

Appeal Decision

Site visit made on 24 January 2017

by Mr Keri Williams BA MA MRTPI

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

Decision date: 13 February 2017

Appeal Ref: APP/J2210/C/16/3153738

Land to the North of Herfield, Hadres Court Road, Upper Hadres, Canterbury, Kent, CT4 6EA

- 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 Mr R C Hubbard against an enforcement notice issued by Canterbury City Council.
- The Council's reference is ENF/14/00297/MP.
- The notice was issued on 7 June 2016.
- The breach of planning control as alleged is the material change of use of an outbuilding for residential use, and facilitating development comprising an area of hardstanding.
- The requirements of the notice are to:
 - i. Permanently cease the use of the shelter for all activities other than for the shelter of livestock and storage of feed.
 - ii. Permanently remove all internal items and belongings that are not in accordance with the keeping of livestock and storage of feed.
 - iii. Permanently cease the use of the land for any residential purposes.
 - iv. Permanently remove all hardstanding on the site.
 - v. Restore the land resulting from the removal of the hardstanding to its former condition.
 - vi. Permanently remove all resulting material from the site.
- The period for compliance with the requirements is 6 months.

The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed. The enforcement notice is corrected, varied and upheld.

Background

1. The appeal site is an L-shaped block of land, extending to about 1 hectare. It is accessed from Hadres Court Road by an unmade track which also serves other uses. There is a gated access to the site. The building to which the notice refers is sited close to that entrance and to the access track. An area surfaced with road planings extends from the entrance into the site and towards the building. The Council considers the building to be that erected for the shelter of livestock and storage of feed pursuant to a temporary planning permission granted in 1991 (CA/91/0916/UHA).

The Enforcement Notice

2. In addition to the change of use of the building the enforcement notice alleges "facilitating development comprising an area of hardstanding". An enforcement
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notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating an unauthorised use. However, it is not necessary for such works to form part of the allegation. I will therefore correct the notice to remove reference the hardstanding from the allegation. I will address the notice's requirements in respect of the hardstanding under ground (f).

3. It is sufficient for the first requirement to require cessation of the residential use of the building. No other uses or activities are alleged. Although the allegation was limited to use of the building, requirement (iii) is to cease the use of the land. It exceeds what is required to remedy the alleged breach and the notice should be corrected to remove this requirement. I am satisfied that correction of the notice to address these matters would not result in injustice to the main parties

The Appeal on Ground (c)

4. An appeal on ground (c) is that there has been no breach of planning control. On this ground the burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. It is consistent with *Planning Practice Guidance* that the appellant's case should be accepted if there is no evidence to contradict or otherwise make his version of events less than probable, provided that his evidence is sufficiently precise and unambiguous.
5. When I visited the site parts of the building were in poor condition and it contained only a bale of hay. However, my decision is based on the evidence of the position when the notice was issued. The appellant does not dispute that the building was used for overnight residential accommodation, although he explains that he did not authorise that use. Prior to issuing the notice the Council carried out an enforcement investigation. This followed complaints of a person seen leaving the building at about 8am each morning. Council officers saw a person leaving the building on several dates in July, August, September and October 2015. The Council obtained access to the interior of the building by warrant on 5 February 2016. A series of photographs taken on that date show the building fitted out and furnished in a manner suitable for residential use. Based on the available evidence I conclude that there was a breach of planning control by the material change of use of the outbuilding to residential use.
6. The appellant contends that there has not been the laying of hardstanding but merely the placing of a thin layer of road planings and chippings over the underlying chalk to allow vehicles and equipment to be brought onto the land. The term hardstanding denotes the laying of some surface material to facilitate, for example, the standing of vehicles. The use of the term is appropriate in this case.
7. The appellant also refers to his intention to use the land for recreational purposes, to plant fruit trees on the land and to keep a flock of sheep on it. However, the submitted evidence does not show that this is agricultural land comprised in an agricultural unit. The permitted development provisions of Part 6, Class B of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 therefore do not apply. The laying of the hardstanding amounts to operational development. I conclude that it was a breach of planning control. The appeal should not succeed on ground (c).

The Appeal on Ground (f)

8. The appeal on this ground concerns only the hardstanding. In a Planning Contravention Notice dated 27 July 2015 the appellant states "*July 2014, timber stable repaired as shelter, plus entrance and hardstanding put down after rain made it impossible to gain access to the field or turn around in a motor vehicle*". He makes a similar reference in his evidence for this appeal, although he refers to 2013 rather than 2014. He alludes to the hardstanding being necessary for other uses of the land, for recreational or agricultural use of the land.
9. The Council does not provide substantive evidence to show that the laying of the hardstanding was carried out to facilitate the alleged change of use of the building. The balance of evidence is that it this was not work integral to and solely for the purpose of facilitating an unauthorised use. The notice's requirement to remove the hardstanding and related requirements to restore the site are therefore excessive and I shall vary the notice to remove them. My decision on this matter does not preclude the Council from issuing a further notice in respect of the laying of hardstanding as a separate act of operational development should it consider that expedient. Nor does it preclude the appellant from making a planning application in respect of all or part of the hardstanding.

Overall Conclusions

10. Having regard to the above and to all other matters raised the notice should be corrected, varied and upheld.

Formal Decision

11. I direct that the notice be corrected as follows:
 - i) At paragraph 3 by the deletion of the words ", and facilitating development comprising an area of hard standing".
 - ii) By the replacement of the words at paragraph 5(i) with the words "Permanently cease the residential use of the building."
 - iii) At paragraph 5 by the deletion of requirement (iii).
12. I direct that the notice be varied at paragraph 5 by the deletion of requirements (iv), (v) and (vi). I dismiss the appeal and uphold the enforcement notice as corrected and varied.

K Williams

INSPECTOR