

MID SUSSEX DISTRICT COUNCIL

MEMORANDUM

To: Head of Legal Services

From: Development Manager – Nick Rogers
Team Leader Planning Investigation & Enforcement – Steve Ashdown
Senior Planning Officer Planning Investigation & Enforcement – Andy Clarke

Date: 23rd February 2023 Ref: EF/18/0446

ISSUE OF AN ENFORCEMENT NOTICE

Premises: LAND AT BOLNEY PARK FARM
BROXMEAD LANE
BOLNEY
HAYWARDS HEATH
WEST SUSSEX
RH17 5RJ

Recipient: PJ Brown (Civil Engineering) Ltd
Burlands Farm
Charlwood Road
Crawley
West Sussex
RH11 0JZ

Mr Dane Rawlins
Bolney Park Farm
Broxmead Lane
Bolney
Haywards Heath
West Sussex
RH17 5RJ

Mrs Maureen Rawlins
Bolney Park Farm
Broxmead Lane
Bolney
Haywards Heath
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BARCLAYS BANK UK PLC (Co. Regn. No.9740322)
P.O. Box 187
Leeds
LS11 1AN

SARAH CATHERINE WRIGHT
Park Farm Cottage
Broxmead Lane
Bolney
West Sussex
RH17 5RJ

Report

The alleged breach of planning control relates to the unauthorised change of use of the land from agriculture to a mixed use relating to the importation, processing and export of waste material and storage upon the land.

Bolney Park Farm is large agricultural holding lying north of Broxmead Lane and east of the A23. It has a lawful use for a mixed use of agriculture and rearing and grazing of horses (for use in relation to show jumping). The site has been subject to previous investigations into breaches of planning control but had not been subject to formal enforcement action.

The land where the unauthorised use taking place is on a parcel of land at the northern end of the agricultural holding at Bolney Park Farm and comprises a cleared area of land approximately 1ha in size where the waste importation and processing takes place and which is served by an existing access road approximately 225m long directly from the A23 trunk road to the west. Incorporating the access road the land to which the notice will relate measures 1.17ha in size.

The primary waste importation and processing takes place on the cleared area to the east with high bunds and raised tracks surrounding which serve the operation. The storage element of the use takes place on the more southern element of the land and is more haphazard in nature with the storage arranged informally around this area but which does not obstruct the tracks or the movement of heavy plant around the site.

The importation, processing, and export of waste takes place then it is removed from the site as waste either destined for further processing or permanent deposit elsewhere unconnected to this site. The waste is delivered by large 16t HGV's and thereafter separated by heavy plant into piles for removal from the site by the same large HGV's.

The land is set in a rural location within the wider Area of Outstanding Natural Beauty and benefits from no other lawful use or vehicular access. Whilst set at an elevated position the land is not visible from wider public views. The site is not owned by PJ Browns but is leased from the landowner(s).

Relevant Planning and Enforcement history

In September 2018 a complaint was received regarding waste importation at Bolney Park Farm via an existing and lawful agricultural access directly off the A23. A joint site visit between MSDC, WSCC and the Environment Agency in October 2018 observed that PJ Browns (a registered waste carrier) was using the site for the importation and sorting of building waste. It was determined that the operation was a 'waste' matter and that it fell within the jurisdiction of WSCC as the local planning authority with responsibility for waste and minerals.

MSDC thereafter assisted WSCC in the matter but no breaches of planning control which would lie under the jurisdiction of MSDC were at the time identified.

On 7th January 2020 WSCC refused a Certificate of Lawful Use for the importation, deposit, re-use and recycling of waste material and use of land for storage purposes

On 27th January 2020 WSCC issued an Enforcement Notice on the landowner and PJ Browns alleging the unlawful change of use of the land and requiring the removal of the waste from the land.

Both recipients of the Notice appealed, and the requirements of the Notice were held in abeyance pending the determination of the appeal.

A public enquiry was held in March 2021 where the Inspector advised WSCC to withdraw the Notice as it was deficient in its drafting and doubts were raised about the lawfulness of WSCC serving the Notice. WSCC withdrew the Notice on the Inspectors advice and full costs were awarded against WSCC.

As the Notice was withdrawn the unlawful PJ Browns operation was free to continue as no enforcement notice was in effect upon the land.

Prior to the inquiry the appellants (PJ Browns) submitted a letter to the Inspector querying the lawfulness of WSCC issuing the enforcement notice as the use may be considered a 'mixed use' of waste and storage' use rather than solely a 'waste' matter, as alleged by the enforcement notice. The Inspector appeared to attribute weight to this suggestion although it was never tested at the inquiry as the Notice was withdrawn before evidence was given.

[REDACTED]

[REDACTED]

Officers visited the site in Spring 2022 and thereafter issued a number of Planning Contravention Notices (PCN) upon the operators(s) to require information as to the materials and uses identified at the site visit. These Notices were thereafter responded to and information provided in May 2022.

[REDACTED]

As of February 2023, the unauthorised use continues but has not extended beyond the limits of the former enforcement notice.

Assessment

A breach of planning control is considered to have occurred relating to the material change of use of the Land from agriculture to a mixed use the importation, processing, storage and export of waste material and the storage of building materials upon the Land. This is considered a mixed use of the land. In association with the use a number of containers and cabins have been sited upon the land and hardstanding has been laid in the area where the waste is stored and processed.

The site lies within a rural area within the High Weald Area of Outstanding Natural Beauty and is accessed directly from the main A23 trunk road. The use is carried on by PJ Brown (Civil Engineering) Ltd who operate a large number of HGV's (8 wheel, 16T vehicles) from the site.

In response to the PCN's issued by MSDC, PJ Brown state that the development, whilst unauthorised, is exempt from enforcement action by virtue of having been carried on for more than 10 years. Whilst it is acknowledged that the site may not have been in agricultural use for a number of years and that PJ Browns first had an interest in the site in 2007, the use in the immediate period following 2007 mainly related to ad-hoc storage and storage related to the ongoing developments taking place on the adjacent land. The processing and the importation of waste did not commence until 2018 and it is at this point that the mixed use is alleged to have commenced. It is therefore within the 10 year period for enforcement by the LPA.

Notwithstanding this, even were any recipients of the Notice to argue the 10 year period of immunity was before the 2018 date, the 'second-bite' provisions of the s.171B(4)(b) of the T&CPA 1990 would apply providing an additional four years for enforcement after the issue of the original Enforcement Notice by WSCC in January 2020. The use is therefore not considered to be exempt from enforcement action.

The site lies in a rural location and the development is unrelated to the needs of agricultural or any other lawful rural use contrary to policies DP12 and DP16 of the Mid Sussex District Plan 2014 – 2031, policies W3, W4, W8 and W9 of the West Sussex Waste Local Plan 2014 – 2031, policy AS3 of the Ansty, Staplefield & Brook Street Neighbourhood Plan, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraph 177 of the National Planning Policy Framework 2021.

The site lies in a visible position within the High Weald Area of Outstanding Natural Beauty and causes harm to the visual amenity of the rural area and in which it lies contrary to policies DP12, DP16, DP26 and DP29 of the Mid Sussex District Plan 2014 – 2031, policies W11, W12 and W13 of the West Sussex Waste Local Plan April 2014 - 2031 policy AS3 of the Ansty, Staplefield & Brook Street Neighbourhood Plan, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraphs 176 and 177 of the National Planning Policy Framework 2021.

The access is via a direct access off the A23 trunk road. The access is lawful and has previously been used for agricultural purposes. The use significantly intensifies the use of the access by HGV's and National Highways have raised an objection on highway safety grounds. The use therefore represents a severe impact upon the safety of the local highway network contrary to policy DP21 of the Mid Sussex District Plan 2014 – 2031 and policy W18 of the West Sussex Waste Local Plan April 2014 – 2031 and paragraphs 110 and 111 of the National Planning Policy Framework 2021.

The site is previous farmland and although no watercourses lie in close proximity to the site there is no knowledge of any bonded surface or measures to prevent contamination from the waste being brought onto the site. The use therefore represents a risk to land and water contamination contrary to policies DP41 and DP42 of the Mid Sussex District Plan 2014 – 2031 and paragraph 183 of the National Planning Policy Framework 2021

A parcel of ancient woodland lies directly to the north-west of the site. The use, hardstanding and cabins lie within the 15m buffer zone around this woodland. The use and operational development therefore cause harm to the adjacent ancient woodland and biodiversity of the land contrary to policies DP27 and DP38 of the Mid Sussex District Plan 2014 – 2031 and policies W14, W16 and W19 of the West Sussex Waste Local Plan April 2014 – 2031, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraph 174 of the National Planning Policy Framework 2021.

The Council is satisfied that there has been a breach of planning control and it is expedient to issue an enforcement notice, taking into account the provisions of the development plan and any other material considerations. The Enforcement Notice is required to ensure the cessation of the unlawful use and the removal of the unauthorised development.

The requirements of the Notice have been drafted in co-ordination with WSCC Waste & Minerals Officers and National Highways. The Notice is being issued by MSDC as the relevant authority with assistance from WSCC as the LPA for waste and minerals.

[REDACTED]

Human Rights

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Therefore the enforcement action proposed to address the breach of planning control on the site is considered necessary and proportionate when balanced against the wider impact of the breach on public safety.

In coming to this conclusion, the Council has also had regard to the fact that the owner/operators of the site have the right to appeal against the issue of the enforcement notice.

The Council have therefore considered the implications of the Human Rights Act 1998 and would make the following observations:

- i. The owners / operators have a right to register an appeal against the issue of such an Enforcement Notice
- ii. Under Article 8 of the Act, I believe that this Authority is justified in pursuing action in the interests and amenities of the locality
- iii. Under Article 1 of Protocol 1, by taking this action, the Authority is seeking to enforce laws deemed necessary to control the use of property in accordance with the general interest.
- iv. The enforcement action is necessary for the purposes of public Safety

The Enforcement Notice should allege that the breach of planning control is:

Without planning permission,

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

The reasons for the issue of the Enforcement Notice are:

The site lies in a rural location and the development is unrelated to the needs of agricultural or any other lawful rural use. The development lies in an unsustainable location, causes harm to the character and appearance of the High Weald Area of Outstanding Natural Beauty, causes unacceptable harm to highway safety, represents a risk to land and water contamination and the adjacent Ancient Woodland and it is considered expedient to issue the notice for the following reasons:

- 1) It appears to the Council that the breach of planning control relating to the unauthorised change of use has occurred within the last 10 years and constitutes unauthorised development.
- 2) It appears to the Council that the breach of planning control relating to the operational development has occurred within the last 4 years and constitutes unauthorised development.
- 3) The Unauthorised Development is located in a rural area and is unrelated to the needs of agriculture and is considered contrary to policies DP12 and DP16 of the Mid Sussex District Plan 2014 – 2031, policies W3, W4, W8 and W9 of the West Sussex Waste Local Plan 2014 – 2031, policy AS3 of the Ansty, Staplefield & Brook Street Neighbourhood Plan, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraph 177 of the National Planning Policy Framework 2021.
- 4) By virtue of its location, scale and appearance the Unauthorised Development causes harm to the visual amenity of the rural area and the High Weald Area of Outstanding Natural Beauty in which it lies contrary to policies DP12, DP16, DP26 and DP29 of the Mid Sussex District Plan 2014 – 2031, policies W11, W12 and W13 of the West Sussex Waste Local Plan April 2014 - 2031 policy AS3 of the Ansty, Staplefield & Brook Street Neighbourhood Plan, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraphs 176 and 177 of the National Planning Policy Framework 2021.
- 5) By virtue of the location and scale of the Unauthorised Development it represents a severe impact upon the safety of the local highway network contrary to policy DP21 of the Mid Sussex District Plan 2014 – 2031 and policy W18 of the West Sussex Waste Local Plan April 2014 – 2031 and paragraphs 110 and 111 of the National Planning Policy Framework 2021.
- 6) By virtue of the use, siting, scale and material construction of the Unauthorised Development it represents a risk to land and water contamination contrary to policies DP41 and DP42 of the Mid Sussex District Plan 2014 – 2031 and paragraph 183 of the National Planning Policy Framework 2021
- 7) By virtue of the use, siting and scale the Unauthorised Development it causes harm to the adjacent ancient woodland and biodiversity of the land contrary to policies DP27 and DP38 of the Mid Sussex District Plan 2014 – 2031 and policies W14, W16 and W19 of the West Sussex Waste Local Plan April 2014 – 2031, paragraph 7 and Appendix B of the National Planning Policy for Waste 2014 and paragraph 174 of the National Planning Policy Framework 2021.
- 8) The Council does not consider that planning permission should be given because it is contrary to the policies of the development plan and planning conditions could not overcome these objections to the development.

The Enforcement Notice should require:

- 1) Cease the use of the Land for the importation, processing and export of waste material;
- 2) Cease the use of the Land for the deposition of waste material;
- 3) Cease the use of the Land for the storage of waste and building materials
- 4) Cease the use of the Land for the storage of plant, machinery and containers
- 5) Remove from the Land all plant, machinery, equipment, containers and vehicles
- 6) Remove from the Land to an authorised place of disposal all imported and stored waste and building materials associated with the unauthorised development
- 7) Disconnect from all services (water, electricity, foul sewerage) the portacabin marked in the approximate position marked 'A' on the Plan.
- 8) Remove from the Land the portacabin sited in the approximate position marked 'A' on the Plan.
- 9) Remove from the Land the containers sited in the approximate position marked 'B' on the Plan.
- 10) Remove from the Land the hardstanding marked outlined in blue on the Plan.
- 11) Remove from the Land to an authorised place of disposal all debris and materials as a result of compliance with step 5.10 above.
- 12) Reinststate and restore the Land to its former condition and topography in keeping with the surrounding agricultural land

Requirements 1), 2) and 3) of the Notice should require compliance seven days after the Notice comes into effect.

A period of 14 days should be given for compliance with requirements 4), 5), 7), 8) and 9) of the Notice.

A period of 28 days should be given for compliance with requirements 6), 10) and 11) of the Notice.

A period of three months should be given for compliance with requirement 12) of the Notice.

Attachments

To aid with the preparation of the Notices I have attached the following documents to this report:

- [REDACTED]

I therefore authorise the issue of an Enforcement Notice in respect of the breach of planning control.



Nick Rogers
Head of Development Management