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## Appeal Decisions

Site visit made on 25 November 2019

**by Paul T Hocking BA MSc MRTPI**

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

**Decision date: 10 January 2020**

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### **Land at Crouchland Farm, Rickmans Lane, Plaistow, Billingshurst, West Sussex RH14 0LE**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Jason Baker of FRP Advisory LLP (Appeals A, C, E) and Alastair Massey (Appeals B, D, F) against three enforcement notices issued by Chichester District Council.
- The enforcement notices were issued on: 1 November 2018.
- The period for compliance with the requirements are: By 21 May 2021.
- The appeals are proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

#### **Appeal A: APP/L3815/C/18/3218436**

#### **Appeal B: APP/L3815/C/18/3218437**

- The breach of planning control as alleged in the notice is: Without planning permission, the construction of a slurry lagoon, with surrounding earth bund and fencing in the approximate position shown on the Plan.
  - The requirements of the notice are: (i) Remove the said fencing from the Land; (ii) Remove the soil forming the said earth bund and slurry lagoon from the Land; (iii) Following compliance with (ii) above in-fill any depression in the ground and level the Land to match the existing land level surrounding the development; and (iv) Following compliance with the above, remove the resulting debris from the Land.
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#### **Appeal C: APP/L3815/C/18/3218438**

#### **Appeal D: APP/L3815/C/18/3218439**

- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a steel framed lean-to building.
  - The requirements of the notice are: (i) Demolish the said steel framed lean-to building and remove the resulting materials and rubble from the Land.
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#### **Appeal E: APP/L3815/C/18/3218440**

#### **Appeal F: APP/L3815/C/18/3218441**

- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a separator tower building.
  - The requirements of the notice are: (i) Demolish the said separator tower building and remove the resulting materials and rubble from the Land.
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## Summary of Decisions

### Appeals A and B

1. The appeals are allowed in part, and the enforcement notice is upheld with corrections and variations.

### Appeals C and D

2. The appeals are dismissed, and the enforcement notice is upheld with a correction.

### Appeals E and F

3. The appeals are allowed following correction of the enforcement notice, and the enforcement notice is quashed.

### The Enforcement Notices

4. The enforcement notices specified the time for compliance as '*By 21<sup>st</sup> May 2021*'. This is however not a "period" for the purposes of s173(9) of the Act. Notwithstanding this, the enforcement notices can be corrected without causing injustice to the parties by calculating the period between that date and the date by which the notices would have taken effect if appeals had not been lodged, which was 13 December 2018. This translates into a period for compliance of 29 months. I shall therefore correct the enforcement notices in my Formal Decision below.
5. The enforcement notice being considered under Appeals A and B cites the address of the land affected as '*Land at Crouchlands Farm...*' as opposed '*Land at Crouchland Farm...*'. Injustice to the parties would not arise from this correction which I shall therefore do within my Formal Decision below.

### Preliminary Matters

6. The parties were notified in advance of my intended site visit however the Council were not in attendance. I consequently proceeded to inspect the site, being escorted for health and safety purposes only, and do not consider that injustice arises from determining the appeal on this basis.
7. The appeals are proceeding on ground (d) and therefore the lawfulness or otherwise of the developments enforced against are being determined. The parties are however content that the appeals can proceed by the written representation procedure. I have no reason to disagree with the parties and so will proceed to determine the appeal on the basis of the written evidence before me.
8. Three enforcement notices relating to the same developments were issued by the Council on 1 August 2018. These were however withdrawn as it was considered they were not properly served on everyone with an interest in the land. The three enforcement notices the subject of the current appeals were then issued on 1 November 2018. It is clear to me that the Council had purported to take enforcement action by issuing the original enforcement notices and therefore those the subject of the current appeals have been issued under the "second bite" provision of s171B(4)(b) of the Act.

9. The consequence is that for the ground (d) appeals to succeed the onus will be on the appellant to demonstrate, on the balance of probabilities, that the alleged breaches of planning control were immune from enforcement action on the date of issue of the original enforcement notices; namely 1 August 2018. Accordingly, the relevant date in the case of all the appeals is for the developments enforced against to have been substantially completed by 1 August 2014.

### **Appeals A and B**

10. The enforcement notice relates solely to operational development consisting of three matters: the construction of a slurry lagoon, surrounding earth bund and fencing. The actual usage of the slurry lagoon and installation of other support infrastructure are therefore not matters before me.
11. Whilst there is a Google Earth Street View image, from August 2010, this merely shows a mechanical excavator working, apparently, in the vicinity of the slurry lagoon. It however does not particularly assist in respect of what works were actually taking place at that time. It is therefore more likely that works commenced in July 2013, as stated by a Design and Access Statement, dated June 2014.
12. There are also references to the construction of the slurry lagoon, including an aerial photograph, of around this time in the Proof of Evidence of Sara Burrell, which was submitted for the purposes of an earlier planning appeal at the site. This does not provide specific dates and was produced to provide observations regarding the health of surrounding trees. It however does provide support for the contention that the slurry lagoon had been constructed in around mid-2013. Furthermore, a July 2013 aerial photograph provided by the Council indicates the presence of the slurry lagoon.
13. In addition, a photograph from a Facebook post on 6 August 2014, shows the slurry lagoon.
14. The evidence therefore supports that the slurry lagoon was constructed in mid-2013. The earth bunds are integral to its construction and so it follows that they were also in situ. I accept that the slurry lagoon may however have not been substantially completed in mid-2013, and that works may have taken place since. I therefore note that the Council has provided a photograph dated 23 July 2017 and this closely resembles the appearance of the slurry lagoon and its immediate environs at the date of my site visit.
15. However, the photograph from the Facebook post on 6 August 2014 shows the slurry lagoon with clearly defined edges and this persuades me that it, and with it the earth bunds, were substantially completed by this date.
16. Whilst this is 6 days later than the relevant date for the purposes of this appeal, the photograph itself is undated, rather it is the post on Facebook that is dated. It therefore could not have been taken any later than this date, but accordingly could have been taken sometime earlier. Even if it was taken on 6 August 2014, the edges of the slurry lagoon are well vegetated, indicating that no works had recently taken place. I also have no evidence which conflicts with or leads to ambiguity relating to this short space of time. Overall, I am satisfied on the balance of probabilities that the posting of the photograph on 6 August 2014 represents that in existence on the relevant date.

17. The fencing enforced against is not integral to the construction of the slurry lagoon and earth bunds and so these developments were not reliant upon the fencing to be substantially complete. Some fencing may have been constructed by 23 July 2017, given the Council's photograph, but there is nothing present in the 6 August 2014 photograph. Based on the available evidence the claim for lawfulness in respect of the fence therefore cannot be successful for the purposes of the ground (d) appeal.
18. I conclude on the balance of probabilities that the operations, namely the slurry lagoon and earth bunds, took place more than 4 years prior to the issue of the enforcement notice, and that the time for issue of the enforcement notice set out in section 171B(1) of the 1990 Act as amended has therefore expired in respect of these developments.
19. I shall consequently vary the enforcement notice to omit reference to the slurry lagoon and earth bunds but uphold it in respect of the fencing. To this extent the appeal on ground (d) succeeds.

### **Appeals C and D**

20. The steel framed lean-to building is affixed to the rear of a substantial agricultural building. The appellants state that it was designed and built by John Ruck Construction Ltd (JRC). A copy of a design drawing to this effect has been provided, dated 20 February 2014. It is then contended that the building enforced against was constructed by no later than the end of May 2014.
21. In support of this an email trail from September 2018 has been submitted which appears to follow-on from a conversation between the appellant and JRC. That conversation appeared to relate to the building being constructed in April 2014 and that construction would have only taken approximately 2.5 weeks.
22. However, in the emailed response, JRC only state that they had machines on site for 3 weeks, and thus do not specify or confirm any dates. They also state that it *'may be difficult to find the invoices proving this...'*
23. This very limited information therefore does not evidence, on the balance of probabilities, that the building enforced against was substantially completed by the relevant date. It merely evidences that was unlikely to have been constructed before February 2014, given the date of the drawing, and that it was built by JRC over a period of approximately 3 weeks. I have no invoices or first-hand evidence pertaining to the erection of the building, and there is no other evidence before me to persuade me that it was substantially completed by the relevant date.
24. I conclude that consequently the appeal on ground (d) must fail.

### **Appeals E and F**

25. The Design and Access Statement, dated June 2014, states that the separator tower building was constructed in 1985. However, it is unclear as to which structure this relates and whether it was completed. There is also evidence that further works have been undertaken.
26. To this effect a Google Earth aerial image dated August 2010 appears to show scaffolding around a structure. This indicates that some works may have been

taking place at this time. Plans, dated April 2013, then provide details of the intended separator tower building.

27. A photograph from a Facebook post on 23 July 2014 also shows the separator tower building. No scaffolding is present. The photograph from the Facebook post on 6 August 2014 then shows the structure more clearly, such that it can be seen that it resembles the April 2013 plans. In my view this evidences that the building was substantially completed by this date. Whilst the latter photograph is again posted 6 days later than the relevant date for the purposes of this appeal, I have no evidence which conflicts with or leads to ambiguity relating to this short space of time. Overall, I am again satisfied, on the balance of probabilities, that the photograph posted on 6 August 2014 represents that in existence on the relevant date.
28. I conclude on the balance of probabilities that the operations, namely the separator tower building, took place more than 4 years prior to the issue of the enforcement notice, and that the time for issue of the enforcement notice set out in section 171B(1) of the 1990 Act as amended has therefore expired.
29. Accordingly, the appeal succeeds on ground (d).

### **Formal Decisions**

#### **Appeals A and B**

30. It is directed that the enforcement notice be corrected and varied by:
- substituting "*Land at Crouchland Farm,*" as the land to which the notice relates and "*29 months*" as the period for compliance.
  - deleting the words "*Without planning permission, the construction of a slurry lagoon, with surrounding earth bund and fencing in the approximate position shown on the Plan.*" and their replacement with the words "*Without planning permission, the construction of fencing in the approximate position shown on the Plan.*"
  - deleting the words "*(ii) Remove the soil forming the said earth bund and slurry lagoon from the Land; (iii) Following compliance with (ii) above in-fill any depression in the ground and level the Land to match the existing land level surrounding the development;*"
31. Subject to these corrections and variations the appeal is allowed in part and the enforcement notice is upheld.

#### **Appeals C and D**

32. It is directed that the enforcement notice be corrected by substituting "*29 months*" as the period for compliance. Subject to this correction, the appeals are dismissed and the enforcement notice is upheld.

#### **Appeals E and F**

33. It is directed that the enforcement notice be corrected by substituting "*29 months*" as the period for compliance. Subject to this correction, the appeals are allowed and the enforcement notice is quashed.

*Paul T Hocking* INSPECTOR

