

LAND EAST OF DAN TREE FARM, LONDON ROAD, BOLNEY, WEST SUSSEX RH17 5QF

APPEAL REFERENCE: APP/D3830/C/23/3319435

### INSPECTOR'S PRE-INQUIRY NOTE 1

*To set out initial observations on the grounds of appeal, including likely main issues and to progress arrangements for the inquiry.*

### GROUND(S) OF APPEAL

The grounds of appeal are: (a), (b), (d), (f) and (g). In terms of the legal grounds of appeal the onus is on the appellant to prove the case on the balance of probability.

**Ground (b):** *that the matters stated in the alleged breach of planning control have not occurred.*

The alleged breach is Without planning permission:

1. the material change of use of the Land from agriculture to a mixed use. The identified components of the alleged mixed use are (i) the importation, processing, storage and export of waste material, (ii) the deposition of waste material, (iii) the storage of building materials, and (iv) the storage of plant, machinery and containers.
2. Operational development comprising the laying and construction of hardstanding upon the Land.

The appellant's case is that there is no permanent deposit of waste on the Land and the Plan attached to the notice should exclude the lawful access road.

It appears that the Council does not agree that the description of the alleged breach or the Plan should be corrected as proposed by the appellant.

The issue in this ground of appeal is whether the development described in the paragraph 3 of the notice has occurred as a matter of fact. A mixed use is a sui generis use comprising two or more primary uses. As drafted, the alleged mixed use has 4 primary components. Are the two storage components better described as a single primary use (the storage of building materials, plant, machinery and containers) or is one or both of the storage components ancillary to the other primary uses?

**Ground (d):** *that at the date the notice was issued no enforcement action could be taken in respect of the matters constituting the breach of planning control.*

The enforcement notice was issued on 28 February 2023. The reasons for issuing the notice set out the 10 year time limit in respect of alleged material change of use and the 4 year time limit for the operational development. This distinction indicates the Council considers the laying and construction of the hardstanding is a separate act of development, rather than being part and parcel of and integral to the material change of use.

### 'Second bite' provision

Section 171B(4) of the 1990 Act permits the taking of further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach. There is nothing within the enforcement notice or in the Council's statement of case to indicate the notice was issued under the second bite provision. The Council is requested to confirm whether this understanding is correct.

### The material change of use

The use the appellant considers immune from enforcement action is "the importation, temporary deposit, reuse and recycling of waste material and the use of the land for storage purposes". Therefore the appellant's case relies on success in the ground (b) appeal.

### The hardstanding

In order to be immune from enforcement action the development, namely 'the laying and construction of the hardstanding' would have to have been substantially completed before 28 February 2019.

Additional information about the hardstanding would be helpful (such as extent, form of construction, works carried out). The plan attached to the notice shows outlined in blue the area of hardstanding required to be removed in the event the notice is upheld. Should the description of the alleged breach in paragraph 3.2 be qualified to refer to the area outlined in blue? Or is the Council under-enforcing through the requirement?

**Ground (a):** *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 deemed planning application is for the development described in the breach of planning control, as set out in the notice or as corrected, as the case may be.

Planning permission may be granted in relation to the whole or any part of the matters constituting the breach or for all or part of the Land to which the notice relates.

The appellant is seeking a temporary planning permission for four years – does the appellant accept that a permanent permission would not be justified?

The Council has stated (in an email dated 24 August 2023) reasons 4.6 and 4.7 of the enforcement notice are no longer being pursued. No evidence will be presented on potential land and water contamination and the impact upon ancient woodland and biodiversity.

### Main issues

These are likely to include:

- The effect of the location of the development in a rural area in a National Landscape.
- The effect of the development on the safety and operation of the strategic highway network.

- The contribution of the development to the sustainable management of waste and to the local economy.

Other considerations will include the availability of alternative suitable sites, and whether any identified harm may be mitigated by the use of planning conditions.

**Ground (f):** *whether the requirements of the notice are excessive, having regard to the purpose of the notice.*

My reading of the notice is that its primary purpose is to remedy the breach, although the Council's statement of case suggests the purpose is to remedy the injury to amenity.

An appellant cannot seek to argue the notice should have a different purpose or that a Council should under-enforce. The requirements may be informed by conclusions on the ground (b) and ground (d) appeals and the planning history of the Land. However, usually a ground (f) appeal is considered in the context of a lack of success on the legal grounds of appeal and the ground (a) appeal.

In respect of the material change of use, it appears the appellant's case is that the requirements do not adequately take account of the previous lawful use(s) of the land. The wording of the description of the alleged breach indicates the Council consider the previous lawful use was agriculture.

In the event the hardstanding is found to be immune from enforcement action under the ground (d) appeal, the requirements of the notice would be varied accordingly.

**Ground (g):** *whether the periods for compliance are reasonable.*

Considerations include:

- a. what the recipient of the notice will have to do in practice to carry out the required remedial steps and how much time it would be reasonable to allow for that purpose;
- b. the level of harm caused by the breach of planning control; and
- c. national policy on the importance of effective enforcement.

The appellant is seeking a period of 24 months. However, if a compliance period of longer than a year is contemplated, a time-limited planning permission may be a preferable course.

## **THE INQUIRY**

### Inquiry date

On 17 January 2024 the Planning Inspectorate informed the appellant and the Council that the inquiry will open on 16 April 2024 and 5 sitting days should be allowed. On 23 January the appellant responded that the date was unacceptable because key factual witnesses would be unavailable. On 30 January the Planning Inspectorate requested the appellant to liaise with the Council to agree a date. Despite two reminders on 9 and 16 February no response has been received and no alternative date has been proposed.

In previous correspondence and statement of case the appellant has accepted that not all witnesses on factual matters may be available due to scheduling and statutory declarations would have to be relied on.

In order to move the matter forward, the appellant should identify the key factual witnesses and explain the constraints on availability. It may be necessary to consider two or more sittings of the inquiry. Given the time lag my availability also has reduced. It may be that a date will have to be imposed.

#### Witnesses

The appellant has indicated calling 5 expert witnesses and 11 witnesses on factual matters.

The Council has indicated calling 5 expert witnesses.

Time also should be allowed for the accompanied site visit, opening/closing submissions, inspector's questions and re-examination, a session on planning conditions and possible interested party involvement.

Taking account of the time estimates provided by the parties, five days looks to be optimistic and realistically 6 or 7 days may be required.

#### Statement of common ground

The appellant has made reference to progressing a statement of common ground with the Council and the possibility of coming to an agreed position on various matters. The Council requested a draft document from the appellant in August 2023 and was hoping to discuss matters at that time. What is the current position? This may have a bearing on the expected length of the inquiry.

#### **RESPONSE**

A reply to this Note is requested no later than Monday 26 February 2024 in view of the length of time that has elapsed already since the notification of an inquiry date. The reply should be addressed to the case officer, email address:

[teame1@planninginspectorate.gov.uk](mailto:teame1@planninginspectorate.gov.uk)

*Diane Lewis*

Inspector

21 February 2024