



## Appeal Decisions

Hearing Held on 10 September 2019

Site visit made on 10 September 2019

**by Paul Dignan MSc PhD**

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

**Decision date: 28 October 2019**

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### **Appeal A: APP/Q1770/C/18/3197890**

#### **Land at Courtwood Farm, Court Hill, Sandleheath, Fordingbridge, SP6 1QD.**

- 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 Ringwood and Fordingbridge Skip Hire against an enforcement notice issued by Hampshire County Council.
  - The enforcement notice, numbered 17/10612, was issued on 6 February 2018.
  - The breach of planning control alleged in the notice is failure to comply with condition Nos. 4, 7 and 9 of a planning permission Ref. 16/11117 granted on 8 November 2016.
  - The development to which the permission relates is: Extension to material recovery facility to allow storage of waste, skips and parking of vehicles. The conditions in question are Nos. 4, 7 and 9, as follows: Condition 4. Heavy Goods Vehicles (vehicles over 3.5 tonnes gross weight) (HGV) movements to and from the site shall be restricted to 50 per week (25 in and 25 out). A daily record of HGVs entering and leaving the site shall be kept at the site and made available to the Waste Planning Authority on request; Condition 7. All sorting or treatment of waste and/or materials shall take place within the building shown on drawing: 'Block Plan'; and Condition 9. There shall be no external sorting or treatment of waste and/or materials. External storage of waste or materials shall only take place in the hatched bays shown on drawing 'Block Plan'. The notice alleges that the conditions have not been complied with in that HGV movements exceed 50 per week, external sorting of waste and/or materials has taken place and external storage of waste and/or materials has taken place outside of the areas specified.
  - The requirements of the notice are: 1. Reduce Heavy Goods Vehicle (vehicles over 3.5 tonnes gross weight) movements to and from the Site to 50 Heavy Goods Vehicle movements a week (25 in and 25 out) and thereafter not exceed 50 Heavy Goods Vehicle movements a week (25 in and 25 out) in order to comply with condition 4 of the Permission; 2. Cease the external sorting and treatment of waste and/or materials outside of the building shown on drawing reference 'Block Plan' included in the permission and annexed to this agreement and thereafter ensure all sorting or treatment of waste and/or materials takes place within the building shown on the drawing reference 'Block Plan' in order to comply with condition 7 and 9 of the Permission; and 3. Cease the external storage of waste outside of the hatched bays shown on drawing reference 'Block Plan' included in the permission and annexed to this agreement and thereafter ensure external storage of waste and/or materials shall only take place in the hatched bays shown on the drawing reference 'Block Plan' in order to comply with condition 9 of the Permission.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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## **Appeal B: APP/Q1770/W/18/3197963**

### **Land at Courtwood Farm, Court Hill, Sandleheath, Fordingbridge, SP6 1QD.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Ringwood and Fordingbridge Skip Hire against the decision of Hampshire County Council.
  - The application Ref. 17/10612, dated 19 April 2017, was refused by notice dated 24 January 2018.
  - The application sought planning permission for Extension to material recovery facility to allow storage of waste, skips and parking of vehicles. without complying with conditions attached to planning permission Ref. 16/11117, dated 8 November 2016.
  - The conditions in dispute are Nos. 4, 7 and 9 and 12. The description of the proposal is "Variation of conditions 4, 7, 9 and 12 of planning permission 16/11117 (to increase vehicle movements; to allow retention of soil screener for external separation of soil and rubble; and to allow continuation of existing concrete panel fence); and retention of existing welfare units.
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## **Decisions**

### Appeal A

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### Appeal B

2. The appeal is allowed insofar as it relates to Conditions 4, 9 and 12 of planning permission Ref. 16/11117 and planning permission is granted for Extension to material recovery facility to allow storage of waste, skips and parking of vehicles at Courtwood Farm, Court Hill, Sandleheath, Fordingbridge, SP6 1QD in accordance with the application Ref 17/10612, dated 19 April 2017 without compliance with the conditions previously imposed on the planning permission Ref 16/11117 granted on 8 November 2016 by Hampshire County Council, but subject to the conditions set out in the Schedule attached to this decision.
3. The appeal is dismissed insofar as it relates to Condition 7 of planning permission Ref. 16/11117.

## **Application for costs**

4. At the Hearing an application for costs was made by Ringwood and Fordingbridge Skip Hire against Hampshire County Council. This application is the subject of a separate Decision.

## **Background**

5. The former farmyard at Courtwood Farm is now used for various business purposes, operating from within former farm buildings and open yards, in addition to its continuing agricultural use. Most of the yard is just inside the Cranborne Chase and West Wiltshire Downs AONB, which extends to the north-west. The yard is just to the south-west of Court Hill, a C class road running through the villages of Sandleheath and Ashford from Fordingbridge. The village of Sandleheath is immediately to the south-east, the nearest non-

- farm residential properties being on Tanners Lane just to the south of the yard.
6. The skip operation occupies the north-west corner of the yard and comprises a large former agricultural building and an open yard with storage bays. The business also uses an office building near the northern access to the yard, but this is outside the application and enforcement notice site and benefits from a separate permission.
  7. Certain aspects of the planning application are not controversial. The Council consider that, based on the existing context of agricultural diversification and use of previously developed land, the physical amendments to the site such as the additional welfare cabin, changes to fencing and surfacing will not have any adverse effect on visual amenity or landscape character.
  8. The enforcement notice allegation of external sorting and treatment of waste and/or materials outside of the building relates to the stationing and use on the site of soil screening plant. That equipment has now been moved to another site and the appellant no longer seeks permission to retain it, or to continue the external treatment of waste and/or materials. As a consequence, and having considered an Acoustic Assessment prepared for the appellant, the Council advised by letter on 30 August 2019 that it no longer objects on the basis of unacceptable impact on residential amenity due to noise and disturbance, subject to securing noise mitigation measures.
  9. Among the measures proposed is restricting the access to the appeal site to the northernmost of the two highway accesses to the wider yard, and to this end the appellant has submitted a unilateral undertaking under section 106 of the 1990 Act. I deal with this below.
  10. At the hearing the parties undertook to provide me with an updated site plan, essentially as is but annotated for clarity and showing key dimensions. This plan, dated 17 September 2019, was agreed on 23 October 2019. There is nothing new in the plan, it simply provides clarity and accuracy, and I consider that nobody's interests are prejudiced by my accepting it.

## **Reasons**

### *Appeal A ground (a) and Appeal B*

11. An appeal on ground (a) is that planning permission should be granted for the matters stated in the notice as comprising a breach of planning control, and this is accompanied by a deemed planning application. As set out above, the issues between the parties have narrowed considerably, so that what is essentially at issue now is the breach of condition 4 of the 2016 planning permission, concerning the number of HGV movements, which of course has a bearing on the scale of the operation. Both Appeal B and the ground (a) appeal against the enforcement notice effectively seek the same thing so far as condition 4 is concerned, that is an increase in permitted HGV movements to a maximum of 234 per week. The main issue therefore is whether the condition is necessary, having regard to the effect on the character and amenity of the AONB, particularly in terms of tranquillity, and whether the site is satisfactorily related to the major highway network.
12. The reason given for imposing Condition 4 in 2016 was "In the interests of local amenity in accordance with Policies 10 (Protecting public health, safety

and amenity) and 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).” The Hampshire Minerals and Waste Plan (2013) (HMWP) remains part of the development plan, and Policies 10 and 12 were also cited in the reasons given for refusing the 2017 application. HMWP Policy 10 aims to avoid harm to residential amenity through noise and dust among other things, but noise measurements since mitigation measures were put in place indicates that noise generation can be kept within satisfactory levels during normal working hours, and removal of the soil screening plant should satisfactorily address dust problems. HMWP Policy 12 is concerned with managing traffic and seeks to mitigate any significant adverse impacts on highway and pedestrian safety, capacity, environment and amenity, while Policy DM22 of the New Forest District (outside the National Park) Local Plan Part 2, also part of the development plan, expects employment development in the countryside to be of an appropriate scale and not harmful to the rural character by reason of, among other things, traffic generation.

13. Regarding the AONB, the route passing the appeal site into the AONB is not one that leads conveniently to the major highway network, hence traffic associated with the skip operation is likely to be predominantly serving users located within the AONB. As I understand it there are no more convenient locations for the processing of waste and materials generated by properties within the AONB and served by the site, hence the associated HGV traffic within the AONB would be likely to occur in any case and the use would not harm the character and tranquillity of the AONB, the non-traffic impacts being, or capable of being, well contained within the site. In terms of the road network then, it seems to me that the main potential for additional impact is on the roads running towards Fordingbridge to join the A338 just beyond the town.
14. The expansion of the operation in 2016 involved extending the use into an area previously used by a haulage depot, which would itself have generated significant HGV traffic, albeit of a different pattern though most probably directed towards the A338. In this context I can understand the appellant’s argument that the 50 trip limit imposed in 2016 was unrealistically low, especially in light of the scale of the operation at that time being similar in scale, at least in terms of number of skip vehicles operating, and that the current usage amounts to a net reduction in HGV trips compared to the former use. However, the opportunity to rectify any perceived misunderstanding was during the consideration of that application. The appeals in this case seek an increase over that permitted, hence the matter at issue is the effect of the additional 184 movements per week.
15. The appellant’s transport assessment indicates that about 80% of the site traffic travels towards Fordingbridge, much of which will pass through the town. On the 2 mile journey to the A338 there are an estimated 12 ‘pinch points’ for large vehicles such as HGVs and buses, but these are all relatively short and unlikely to significantly disrupt traffic flow. Otherwise the road width and alignment appears satisfactory, and highway capacity, which for the last few years has included appeal site traffic in excess of what is now sought, does not appear to be problematic. There appears to have been no recorded personal injury accidents in the vicinity of the site over the last 18 years or so, but there were 2 incidents of pedestrians being hit by vehicle wing mirrors, one a HGV, in Fordingbridge High Street over the 5 year period to September 2017. However, there are about 170 large vehicle movements daily (12 hours)

through High Street, so this level of incident does not appear to me to indicate a particularly hazardous situation.

16. I acknowledge that the number of additional permitted highway movements sought is significant, but the site appears to have been operating at higher traffic levels for some years now without incident or adverse effects on highway capacity. For a facility that is relatively modest in size I consider that it is not unduly distant from the major highway network.
17. On balance, I consider that the increased number of HGV movements sought will not harm the character and amenity of the AONB or adversely affect highway safety, capacity or traffic flow. I find that the it would accord with the development plan read as a whole, and the appeals, so far as they relate to condition 4, succeed accordingly.
18. There is no objection to the condition 9 and 12 changes sought, and it is open to me to grant planning permission for parts of the development while refusing permission for others, specifically in this case refusing permission in respect of condition 7 so as to preclude the use of external plant such as the soil screener. For Appeal A however this means that the enforcement notice will be upheld, which in turn means that an unconditional planning permission deemed to have been granted under section 173(11) of the Act could arise as the result of complying with the notice. To avoid the possibility of inconsistent permissions being granted, that is the conditional permissions in respect of the partial success on Appeal A ground (a) and Appeal B, which would themselves be different, and an unconditional planning permission that could arise as the result of complying with the notice, I shall allow Appeal B so far as it relates to conditions 4, 9 and 12, and I shall dismiss Appeal A entirely and rely on section 180 of the Act to mitigate the effect of the notice so far as it is inconsistent with the permission granted on Appeal B.
19. This also means that there is no need to deal with Appeal A on grounds (f) and (g).
20. In an appeal under section 73A it is only the conditions the subject of the application that are at issue. A new free-standing permission is granted but the other conditions are normally re-applied as per the original permission. However, there have been some changes since the original permission, and some of the matters resolved before the hearing, such as noise generation mitigation and extending material storage areas, need to be conditioned, in the interests of local amenity. Hence there will be some minor changes and some additional conditions, but these were discussed and agreed at the hearing.
21. Turning to the section 106 Undertaking, the obligation, which restricts HGV use to the northern access from Court Hill, is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The s106 undertaking therefore meets the statutory tests set out in paragraph 56 of the National Planning Policy Framework. I have also conditioned this matter since the condition proposed gives greater clarity, but since much of the access is outside of the application site and outside of the appellant's control, I consider that the s106 undertaking can still be given due weight.

## **Conclusion**

22. For the reasons given above, and having considered all other matters raised, I allow Appeal B so far as it relates to conditions 4, 9 and 12, and I dismiss it so far as it relates to condition 7. Appeal A is dismissed and the enforcement notice is upheld, but the requirements of the notice that are inconsistent with the Appeal B planning permission will not have effect.

*Paul Dignan*

INSPECTOR

## **APPEARANCES**

FOR THE APPELLANT:

Jerry Davies	Planning Consultant
Ben Wyatt	Appellant
Jamie Duncan	Acoustics
Jon Huggett	Transport

FOR THE LOCAL PLANNING AUTHORITY:

Sam Dumbrell	Development management
Amie Heath	Enforcement
Phillipa Gordon	Transport

INTERESTED PERSONS

Murray Philips	Local resident
Caroline Kemp	Sandleheath Parish Council
Sue Philips	Local resident
Graham Wingrove	Local resident
David Crane	Local resident
Robert Streatfield	Local resident

## **DOCUMENTS**

- 1 Council's letter of notification
- 2 Signed Statement of Common Ground
- 3 Revised site plan dated 17.09.2019, received 21/10/2019.

## **Appeal B: APP/Q1770/W/18/3197963 - SCHEDULE OF CONDITIONS**

- 1) No Heavy Goods Vehicles (Vehicles over 3.5 tonnes gross weight) shall enter or leave the site and no plant or machinery shall be operated except between the following hours: 07.00 - 18.00 Monday to Friday and 07.00 - 13.00 Saturday. There shall be no working on Sundays or recognised Public Holidays.
- 2) No operations shall be undertaken prior to 07.30 hours Monday-Friday and 08.00 hours on a Saturday.
- 3) Heavy Goods Vehicle (vehicles over 3.5 tonnes gross weight) (HGV) movements to and from the site shall be restricted to 234 per week (117 in and 117 out). A daily record of HGVs entering and leaving the site shall be kept at the site and made available to the Waste Planning Authority on request.
- 4) Notwithstanding the Premises Dust Control Plan approved in accordance with planning permission Ref. 16/11117, an updated Premises Dust Control Plan shall be submitted to the Waste Planning Authority within 3 months of the date of this permission for approval in writing. The updated Plan shall include:
  - measures to employ a water bowser on site to damp down dusts and fine matter in dry conditions; and
  - the implementation of speed limit within the Courtwood Farm site.Once approved, the updated plan shall be implemented in full throughout the duration of permitted operations. The Premises Dust Control Plan approved under permission Ref. 16/11117 shall remain in force until the updated plan is approved and implemented.
- 5) The Premises Rodent Control Plan approved under permission Ref. 16/11117 shall be implemented in full as approved throughout the duration of the use permitted by this planning permission.
- 6) The development hereby permitted shall be carried out in accordance with the following approved plans: revised site plan dated 17.09.2019.
- 7) All sorting or treatment of waste and/or materials shall take place within the building labelled "Transfer station" shown on the revised site plan dated 17.09.2019.
- 8) The external fabric (roof and clad elevations) of the building labelled "Transfer station" shown on the revised site plan dated 17.09.2019 shall, for the duration of the use of the building in accordance with this permission, be maintained in a good state of repair to ensure that the building remains fully enclosed (with the exception of the vehicular access).
- 9) There shall be no external sorting or treatment of waste and/or materials. External storage of waste or materials shall only take place in the bays shown on revised site plan dated 17.09.2019.
- 10) The external concrete waste/material storage bays shown on revised site plan dated 17.09.2019 shall be 3 metres in height to the rear and sides.

- 11) No development within the area annotated "Area still to be concreted as approved – skip storage and overnight vehicles" on revised site plan dated 17.09.2019 shall take place until details of construction, including arrangements for drainage, have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.
- 12) There shall be no outside lighting except the use of sensor controlled security lighting.
- 13) A 2-metre high steel palisade fence shall be erected along the south-western boundaries of the site and retained throughout the duration of permitted operations.
- 14) No Heavy Goods Vehicles (vehicles over 3.5 tonnes gross weight) (HGVs) shall leave the site unless its wheels have been cleaned sufficiently to prevent mud/material being carried on to the public highway. In the event that any mud or spoil is deposited on the highway, it shall be cleaned off at the end of each working day.
- 15) All Heavy Goods Vehicles (vehicles over 3.5 tonnes gross weight) (HGVs) entering and leaving the site shall be fully sheeted.
- 16) All Heavy Goods Vehicles (vehicles over 3.5 tonnes gross weight) (HGVs) entering and leaving the site shall do so by the Farm's northern junction with Court Hill only. Details of signage stating this, and their locations, shall be submitted to the Minerals & Waste Planning Authority for approval in writing. Once approved, they shall be erected at visible locations within the site and maintained in full throughout the duration of permitted operations.
- 17) The development hereby permitted shall be operated in accordance with the changes relating to the mitigation of noise made as outlined in Chapter 6 of the Noise Impact Assessment carried out by Venta Acoustics in their Report Reference: VA1692.190227.NI13.2 at all times.

Within two months of the grant of planning permission, a noise management plan shall be submitted to the Minerals & Waste Planning Authority for approval in writing. It must include:

- measures to control on-site operational noise from all plant and machinery used in the transfer and storage of imported waste and materials from adversely impacting local residential properties; and
- measures to promptly mitigate any substantiated noise-related complaints caused by on-site waste and materials handling operations.

Once approved, the plan shall be implemented in full throughout the duration of permitted operations.