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## Appeal Decision

Site visit made on 25 January 2016

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 February 2016

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**Appeal Ref: APP/V2255/C/15/3121548**

**Land at Vicarage Lane, Ospringe, Faversham, Kent ME13 8XT**

- 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 R Cumberland against an enforcement notice issued by Swale Borough Council.
  - The enforcement notice, numbered 14/500478/CHANGE, was issued on 20 April 2015.
  - The breach of planning control as alleged in the notice is the alteration of site access, levelling of the site, provision of access track and turning head and change of use to processing and storage of timber.
  - The requirements of the notice are (i) Cease using the land for processing and storage of timber. (ii) Restore the land to its former state. (iii) Remove any debris associated with complying with (i) and (ii) above from the land.
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. It is directed that the enforcement notice be corrected by the substitution of the plan attached to this Decision for the plan attached to the notice and by the deletion of the words '*alteration of site access*', and '*provision of access track and turning head*' in the allegations. Otherwise, the appeal is dismissed, the enforcement notice is upheld as corrected and planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 (as amended) (TCPA).

### Main Issues

2. I consider the main issues on the appeal on ground (a) and the deemed planning application are the effect of the development on:
  - (i) the character and appearance of the surrounding countryside and the Ospringe Conservation Area;
  - (ii) highway safety and the free flow of traffic in Vicarage Lane and Water Lane and
  - (iii) the living conditions of local residents.

### Planning history

3. A planning application for 'Alteration of site access, levelling of the site, provision of access track and turning head, construction of two pole barns and change of use to processing and storage of timber', ref: SW/14/0548, at the site was refused by the Council on 2 March 2015.
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#### **Procedural matter**

4. The appellant has submitted a Land Registry document showing the area of the site in his ownership, which does not include some of the area enclosed by the red line on the Enforcement Notice. The Council raises no objection to the amendment of the enforcement notice to omit the land that is outside the appellant's control and I can therefore do so without prejudice to either party.

#### **Site and surroundings**

5. The appeal site is part of a field lying to the south of the village of Ospringe and within the Ospringe Conservation Area. It is accessed from the north via a field gate on Vicarage Lane and is also bounded by Vicarage Lane to the east. It comprises grassland that rises to the east and to the west lies another field, Water Lane and the church of St. Peter and St. Paul. There are residential properties to the south-west and north.

#### **Reasons**

##### *Ground (b)*

6. The appellant submits that there has been no alteration to the site access, that there has been no access track or turning head created, that any levelling of the site is a minor operation and that the change from the agricultural use is to forestry. The submissions on whether there is a difference between forestry and the use actually taking place on the land will be considered under the appeal on ground (c), as there is no dispute that the use of the land for the processing and storage of timber is taking place as a matter of fact, as alleged.
7. I saw at the site inspection that the site access appears to be the only entrance to the field and the Council has not explained how it considers it has been altered. A letter from the Council to the appellant dated 4 May 2012 alludes to a possible new access but the appellant says he has always used an existing gateway which has not been altered. In the absence of any evidence from the Council to contradict this, I conclude that the allegation referring to the alteration of the access is incorrect.
8. Similarly, I saw that there has been no access track or turning head 'provided' on the site. Vehicles have obviously accessed the site and this has resulted in depressions being formed by their tyres in the grass and, in places, some hardcore has been laid to fill in the deeper ruts. However, this is such a low key operation that I consider that it does not amount to development and consequently cannot be enforced against. I shall therefore correct the enforcement notice by omitting the references to the alterations to the access and the formation of a track and turning head.
9. It is clear that there have been some changes made to the profile of the land and some cutting into the slope has occurred. This is classified as an engineering operation and although the appellant describes it as 'minor', it has taken place as a matter of fact. The appeal on ground (b) therefore fails in respect of this item.

##### *Ground (e)*

10. It is submitted that the appellant was not served properly with the enforcement notice, which was, in fact, issued to his father, who acts as his agent. This came about because Mr P Cumberland had signed the owner's certificate on the planning application noted above.

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11. The land is owned by Mr R Cumberland and his wife, Mrs Susan Cumberland. The appeal is, however, made in the name of Mr R Cumberland, who has consequently not been disadvantaged by the failure to serve the notice on him directly. Mr Paul Cumberland, his father, gives his address as the same as his son and I have no reason to suppose that Mr R Cumberland has not been made aware of the appeal. He also attended the site visit.
12. In any event, s.175(5) of the TCPA provides that any person who has made an appeal against an enforcement notice is not entitled to subsequently claim that the notice was not properly served on them. The appeal on ground (e) therefore fails.

*Ground (c)*

13. The appellant submits that planning permission is not required for the change of use, as it is a forestry operation. The dictionary definition of 'forestry' is the 'science or art of managing forests'. There are no trees being grown or harvested on the site; all the timber that is processed and stored has been imported from elsewhere. Consequently, the operations that are being carried out are not a forestry use, and would not be exempt from the definition of development that requires planning permission as set out in s.55 of the TCPA.
14. In respect of the changes made to the profile of the land, I consider that this is significant enough to require a grant of planning permission to authorise it. The appeal on ground (c) therefore fails.

*Ground (a)*

15. The appeal site is in a tranquil valley area of countryside within a conservation area and it contributes to the pleasant rural surroundings outside the built up confines of the village. In such areas policies, E6 and E19 of the Swale Borough Local Plan Local Plan 2008 (LP) seek to protect the quality, character and amenity of the countryside and reinforce local distinctiveness by restricting development to certain categories that require a rural location.
16. As noted above, the operation being undertaken by the appellant does not fall within these categories and is a commercial business that does not need to be undertaken on its current site or in a rural location. It is not associated with any tree felling on the site and would not be limited to works associated with the management of established woodland. The importation of timber and subsequent cutting and distribution of the logs produced could be carried out elsewhere.
17. The operation can be clearly seen from Water Lane, the road that serves the church, and appears as an obtrusive and jarring insertion into otherwise attractive countryside. The noise of the chainsaw operating can also be heard across the valley and I noted it was considerably louder and more disturbing than the background noise of the M2 motorway, which lies some 500m from the site.
18. Consequently, the development harms the appearance of the countryside and detracts from the tranquillity of the surroundings. It also fails to preserve the character of the Ospringe Conservation Area, conflicting with the statutory requirement set out in the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires special attention to be paid to the desirability of preserving the character and appearance of such areas.

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19. I accept that the sound of a chainsaw and logging works can often be found in rural areas and that, at present, the operations taking place on site are limited in extent to a small part of the land in the appellant's ownership. However, the grant of planning permission under the appeal on ground (a) would be for the processing and storage of timber across all of the area contained within the enforcement notice 'red line' plan.
20. Even without any building works, the level of activity could therefore be extensive and become even more intrusive than at present. No planning conditions have been suggested that could overcome this harm or restrict the extent of the operations taking place, other than by limiting the hours of use of the site and the times when machinery could be used on it. I also note that the appellant raises objections to these suggested conditions.
21. In terms of highway safety, there are concerns about the use of the narrow country lanes by commercial vehicles delivering timber to the site. I can understand these concerns but the appellant states that the site is normally only accessed by tractor and trailer with a maximum of 6 lorry movements a year. However, the County Highway Authority has raised objections to the scheme due to the restricted width of the lanes around the site and the possible increase in the amount of traffic using them.
22. I am concerned that, as noted above, the activity on site may not, in future, be limited to the level that takes place at present, as a grant of planning permission would authorise the use of all the area within the enforcement notice plan, not only by the appellant but also by a future owner who might want to make greater use of the facility. Once again, conditions could not limit the expansion of the business within the site boundaries once the land had permission for this commercial use. This could result in an increase in traffic that would prove unacceptable in this rural location. This would be contrary to policy T1 from the LP, which aims to prevent development that would result in a reduction in highway safety. I conclude, therefore, that the risk of additional traffic movements weighs against the development.
23. Local residents have reported disturbance from the noise of the chainsaw and, from what I heard at the site visit, I can understand their concern. The Council has suggested a condition requiring the submission of a noise mitigation scheme but the appellant has objected to this. In any event, I have been given no indication of how, or even if, this could be achieved. The appellant has made reference to a noise report that was submitted with the planning application but this has not been included by either side in the appeal documentation and is consequently not before me.
24. It may well be that the noise produced by the chainsaw would not be at a level that would result in a statutory nuisance but, from my experience on site, there would nonetheless be a degree of harm resulting from the operation as it is now being carried out. This again weighs against the development as there would be a conflict with LP policies E1 and E19, where they seek to protect existing amenity.
25. The wording of the enforcement notice directly relates to the development for which planning permission was sought, and refused. It seems that this is the source of the incorrect allegations but also gives an indication of the appellant's aspirations for his business. Consequently, there is no indication that it would be viable without the other infrastructure for which planning permission was previously sought.

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26. The National Planning Policy Framework (the Framework) notes that sustainable development comprises three strands: social, economic and environmental, which need to be considered together and as a whole. In this case, I have found environmental harm to the countryside and to the designated heritage asset that is the conservation area and through increased noise that has already proved disturbing to local residents. I have also found that the possibility of increased traffic generation is another factor that weighs against the grant of planning permission.
27. I have considered the benefits that the appellant claims the business brings for him and the area in general. I agree that the provision of employment and the production of the logs for fuel are factors that support the application but I am not persuaded that they are sufficient to outweigh the identified harm, given that there is no requirement for the business to operate from this particular site, which is not in a location supported for commercial uses by LP policy.
28. I have also noted the other developments in the Borough that the appellant cites as supporting his case or which he claims shows an inconsistent approach by the Council. However, none of these examples are directly comparable to the circumstances at the appeal site. I also have no information on whether the Council has taken enforcement action against any of them. I have therefore considered this case on its own particular merits.
29. Although the Framework gives broad support for rural businesses, these businesses must represent sustainable development and in this case I consider that the economic and social benefits of the proposal are not sufficient to outweigh the identified environmental harm. Consequently, the business is not sustainable and is not supported by local or national planning policy. In these circumstances, I find no overriding justification for allowing the field to be used for the processing and storage of timber and the appeal on ground (a) fails, as does the deemed planning application.

*Grounds (f) and (g)*

30. Part of the appeal on ground (f) seems to be based on the assumption that the enforcement notice requires the removal of hedgerows and fencing that the appellant has put in place. This is not the case as these items have not been enforced against in the notice and the requirements can only call for the removal of items, or the cessation of the use, that are in the allegations.
31. The appellant also seeks confirmation that the wood that is already on site can be cut into logs prior to removal if the other grounds of appeal fail. I agree that this would be sensible, given the limited amount of stock on site at the time of the visit, the submission by the appellant that he has already stopped the importation of timber to the site and the need to restrict larger vehicles accessing the site.
32. However, the enforcement notice allows 3 months for the removal of the stock from the site and it seems to me that the cutting of the timber and its removal from site could be achieved in this time. There is consequently no need to vary the requirements under an appeal on ground (f) and during the 3 month period the timber could be cut into logs as requested by the appellant.

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33. The appeal on ground (g) seeks until 1 June 2016 for compliance with the notice and, by the time this Decision is issued, this date will be only just over the 3 months sought by the Council. I conclude that there is consequently no need to extend the time for compliance and the appeal on ground (g) consequently fails.

*Katie Peerless*

**Inspector**



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## Plan

This is the plan referred to in my decision dated: 18 February 2016

by **Katie Peerless Dip Arch RIBA**

Land at: **Vicarage Lane, Ospringe, Faversham, Kent ME13 8XT**

Reference: **APP/V2255/C/15/3121548**

Scale: NTS

