

MID SUSSEX DISTRICT COUNCIL

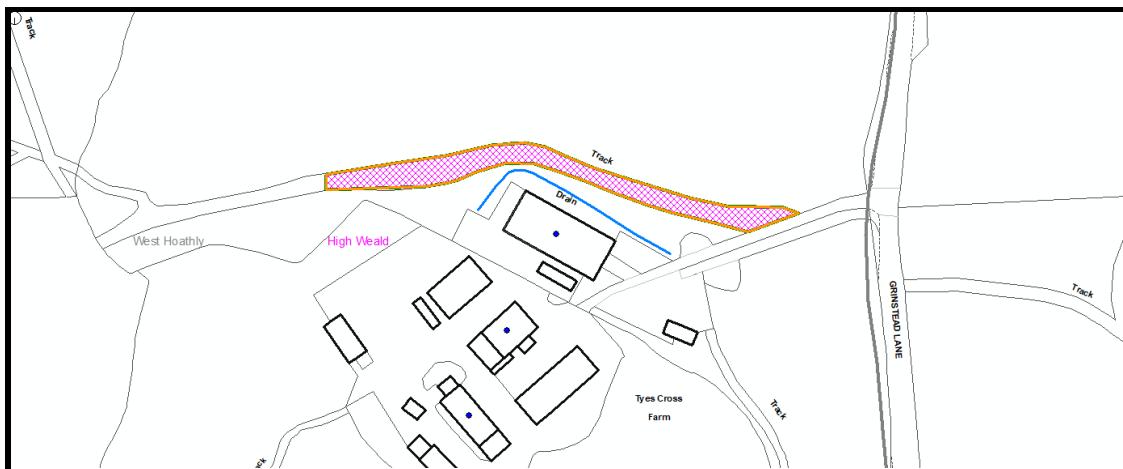
Planning Committee

11 NOV 2021

OTHER MATTERS

East Grinstead

EF/18/0160



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SITE: LAND AT TYES CROSS FARM, GRINSTEAD LANE, WEST SUSSEX

INTRODUCTION

This report relates to a planning enforcement investigation and breach of planning control where the land owner has failed to comply with the requirements of an Enforcement Notice. Officers are therefore requesting authorisation from members of the committee to commence prosecution proceedings in relation to the failure to comply with an extant s.172 Enforcement Notice.

SITE AND SURROUNDING

The land to which the Enforcement Notice relates is a parcel of agricultural land lying to the western side of Grinstead Lane close to the village of Sharpthorne. The agricultural holding is of a significant size with lawful vehicular access from Grinstead Lane to the east and which serves commercial units on adjoining land. The agricultural unit thereafter falls away in level.

An agricultural track has been subject to development without planning permission through the removal of topsoil and importation of material to create a hard surfaced private way wider and more substantial than the pre-existing track. The track leads west off of the main vehicle access into the farm complex and is comprised of an assortment of construction. The waste has been crushed to varying sizes has been laid down for a length of approximately 120 metres, beyond which an informal grass track can be made out.

The site is within designated countryside as defined by the Mid Sussex District Plan and is within the designated High Weald Area of Outstanding Natural Beauty which benefits from special protection addressed under paragraph 177 of the NPPF which states the following:

177. Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) *the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*
- b) *the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and*
- c) *any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.*

PLANNING AND ENFORCEMENT HISTORY

In April 2018 the Council commenced an investigation into an informal agricultural track being formalised and developed through the importation and laying of construction and demolition waste.

By virtue of the material importation, excavation works and the increased scale of the development it is considered that it cannot benefit from permitted development rights under either under Part 6 (Agricultural) or Part 9 (Roads) and therefore represents a breach of planning control. It is noted the landowner disputes this assessment by the Council.

Attempts to regularise the development through a Prior Notification process and a planning application have been unsuccessful with both applications refused in 2018. The development was considered, by virtue of its siting, design, appearance and material construction to cause harm to the rural appearance and character of the area which fails to conserve the scenic qualities of the High Weald Area of Outstanding Natural Beauty and is contrary to the policies of the development plan.

Thereafter, and in accordance with the Council's Enforcement Charter, the Council sought to make contact with the owner to address the matter without recourse to formal action, however, following the failure to respond to a number of letters an Enforcement Notice under s.172 of the Town and Country Planning Act was issued on 3rd December 2020. The Notice did not come into effect until 9th January 2021 (in excess of the 28 days legally required) and alleged the following breach of planning control:

'Without planning permission, the carrying out of engineering operations by the formation and laying out of a track comprising construction and demolition waste materials'

The Notice required the following steps to be taken.

- i. *'Take up and remove from the Land all the imported material, including, but not limited to the bricks, hardcore, plasterboard, wood, glass, plastics and metal used to form the Track.'*

- ii. Restore the Land to its condition before the breach of planning control too place by infilling with soil and earth and reseeding with grass.*
 - iii. Remove from the Land to an appropriate place for disposal all equipment, materials, paraphernalia, waste and debris arising from compliance with requirement i) and ii) above.'*

A period of four months to comply with the requirements of the Notice was given.

An appeal against the issue of the Notice was turned away by the Planning Inspectorate for being submitted after the Notice came into effect. The Notice therefore came into effect on 9th January 2021 and compliance was due by 9th May 2021.

CURRENT SITUATION

The requirements of the Enforcement Notice have not been complied with. A site visit of 25th May 2021 noted the development remained. It is therefore open to the Council to pursue a prosecution against the failure to comply with the requirements of an Enforcement Notice in line with s.179 of the Town and Country Planning Act 1990 which provides that where the owner of the land is in breach of an enforcement notice they shall be guilty of an offence.

The Council has now been in communication with the landowner and recipient of the Notice who alleges the development is lawful by virtue of it benefitting from permitted development. The Council has sought to address this matter with the recipient of the Notice explaining the breach of planning control and that the Notice has been lawfully issued and that the development cannot benefit from permitted development as it exceeds the provisions of permitted development as laid out in Part 10 of the General Permitted Development Order.

The owner made an application for a Certificate of Lawful development under s.191 of the Town and Country Planning Act, however, this application was refused on 8th July 2021. Thereafter the Council wrote to the owner allowing a further informal period of compliance with the Notice until 1st October 2021. To date the development remains and the owner has made no indication that he intends to comply with the requirements of the Notice.

In accordance with the contents of the NPPF and policy DP16 of the District Plan, great weight should be given to conserving and enhancing the landscape and scenic beauty in Areas of Outstanding Natural Beauty and that major development should not be supported unless it is in the public interest. The retention of the track which does not benefit from planning permission is of poor quality construction and is visible from public vantage points and is considered to cause harm to the character and appearance of the Area of Outstanding Natural Beauty. It is therefore in the public interest to pursue the breach of planning control to protect the character and appearance of the landscape which benefits from special designation.

The owner has stated that the development is necessary for potential use of the land by a charity and the keeping of horses. The Council has undertaken pre-application advice regarding the potential change of use of part of the wider agricultural unit and whilst the development may be acceptable subject to obtaining planning permission, the track as constructed would be considered excessive and harmful to the AONB. The presence and compliance with the Enforcement Notice would not be considered to prejudice the potential change of use or prevent the potential grant of planning permission of a suitable access track of an acceptable construction and scale.

It is considered that the instigation of prosecution proceedings are undertaken where there does not appear to be any voluntary compliance with the requirements of an extant Enforcement Notice. Should the works to remedy the breach of planning control commence

prior to any prosecution proceedings being concluded, the Council could choose not to pursue the matter further. However, at the current time, and as the owner has failed to comply with the requirements of the Enforcement Notice, the harm to the character and appearance of the Area of Outstanding Natural Beauty remains. Therefore the owner may be prosecuted under s.179 of the Town and Country Planning Act and if found guilty of an offence shall be liable on summary conviction, or conviction on indictment, to a fine not exceeding £20,000.

RECOMMENDATION AND CONCLUSIONS

The owner has failed to comply with the requirements of the extant Enforcement Notice by the end of the period for compliance of 9th May 2021 and the informal extension until 1st October 2021 and remains in breach of the Enforcement Notice. The harm caused by the unauthorised part of the track to the character and appearance of the Area of Outstanding Natural Beauty which the Enforcement Notice seeks to remedy therefore remains.

Whilst the owner may disagree with the Notice the Council has explained its position and that no lawful appeal was or can now be made. The owner currently appears to have little intention to comply with the requirements of the Notice.

Having due regard to the options that are available (but without prejudice to any other enforcement action the Council may decide to take), the Town and Country Planning Act 1990 and relevant policies and applicable guidance issued, it is concluded that the most satisfactory course of action, at this time, is to recommend that authority be given for the Council to prosecute the owner of the land for non-compliance with the Enforcement Notice (which is an offence under section 179 TCPA 1990) subject to the Solicitor to the Council being satisfied that there is sufficient evidence and it is in the public interest to pursue a prosecution.