ENFORCEMENT NOTICE APPEAL

STATEMENT OF CASE

LAND SOUTH OF THE RAILWAY LINE

SCAR LANE

MILNSBRIDGE

HUDDERSFIELD

HD3 4PN

APPELLANT: MR B GOOD

REF: KIRKLEES COUNCIL – DEV/HG/D23-1391

MAY 2024

1. Introduction

1.1 This Statement has been prepared to support an appeal against an Enforcement Notice (“EN”) served on the owner of land south of the railway line, Scar Lane, Milnsbridge, Huddersfield (“the Land”).

1.2 The EN alleges –

Without the benefit of planning permission, the material change of use to wood processing yard.

1.3 The EN requires –

(a) Cease the use of the site as a wood processing yard

(b) Remove all of the paraphernalia associated with the wood processing use, including but not limited to, machinery, logs/wood, lorry backs, containers, heavy goods vehicles

(c) Return the land back to its condition prior to the development taking place

1.4 The period for compliance to complete the steps 5 (a) and (b) above is 60 days. The period for compliance for step 5 (c) above is 120 days.

1.5 The effective date of the EN is 28 May 2024.

1.6 The owner / appellant now appeals substantially under Ground (a) but also under Ground (f).

Appellant’s case

2. Background

2.1 In order to provide a context for the appellant’s case, it is considered important by the appellant to provide the Secretary of State with a brief site history of the activities that have taken place on the Land in the recent past and which are being undertaken currently.

2.2 The Land is a former railway goods yard and coal depot, which includes coal hoppers (which are designated heritage assets). The Land was used for purposes associated with the railways for a considerable period of time within the early to mid-C20. More recently, in the latter part of the C20, the Land was used as a stone yard by JC Bower from approximately 1990 to around 2000. The Land was then purchased by D Burgin around 2000 and then the appellant purchased the Land in 2021. The appellant uses it predominantly as a base for his main business, which is tree management and vegetation control on the railway network (as a contractor for Network Rail). None of the equipment used by the appellant in connection with his contracting business are used in connection with the processing of wood on the Land

In terms of wood processing, any surplus wood from the appellant’s contracting business is brought back to the site to be split, processed, and subsequently sold (nb the wood is not sold from the Land and no customers visit the Land).

2.3 The Land is bordered to the north by the railway line and to the east and south-east by existing industrial and commercial uses. An area of

residential properties lies to the south, at a significantly lower level than the Land and separated from the Land by mature trees and landscaping.

2.4 The EN states that a recent planning permission has been granted on this site for a light industrial use. As this permission has not been implemented, the use of the Land when the EN was served is that as set out above. The appellant therefore does not understand why this matter has been raised by the LPA and nor why it was included in the EN.

3. Appeal under Ground a)

3.1 The EN correctly identifies the site as part of a wider Priority Employment Area allocation within the Kirklees Local Plan (ref: PEA72). Policy LP8 of the Local Plan states –

Safeguarding employment land and premises

1. Proposals for development or re-development for employment generating uses (as defined in the Glossary) in Priority Employment Areas will be supported where there is no conflict with the established employment uses (as defined in the Glossary) in the area……

3.2 For employment generating uses, the Glossary states that –

Employment generating use

The B use class employment uses derived from the Town and Country Planning (Use Classes) Order Guide 1987 (as amended). These are:

B1 Business (a) Offices (other than those that fall within A2 (Professional and Financial Services)

(b) Research and Development of products or processes

(c) Light Industry

B2 General Industry

B8 Storage and Distribution

3.3 Notwithstanding recent changes to the Use Classes Order 1987, the proposed use of the site for wood processing would fall within Class B2 above. As such, the appellant holds that the proposed development is acceptable in principle on this site and would accord with policy LP8 of the development plan, as it is an employment generating use in a Priority Employment Area. The appellant therefore contends that it falls to the details of the development as to the acceptability of the development.

3.4 However, the appellant holds that the plan attached to the EN is imprecise, in that it does not identify the precise area on which the alleged activity is taking place. As demonstrated in Section 1 above, the site is used for other uses, not least in connection with the appellant's main business, and to include the whole site within the EN is held by the appellant to be disproportionate and excessive. The actual area used for wood processing is confined to the very north-eastern portion of the site and is identified on a plan contained in the report attached as Appendix 1 (see paragraph 3.8 below).

3.5 The LPA asserts that the use of the site for general industrial use, specifically the use of heavy machinery, results in unacceptable noise and disturbance and subsequent loss of residential amenity (presumably

to the occupiers of Royal Terrace, although this is not specified within the EN).

3.6 Contrary to the assertion contained within the EN, the appellant refutes that this is contrary to policy LP8 (as per the argument set out above in paragraph 3.3). The EN also refers to policy LP52 of the development plan, which states that –

Proposals which have the potential to increase pollution from noise, vibration, light, dust, odour, shadow flicker, chemicals and other forms of pollution or to increase pollution to soil or where environmentally sensitive development would be subject to significant levels of pollution, must be accompanied by evidence to show that the impacts have been evaluated and measures have been incorporated to prevent or reduce the pollution, so as to ensure it does not reduce the quality of life and well-being of people to an unacceptable level or have unacceptable impacts on the environment

3.7 At this point, it should be noted that the appellant has received no approach from the local authority in respect of any Statutory Noise Nuisance on the site nor any alleged breach of any other legislative or regulatory requirements.

3.8 In respect of any alleged noise nuisance impacting on residential amenity, the appellant has commissioned a Noise Assessment report (see Appendix 1), which states that (page 8) –

In order to reduce noise emissions from the wood processing equipment, the following noise control strategy should be adopted:

• *Relocate the equipment to a distance of at least 40 m from the nearest noise sensitive receptor.*

• *Construct a barrier/screen to acoustically screen noise from the equipment to nearby receptors. The barrier may be constructed from any material that is imperforate with a surface mass of at least 10 kg/m2 and should be built to a height no less than the height of the wood processing equipment to fully obscure any line of sight to the nearby receptors.*

The above has been discussed with the Client, who proposes to relocate the equipment to one of the two areas highlighted blue below. Provided the equipment is appropriately screened, this approach is considered to be suitable.

3.9 The report concludes that (page 10) –

A subsequent assessment has been undertaken considering the proposed mitigation measures. This assessment has predicted a low impact to nearby noise sensitive receptors, provided the mitigation measures are followed in full.

3.10 The plan referred to within the report indicates two preferable sites and the appellant is currently using the one to the north-east of the site, having moved the operation to this location in January 2024. Whilst the recommended acoustic barrier / screen has not been erected to date, the appellant holds that, should the Secretary of State be so minded as to grant planning permission for the development, then suitable conditions can be attached to any such permission which would specify the location of the use within the Land; a requirement to erect an acoustic barrier / screen (details to the satisfaction of the LPA) in a suitable location; and the hours of operation (as set out within the report or any hours of operation which the Secretary of States deems appropriate to protect residential amenity).

3.11 Therefore, the appellant contends that the measures contained within the Noise Assessment report provide the evidence to show, as set out in policy LP52 of the development plan, that the impacts (of noise) have been evaluated and measures have been (can be) incorporated to prevent or reduce the (noise) pollution. As such, it is held by the appellant that policy LP52 can be satisfied.

3.12 The EN also refers to policy LP24 of the development plan, which relates to design, but it adds no further detail in this regard. As such, the appellant cannot respond on this issue, save that the appellant contends that this policy is not relevant to this matter.

4. Appeal under Ground f)

4.1 The appellant holds that the steps required to be taken exceed what is necessary to remedy the alleged breach of planning control and also exceed what is required to remedy any amenity which may have been caused by the alleged breach.

4.2 The lack of precision in identifying the location of the alleged breach means that the steps required to be taken are similarly imprecise. The information contained in Section 1 identifies that the Land has, and continues to have, a number of uses within it, including (but not limited to), the appellant's use of the site that is associated with his main business and which is not subject to any enforcement action. As set out in Section 1, there are no lorry backs, containers, or heavy goods vehicles associated with wood processing, and so the steps required here are excessive.

4.3 Similarly, there is a lack of precision in respect of the requirement to return the Land back to its condition prior to the development taking place. The appellant holds that the condition of the Land is, and always has been, consistent with that of a former railway goods yard which has seen a number of employment uses associated with it over the years. The appellant contends that this requirement is also excessive and disproportionate to the alleged breach, which is only on one small area within the Land.