

TO: PLANNING & REGULATORY COMMITTEE

DATE: FEBRUARY 2014

BY: PLANNING DEVELOPMENT CONTROL TEAM
MANAGER

DISTRICT(S) REIGATE AND BANSTEAD
BOROUGH COUNCIL

GUILDFORD BOROUGH COUNCIL

ELECTORAL DIVISION(S):

CONWAY COTTAGE
Electoral Division:
Horley West, Salfords and Sidlow
Parish:
Salfords and Sidlow Parish
County Councillor:
Kay Hammond

CHAPEL FARM
Electoral Division:
Worplesdon
Parish:
Normandy Parish Council
County Councillor:
Kieth Witham

PURPOSE: FOR INFORMATION

GRID REFS:

CONWAY COTTAGE
Easting: 526719
Northing: 146874

CHAPEL FARM
Easting: 494052
Northing: 151915

DECISION ON PLANNING AND ENFORCEMENT APPEALS

TITLE: **LAND AT CONWAY COTTAGE**
APPEAL REFS: APP/B3600/C/13/2194245 & APP/B3600/X/12/2185390

LAND AT CHAPEL FARM
APPEAL REF: APP/B3600/A/13/2203613

LAND AT CONWAY COTTAGE, LONESOME LANE, REIGATE, RH2 7QT

Appeals dismissed with variations to enforcement notice and partial award of costs to Surrey County Council

Appeal Context

- 1 The appeals associated with this site concerned:
 - a) Surrey County Council's (SCC) decision (by Officers under delegated powers) made on 19 April 2012 to refuse Mr. D Matthews' (the Appellant in both appeal cases) application for a Certificate of Lawful Existing Use or Development (CLEUD) relating

to the use of a yard for recycling of scrap metal (Ref. RE11/02070) - Appeal Ref. APP/83600/C/13/2194245; and

- b) SCC's enforcement notice (Ref. CGL/546191/LA) issued on 23 January 2013 in respect the material change of use of the land from use for residential purposes to use of the land for the importation, deposit, storage, sorting and transfer of scrap metals – Appeal Ref. APP/83600/X/12/2185390.
- 2 A Public Inquiry was held by the Planning Inspectorate on 4 June and 8 October 2013 following which on 29 October 2013 both appeals were dismissed subject to variation of the enforcement notice. A partial award of costs was granted to SCC.
- 3 The appellant is in the process of challenging the Planning Inspectorate's decision to dismiss his appeals in the High Court. The basis for the applicant's challenge appears to be that the decision made was outwith the powers of the Town and Country Planning Act 1990 (the 1990 Act). The appellant's challenge is likely to be heard between March and May 2014.

Background to Appeal

- 4 The appeal site, located within the Metropolitan Green Belt, had been used as a travellers' caravan site since the 1960's. In September 1999 Reigate and Banstead Borough Council (the Borough Council) granted a personal planning permission to the appellant for use of the site for the siting of two residential caravans (Ref. 99P/0589). This permission contained a condition prohibiting any storage or processes in connection with a business from taking place on the site.
- 5 In June 2001, the Borough Council granted planning permission (Ref. 01/00247/F) for three horse stables and a tack room to be constructed on the appeal site. However, by the summer of 2003 the Borough Council issued two enforcement notices relating to the erection of a barn, and the material change of use of the land from use for residential purposes to use for residential purposes and for the storage of building and roofing materials, equipment and keeping of associated commercial vehicles. The appellant appealed these enforcement notices, but his appeals were dismissed on 7 January 2004.
- 6 Whilst visiting land known as Ridgeways Farm to the rear (east) of the appeal site in November 2010, SCC Enforcement Officers noted the presence of scrap metal on the site. Accordingly, the opportunity was taken to inspect the land and discuss the presence of scrap metal with the appellant. At this time the appellant informed Officers that scrap metal recycling had been taking place on the appeal site since May 2005 (later during the appeal the appellant claimed that this use had been taking place since at least 1999).
- 7 In April 2012 the appellant's CLEUD application (Ref. RE11/02070) was refused by SCC and subsequently, in January 2013, the authority issued its enforcement notice (Ref. CGL/546191/LA).

The Appeal

- 8 At the onset the Inquiry the Appellant submitted that (a) the whole of the site was still one planning unit in a mixed use and, (b) in the alternative, there were two separate planning units both of which were still in mixed use. The appellant claimed that whatever way the land or its uses are considered, the use(s) involved activities that are not County Matters and therefore only a Borough/District Council can issue an enforcement notice in respect of that use(s). Accordingly, at the opening of the Inquiry, in addition to his ground (d) and (g) appeals, the appellant made a ground (b) appeal i.e. that the breach of planning control alleged in SCC's enforcement notice had not occurred as a matter of fact.

- 9 Following an adjournment of the Inquiry and consideration of submissions made by the appellant and SCC in respect of the appellant's ground (b) appeal, the Planning Inspectorate ruled that he can correct the notice to deal with both the use alleged and the area of land that is relevant. Accordingly, in August 2013, the Appellant withdrew his ground (b) appeal.
- 10 Consequently, the complex legal question at the heart of the appeal which remained therefore was whether the authorised use reverted to in 2004 was the residential use granted by planning permission Ref. 99P/0589 or a possible mixed use, including a scrap metal business that had become lawful through the passage of time, as asserted by the appellant.
- 11 After the first enforcement notices appealed against were complied with in 2004 the appeal site would have reverted to its previously authorised use, as explained in s57(4) of the 1990 Act. No planning permission or CLEUD for the appeal site has ever been granted that authorised a mixed use as residential and as a scrap metal business. The only possible mixed use that would have been authorised through the grant of any of the planning permissions related to the appeal site would have been for residential purposes and the keeping of horses, after the stable block had been permitted by the Borough Council (Ref. 01/00247/F).
- 12 The appellants ground (d) appeal i.e. that the appeal site had been used for the purposes of recycling scrap metal in excess of 10 years and thereby making it immune from enforcement action, and against the refusal of his CLUED application by SCC would then only be able to succeed if the appellant could produce evidence that demonstrated, on the balance of probabilities, a mixed residential and scrap yard business use had continued uninterrupted on the appeal site for 10 years prior to the material change of use enforced against in 2003.
- 13 Having regard to the documented history of the appeal site the Planning Inspectorate considered that there had obviously not been time for the scrap metal business use to become lawful in the periods since 2004, when the first enforcement notices were complied with, and the date the application for the CLUED was made or the date SCC's enforcement notice was issued.
- 14 Considering the evidence presented by SCC the Inspectorate deduced that even if it could be shown that a previous scrap metal business use was lawful as part of a mixed use prior to 1999, the appellant's purchase of the site and the grant of the new planning permission, which was then implemented by the appellant moving onto the site, would have been a material change back to a single residential use.
- 15 Accordingly, this created a new chapter in the planning history of the site, and therefore planning permission would have been required to authorise a change back to the previous mixed use and the clock would have been reset on the time for claiming immunity from enforcement action.
- 16 Although the appellant submitted that the permission of 1999 did not bring about a material change of use of the appeal site, as it only carried forward the earlier residential permission from the previous occupier, with the same conditions attached, the Inspectorate ruled that this would not have change the situation. According to the Inspectorate, even if this submission was correct, it would have only have confirmed that it was a residential use, with a condition preventing any business use, which was authorised in 2004. Consequently, in either case, the appellant's appeals were deemed to have failed.
- 17 Notwithstanding the above, the Planning Inspectorate considered that whilst the openness of the Green Belt will be affected to a certain extent by the presence of the stored metals, the site itself is already developed and enclosed by boundary walls and

gates, so the business operation is not contributing significantly to a loss of openness. Consequently it considered that there was little reason to refuse the appellant's request (his ground (g) appeal) to allow periods longer than 1 day to cease the importation of scrap metals and 3 months to clear the site. The appellant asked for 12 months to find a new site and a further 3 months to transfer his business to it. Accordingly, SCC's enforcement notice was varied to reflect these amended periods for compliance.

LAND AT CHAPEL FARM, GUILDFORD ROAD, NORMANDY, GU3 2AU

Appeal upheld and planning permission granted with full award of costs to the appellant.

Appeal Context

- 18 This appeal concerned Surrey County Council's (SCC) refusal, in February 2013, to grant planning permission (Ref. GU12/P/01887) for the change of use of some 0.036 ha of previously developed land so as to allow the use of some 0.34 ha of land in total for the receipt, processing and distribution of up to 30,000 tonnes per annum of non hazardous skip wastes, repair and maintenance of 2020 Recycling and Associates' vehicles, and the storage of full and empty skips awaiting hire; the erection of seven precast concrete external storage bays; alterations to the existing workshop building including the raising of roof height and replacement of three smaller workshop roller shutter doors with taller versions; erection of a 2.5m galvanised steel palisade fence on the western and northern boundaries; and the repositioning of the 2.5m high acoustic barrier on the southern boundary.
- 19 SCC's Planning and Regulatory Committee resolved to refused planning permission for the proposal on the basis that the *applicant had failed to demonstrate factors which either alone or in combination demonstrate very special circumstances which clearly outweigh harm to the Green Belt by virtue of the inappropriate nature of the development and the harm to openness contrary to the National Planning Policy Framework 2012, and Policy CW6 – Development in the Green Belt of the Surrey Waste Plan 2008. This decision was taken* contrary to Officers advice to grant planning permission for the development subject to conditions.
- 20 The Planning Inspectorate held a Hearing on 7 January 2014 to consider the appeal and on 28 January upheld the appeal and granted planning permission. A full award of costs was granted to the appellant.

Background to Appeal

- 21 The appeal site has been developed land for a long time. This is plain given that in November 1986 Guildford Borough Council (the Borough Council) granted planning permission (Ref. 86/P/00030) for the erection of a new workshop for hire vehicle maintenance with restroom and office for SanitruX Ltd. following demolition of an existing workshop and offices. Subsequently, in January 1996 the Borough Council granted planning permission (Ref. 95/P/01519) for a single storey extension to the existing workshop for service and repair of heavy goods vehicles, and in October 1996 the Borough Council granted a further planning permission (Ref. 96/P/01021) for the change of use of the existing bungalow to an office use.
- 22 Most recently, in March 2010, SCC granted planning permission (Ref. GU09/2057) for the material change of use of appeal site to a materials recovery facility involving the receipt and processing of up to 30,000 tonnes per annum of non-hazardous skips wastes with alterations to existing workshop building including raising the roof height of the lower part of the building to match the higher part, replacement of two smaller workshop roller shutter doors with taller versions to match the existing taller doors, removal of the two centre roller shutters replaced with walling to match existing elevation, erection of an

acoustic screen attached to the western elevation of the workshop, installation of waste processing plant within the workshop, two bays formed from pre-cast concrete section walls, the provision of a weighbridge, the resurfacing of external areas and the installation of a sealed drainage system and the maintenance of Full Circle and associates' vehicles within a single bay workshop, the storage of those vehicles and the storage of empty skips awaiting hire and erection of two 2.5m high acoustic barriers/fences.

- 23 This permission was amended in October 2010 when SCC granted planning permission (Ref. GU10/1501) for the continued use of the existing materials recovery facility without compliance with conditions 3 and 4 of planning permission Ref. GU09/2057 to allow the processing of waste using fixed and mobile plant and machinery at the site and variation of condition 5 of planning permission Ref. GU09/2057 to allow the storage of waste within the building and covered bays. Following which, in February 2012 SCC approved the details of a Method of Construction Statement and Dust Action Plan submitted pursuant to conditions 7 and 13 of planning permission Ref. GU10/1501.
- 24 In February 2013 SCC refused the grant of planning permission Ref. GU12/P/01887.

The Appeal

- 25 In considering the appeal the Planning Inspectorate asserted that main issue in deciding the appeal was whether the proposal amounted to inappropriate development in the Green Belt and, if it did, whether any harm arising out of that inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.
- 26 The Inspectorate determined that the proposal amounted to alterations to an existing waste site, the principal changes being the extension of the operation onto adjoining land, the enlargement of a building roof, the erection of concrete walled bays for the external storage of waste, the processing and sorting of waste outside the buildings on the site, and the realignment and replacement of boundary fencing.
- 27 As with Officers and Members in making their respective recommendation to grant planning permission and decision to refuse planning permission Ref. GU12/P/01887, the Inspectorate, on balance, considered that the proposal did amount to inappropriate development in the Green Belt.
- 28 The Planning Inspectorate did not consider that the proposed roof extension and boundary changes would have a detrimental impact on openness. Nevertheless the Inspectorate did deem that the other proposed changes would have the potential to influence openness, with the bay structures and the processing of waste taking place on land which was formerly an open yard.
- 29 However, the Inspectorate recognised that some development of external bays were allowed under the previous planning permission granted by SCC (Ref. GU10/1501), and the permitted or previous use of most of the areas proposed for bays and processing was for external skip storage and HGV or car parking. Moreover, the additional land now incorporated into the site was deemed to be a relatively small proportion of the total area, being a rounding off of a corner of the property, the whole site being surrounded by high vegetation or walls, and with a clearly developed character.
- 30 Overall, the Inspectorate concluded that the proposal would not have a significant effect on reducing the openness of the Green Belt.
- 31 In considered whether any 'very special circumstances' existed in relation to the proposal the Planning Inspectorate accepted that no suitable alternative premises would provide a viable alternative for the proposal, the operation is already established and that there is

little realistic prospect of the land being returned to open space, the application site is an appropriate location to serve Woking and Guildford, and that the present operation matches the requirement for sustainable waste management facilities as set out by the Surrey Waste Plan 2008 (SWP).

- 32 The Inspectorate acknowledged that the Parish Council and other interested parties have raised a number of concerns, including the effect on residential amenity, however it was noted that SCC had not raised any technical objection to the proposal and consider that residential amenity would be adequately protected by the use of planning conditions.
- 33 Accordingly, the Inspectorate ruled that there is a clear need to provide recycling facilities in order to achieve sustainable waste management and there are no grounds to dispute the appellants' claim that the proposals are necessary to better and more efficiently carry out this process. It was concluded that this is a substantial benefit of the proposal and, having regard to the limited impact on openness, and the absence of other significantly detrimental effects, the Inspectorate concluded that the harm arising out of inappropriateness, and any other harm, were clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.
- 34 Notwithstanding the above, the Planning Inspectorate also resolved that SCC's failure to adequately support their reason for refusal amounted to unreasonable behaviour resulting in unnecessary expense on the part of the appellants and therefore the appellant's application for a full award of costs of the appeal was considered to be justified.

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