appeal A Ref: APP/G1440/C/20/3245299**

#### **Land adjacent to Appletree Cottage, Beacon Lane, Staplecross, Robertsbridge TN32 5QP**

- 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 H Willing against an enforcement notice issued by East Sussex County Council.
  - The enforcement notice, numbered RR/828/CM, was issued on 19 December 2019.
  - The breach of planning control as alleged in the notice is the unauthorised change of use of the land from woodland to the use for the importation and deposit of waste.
  - The requirements of the notice are:
    - 5.1 Cease the importation and deposit of all waste materials
    - 5.2 Cease the use of the land for the storage and disposal of waste materials and return the land to its original state by carrying out the following works on the land;
      - (i) Between one September 20 and 31 October 20 construct a track in the woodland as described in the arboricultural and ecological impact assessment report (October 2019) which accompanies the planning application (RR/828/CM) and use it to facilitate the removal of the waste materials as required in paragraph 5.2 (ii) below.
      - (ii) Remove from the land all waste materials that have been deposited on the land so that the original undisturbed natural contours of the site are exposed. The term "waste materials" include soil, wood, concrete, bricks, paving slabs, hardcore, plastics, metals, cable and carpet.
      - (iii) On completion of the removal of the waste materials as required by paragraph 5.2 (ii) above remove the track referred to in paragraph 5.2 (i) above from the woodland.
      - (iv) Plant the gap in the hedgerow adjoining the track with Holly and Hazel saplings of a minimum height of 60 dash 70 centimetres in a double row at one metre spacings.
  - The period for compliance with the requirements is: One day for step 5.1.; For steps 5.2 (i) 5.2 (ii) and 5.2 (iii) by 31 October 2020; and Step 5.2 (iv) by 30 November 2020
  - The appeal 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. 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 Act.
  - **Summary decision:** The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.
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### **Appeal B Ref: APP/G1440/C/20/3245302**

#### **Appletree Cottage, Beacon Lane, Staplecross, Robertsbridge TN32 5QP**

- 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 H Willing against the decision of East Sussex County Council.
  - The application Ref RR/2029/2308/CM, dated 29 July 2019, was refused by notice dated 19 December 2019.
  - The development proposed is the retention of deposited inert building waste.
- Summary decision:** The appeal is dismissed.
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## **Decision**

### **Appeal A**

1. It is directed that the enforcement notice is varied by the deletion of the year '2020' in paragraphs 5.2 (i), 5.2 (iii) and 5.2 (iv) of the notice, and the substitution of the year '2021'.
2. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177.

### **Appeal B**

3. The appeal is dismissed.

### **Procedural matters**

4. The appeal on ground (a) and the s78 appeal both relate to largely the same matters. I shall therefore deal with the two appeals together, in so far as they relate to the retention of the material. I shall then go on to consider the remedial proposal submitted as part of the planning application, before moving on to the appeal on ground (f).
5. Whilst no appeal on ground (g) has been put forward, it has become clear that the time for compliance with the notice, may need to be reconsidered in the light of the length of time that has elapsed since the notice was issued. I therefore consider it necessary to address the time for compliance, under ground (g), and have added this ground to the heading above. The parties have been made aware of this and have not raised any objection to this approach.
6. My attention has been drawn to a slight difference in the plan attached to the notice and the block plan submitted as part of the s78 application. From my visit it was evident that some of the material has rolled some distance from the main deposit, including into the adjacent pond. The extent of the overflow of debris is therefore unclear. Nonetheless, I am satisfied that the notice, including the address of the site and the plan, makes it clear the land to which the notice relates.

### **Main Issues**

7. The main issues in these appeals are:
  - The effect of the development on the character and appearance of the area; and
  - The effect of the development on the woodland.

### **Reasons**

#### *Character and appearance*

8. The appeal site is located to the east of Apple Tree Cottage and lies within the High Weald Area of Outstanding Natural Beauty (HWAONB). The land identified by the notice lies immediately adjacent to an access road that serves a number of properties and is also a public footpath. It comprises an area of woodland and ponds, set within a deep depression. This depression has steep sides that lead to the access road, with established trees and vegetative ground cover.
9. The development has resulted in a section of established hedge being removed, to allow for the deposit of waste material, that was derived from works carried out at a neighbour's property known as The Barn. The parties agree that some 60 tons of spoil comprising builder's brick and concrete rubble and soil has been tipped over the edge of the bank, leaving a flattened area to the top of the bank. It was clear from my site

- visit that established trees had material piled around their base and root protection area.
10. Paragraph 172 of the National Planning Policy Framework (the Framework) makes it clear that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The High Weald AONB Management Plan 2019 – 2024, further defines the natural beauty and sets objectives to conserve and enhance the HWAONB. This emphasises the need to maintain the existing extent of woodland and in particular ancient woodland.
  11. It is acknowledged that there are limited wider views into the site. However, the development can be clearly seen from the public footpath, with the attention of those using the footpath drawn, as a result of the gap in the hedge.
  12. The introduction of waste material into this area of woodland, has altered the natural contours of the slope, resulting in an anomalous flattened projection. This unnatural appearance is further exacerbated by the type of material involved, with the imported waste materials clearly evident. Moreover, the relative height of the spoil, when compared with the existing trees, adds to its harsh and artificial appearance. I acknowledge that the waste is confined to a fairly limited area. Nonetheless, the development has resulted in an incongruous and discordant feature in this area of woodland, that is in stark contrast to the otherwise natural beauty of the area and wider HWAONB.
  13. For the above reasons, I find that the development has introduced a discordant and alien feature, that has significant and unacceptable harm to the character and appearance of the area and the HWAONB. The development is therefore contrary to policies WMP 25 and WMP27 of the East Sussex, South Downs and Brighton and Hove Waste and Minerals Plan (2013) (Waste and Minerals plan); and policies OSS4, RA2, RA3 and EN1 of the Rother Local Plan Core Strategy (2014) (CS). In summary these policies when taken together, seek to conserve and enhance local character and make clear that development will not be permitted where there is a significant adverse impact on the HWAONB.

#### *Ecology*

14. It was clear from the site visit, that some of the material that has been deposited has extended across the floor of the hollow, with pieces of concrete and brick clearly visible and extending into the adjacent pond. The material is piled around the base of several established trees and smaller saplings and covers the original ground vegetation below.
15. The tipped waste material is likely to have resulted in damage to existing and future habitats. It has already damaged the existing vegetation, with the potential for more long term damage to the existing trees, due to impaction within the root protection area. Whilst the material is described as inert waste, I share the Council's concerns about the effect that any leakage may have, on the remaining vegetation and the water quality of the pond.
16. For these reasons, I find that the development has had an unacceptable impact on the wildlife, habitats and the local natural environment of the area. The development is therefore contrary to policies WMP27 of the Waste and Minerals Plan and policies EN1 and EN5 of the of the LP. These policies when taken together seek to protect, conserve and enhance habitats of ecological interest and the local natural environment.
17. The planning application that is the subject of this appeal, sought to retain the material in situ, with topsoil imported to cover it. It also proposed some remedial works, to remove the spoil away from the base of the trees, the pond and replant the hedge. I recognise that this would negate the need for the temporary track, that would be required to facilitate the removal of the spoil.

18. I also acknowledge that this would limit the number of vehicle movements and associated inconvenience to other road users. However, in my judgement it would not overcome the significant harm to the ecology of the HWAONB that I have already identified.

**Ground (f)**

19. The appeal is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or as the case may be, to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the extension is removed, and specific steps are taken to restore the land. The purpose of the notice is therefore to remedy the breach of planning control.
20. It is the appellant's case that it is their intention to complete the works in accordance with the scheme submitted with the application and the s78 appeal. They submit that this would remedy the injury to amenity.
21. My attention has been drawn to another appeal decision, at Rens Shaw, Rock Hill, where the Inspector agreed to allow the spoil to remain in place to avoid additional damage. To my mind, the site in that appeal differs from this site, as it related to a significantly greater quantity of material. In that case the removal of the spoil would have resulted in a lengthy period, where roads would be subject to considerable HGV traffic. The site subject to this appeal would result in a low number of lorry movements and therefore does not represent a true comparison.
22. The letter from Ravensbrook Groundworks, dated 12 July 2019, refers to some three lorry loads of spoil to be removed. Whilst this would cause some inconvenience it is not of a magnitude that it leads me to a different decision. Moreover, any limited benefit of reducing traffic movements, would be offset against the need to import the topsoil.
23. Overall, for the above reasons and based on the evidence I have before me, I find that the remedial nature of the notice requires full compliance, and the requirements are not excessive. Consequently, the appeal on ground (f) therefore fails.

**Ground (g)**

24. In the requirements of the notice at paragraph 5, the Council has specified dates when particular steps need to be taken. The reason for this is to ensure that these steps are taken at a time, that limits any potential additional disturbance to reptiles and Great Crested Newts. The appeal has taken some time to determine, in part due to the uncertainty and restrictions arising from the Covid-19 virus.
25. For the reasons given above, I consider that the material should be removed from the site as soon as possible. However, I am also mindful of the effect that the restrictions may have had on the appellant's preferred contractor's business. Accordingly, the construction of the temporary track and the removal of the material by 31 October 2020, may no longer be reasonable, especially if another contractor is required.
26. I have had regard to the Arboricultural and Ecological Impact Assessment Report (October 2019). Paragraph 3.2 refers to the ecological survey that identifies that the woodland habitat provides high potential for roosting bats, dormice, hibernating great crested newts, hibernating reptiles, badgers and breeding birds.
27. The period for compliance with the notice, would normally be based on the time that it would take to carry out the works. However, in this case I give the potential for further damage to these species significant weight. For this reason, exceptionally, I intend to vary the notice to specify the same stepped approach to the remedial works, but substituting the year 2021 for 2020 as the time for compliance. To this limited extent the appeal on ground (g) succeeds.

**Conclusion**

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

*Hilary Orr*

INSPECTOR