

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 2

Pre-Inquiry Note 1 set out initial observations on the grounds of appeal, including likely main issues and made initial comments on the arrangements for the inquiry. This Note updates the position following the earlier responses to Note 1 and the draft statement of common ground.

THE APPEAL

Enforcement notice

Outstanding matters are:

The Land

Matters for consideration: the extent of the red line area, whether the access road from the A23 should be included, whether the mixed use described in paragraph 3 extends over all the Land.

The matters which appear to constitute the breach of planning control

The notice is directed at (i) a material change of use, and (ii) operational development, in other words two separate acts of development as opposed to the hardstanding facilitating the change of use.

The description of the mixed use will be dealt with primarily through the ground (b) appeal. The parties have confirmed the two elements of storage (3.1.3 and 3.1.4) should remain separate primary uses but I still have reservations about this.

The Council has clarified 'the laying and construction of hardstanding' applies only to the area outlined in blue on the plan. Should this clarification be confirmed through a correction to the wording of the alleged breach?

Reasons

In the absence of any information to the contrary the time limits in paragraphs 4.1 and 4.2 would be expected to relate to the date of issue of the notice, 28 February 2023. However, the Council maintain the notice was issued under 'the second bite provision', following the withdrawal of an enforcement notice dated 27 January 2020.

Time would be saved if this matter could be resolved before the inquiry opens. Section 171B(4) on the 1990 Act provides "The preceding sections do not prevent ..(b) taking 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.” Case law has established that a question to ask is whether the second notice is wider in substance than the first notice or if it merely describes more accurately what had been misdescribed in the first notice.

The Council (email dated 26 February 2024) maintained that whilst the responding issuing authority has changed, the 2020 Notice addressed the same activity, on the same land and against the same parties. Is that the case? The current notice alleges a material change of use to a mixed use and operational development, compared to the 2020 notice which alleged a material change of use to a single primary sui generis waste use for the importation, processing and the export of waste and deposition of waste along with ancillary storage. The boundaries of the Land appear not to be exactly the same.

The Council’s further comments are requested, together with a copy of the report authorising the current enforcement action.

Grounds of appeal

In my view the ground (b) appeal should be considered before the appeal on ground (d).

Appeal on ground (a)

The development in the deemed planning application

Pre-Inquiry Note 1 stated “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 notice could only be corrected if no prejudice would be caused to either the appellant or the Council.

The appellant’s statement of case at paragraph 6.2 sets out what the appellant considers is the scope of the deemed planning application. However, this is not the same wording as the alleged breach and is not a description of the development being enforced against.

Evidence to support a different type of development may not be relevant to determination of the deemed planning application.

Highways

The Council should confirm its position regarding highways in view of the National Highways letter dated 12 February 2024 because it is likely to have an important bearing on the procedure and, if necessary, the time needed for this issue at the inquiry.

THE INQUIRY

The inquiry is due to open on Tuesday 24 September 2024. Four sitting days have been arranged.

The Council has confirmed that the venue is the Council Chamber at Mid Sussex District Council, Haywards Heath RH16 1SS.

The appellant will present its case first given the legal grounds of appeal.

The Appellant and the Council should confirm their witnesses and time estimates. Witnesses on factual matters (related to the ground (b) and ground (d) appeals) will be asked to give their evidence under solemn affirmation. They should be made aware of the potential sanction under the Perjury Act 1911 for making a statement which they know to be false or do not believe to be true. In addition, the decision may be overturned in the courts if it is subsequently found to have been based upon false or misleading evidence given at the inquiry.

The programme will need to make provision for an interested party to speak, should they so request in the opening session.

The amount of time allocated to the ground (a) appeal will be informed by the statement of common ground and the Council's case on the highways issue. It may be that the main issues could be dealt with primarily through written submissions or discussion – the parties comments on this approach would be helpful.

The accompanied site visit will take place at a convenient and appropriate time in the programme but before Closing submissions.

Documents

The Council's statement of case indicates that a number of documents will come forward at the proof stage, for example aerial and other documentary evidence to support its case on ground (d). The Council should be aware that a "statement of case" means, and is comprised of, a written statement which contains full particulars of the case which a person proposes to put forward at an inquiry, and a list of any documents which that person intends to refer to or put in evidence.

The appellant provided a set of appendices to accompany their statement of case – is this the complete set of documents on which the appellant wishes to rely when read in conjunction with the documents submitted when the appeal was made?

Proofs of evidence should cover only areas which remain at issue and should not include new evidence or arguments. No new or additional documents should be submitted at the inquiry.

The Core Documents list should be finalised as part of the statement of common ground.

Applications for costs

Planning Practice Guidance advises that all costs applications must be formally made before the inquiry is closed, but as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the inquiry opens. Any such application can be added to or amended as necessary in oral submissions. If the application relates to behaviour at the inquiry, the applicant should alert the Inspector that they are going to make a costs application. The application, the response by the other party, and final comments will be heard after Closing submissions and before the close of the inquiry.

Timetable

By 28 June: Response to questions and information requested in this Note. Submit agreed statement of common ground.

By 27 August: Submit Proofs of evidence

20 September: Submit application for costs, (if any)

24 September: Inquiry opens.

All correspondence with the Planning Inspectorate should be sent to the case officer, email address: teame1@planninginspectorate.gov.uk

Diane Lewis

Inspector