

Appeal Decision

Inquiry held on 5 April 2017

Site visit made on 5 April 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 19 April 2017

Appeal Ref: APP/K2230/C/16/3147956

Rose Small Holdings, Harvel Road, Meopham, Gravesend, Kent, DA13 0RN

- 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 Russell Bennett against an enforcement notice issued by Gravesham Borough Council.
 - The enforcement notice, numbered 2016/00009/ENF, was issued on 15 February 2015
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised creation and retention of an area of hardstanding in the position shown hatched on the plan attached to the notice.
 - The requirements of the notice are;
 - i) Remove the concrete hardstanding in the position shown hatched on the plan;
 - ii) Scarify and cover with topsoil the area of ground remaining after the removal of the hardstanding;
 - iii) Remove the broken concrete and rubble from the site resultant upon compliance with step (i) and (ii) above;
 - iv) Implement the landscaping scheme approved by the local planning authority under planning reference 20150414 in accordance with drawings DPP/SD/12/53/01E and DPP/SD/12/53/o1F attached to the notice and maintain such a scheme to the satisfaction of the local planning authority for 5 years once completed.
(NB Steps (ii) and (iv) represent compliance with condition 2 of permission 20140636 under which the adjacent area of hardstanding is retained.)
 - The periods for compliance with the requirements is;
Requirements 5 (i), 5(ii) and 5(iii) - 2 months
Requirement 5(iv) - 28 days after the start of the first growing season to begin after compliance with requirement 5(ii). For the purpose of the notice 'growing season' is defined as the period between 1 March and 31 October in any year.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of decision: Appeal allowed and notice quashed.**
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Procedural Matter

1. Prior to the inquiry I invited the views of the parties on whether requirement (iv) goes beyond s173(4)(a) in that it seeks to implement a landscaping scheme rather than to restore the land to its condition before the breach took place. The appellant agreed with this position and the Council accepted that the notice should be varied. I have the power under s176 to correct and vary the notice so long as neither party would suffer an injustice, which I consider to be the position in this case. However in view of my decision in respect of the ground (d) appeal it is unnecessary for the variations to be made.
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2. All evidence at the inquiry was given under oath.

The site and relevant planning history

3. The appeal site is an area of grazing land and woodland amounting to 8.9 hectares used for the rearing of Welsh Cobs, other animals and the growing of hay. Within the site are three stables, a dwelling, two residential outbuildings and an open barn. Vehicular access is from Harvel Road and this serves the holding, including the area of concrete hardstanding situated to the south of the various buildings and the subject of the notice. There is a large inspection pit situated roughly in the middle of the hardstanding.
4. The site is within open countryside, within the Metropolitan Green Belt and is the subject of an Article 4 direction restricting certain types of development.
5. Following an enforcement investigation, a retrospective application was submitted for the retention of the concrete hardstanding, inspection pit and a field gate. This was refused and dismissed on appeal in October 2013 (APP/K2230/A/13/21396978).
6. An application was refused for the reduction and retention of the hardstanding in January 2014 (20131122).
7. A revised application for the reduction and retention of the hardstanding was granted in November 2014 subject to conditions (20140636). Following a Breach of Condition Notice, an application for approval of details was approved in July 2015 (DPP/SD/12/53/01/F).
8. In December 2015 an application for a Lawful Development Certificate (20150946) in respect of the concrete hard standing and associated engineering works was refused due to insufficient evidence.

The appeal on ground (d)

9. An appeal on this ground is that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. As the notice was issued on 15 February 2016, it is necessary for the appellant to show that the operational development occurred and was substantially completed prior to 15 February 2012. The burden of proof falls to the appellant and the test is the balance of probabilities.
10. Document 7 shows three photographs of the appeal site taken on 26 November 2010 by Ms Doyle. These clearly show that the concrete hardstanding had not been constructed at that time. Google earth aerial photographs of March 2011 and July 2013 submitted by Mr Downes (Appendices SD9 and SD10) show that the appearance of the site changed significantly between these dates consistent with the appearance of concrete hardstanding. However these photographs are not conclusive in respect of the actual date when the hardstanding was completed.
11. Mr Bennett under oath and in his statutory declaration of 14 September 2015 states that the site had previously been laid to hardcore and that the concrete hardstanding and the maintenance pit were constructed between May and July 2011. Mr E V Davies of Putlands Veterinary Surgery has carried out many visits to the premises and recalls seeing a concrete driveway and an inspection

- pit although his evidence is not specific in respect of the dates he personally visited the premises.
12. The Council were alerted to a breach of control in July 2012 relating to various matters (including the erection of floodlights and the use of the site as a haulage yard) and a site meeting was held between the appellant, his agent Mr Downes, and Council officers, including Ms Doyle in the August. The Council's note of the meeting records the appellant stating that the hardstanding was laid 'in the summer 2012', although Mr Downes' note of the same meeting remains silent on the matter. It seems unusual for a person to refer to the laying of a hardstanding in the summer of 2012 in the August of the same year, which raises doubt over the accuracy of either the appellant's comment or the file note.
 13. The planning application forms completed by Mr Downes show at section 3 that for application 20120988, dated 14 November 2012, the work was completed 6 months ago, i.e. in May 2012; for application 20140636, dated 19 June 2014, the work took place 2 years ago, i.e. in 2012. Mr Downes accepts that he completed the forms but photocopied earlier forms and repeated mistakes about the date when the hardstanding was constructed.
 14. The appellant has submitted at Document 6 photographs of a portacabin that has since been moved off the site. Mr Head, under oath, stated that he purchased the 9x32 ft portacabin in early 2010 and removed it from the site with a 32 tonne crane lorry. He recalls that the portacabin was on a concrete pad and that the rest of the hardstanding was crushed concrete/type 1 hardcore which supported the weight of the lorry and its outriggers. It was apparent from my site inspection that this base remains although it forms part of the larger area of hardstanding composed of concrete on a hardcore base.
 15. The Council has analysed the 9 invoices from Poundhouse Ltd for concrete supplies submitted by the appellant with the refused LDC application. The Council points out that the area of hardstanding is 837.6 sq. m as opposed to the 752 sq. m stated by the appellant in application 20131122. Their investigations show that the volume of concrete the appellant refers to in the invoices of 45.5 cu m only equates to an area of 364 sq. m and question why the concrete was laid over a period of 3 months.
 16. Mr Archbold has been Transport Manager for Vigo Haulage Ltd (a haulage company associated with the appellant) since September 2013 and has previously been a police constable with the Transport Police. Under oath, Mr Archbold stated that he has known the site since October 2011 when his wife obtained a job as a groom for the appellant. He has been aware of the concrete hardstanding and the inspection pit since that time as he used to take her to work and drop her off close to the hardstanding.
 17. Mr Archbold has measured the hardstanding and estimates the area to be 490 sq. m, including the area of the concrete pad that had previously been laid (Document 8). This area laid on a hardcore base would require 48 cu m at a thickness of 100mm or 52 cu m at a thickness of 110mm. At the site inspection the parties measured the area of hardstanding and this confirmed Mr Archbold's estimate of 490 sq. m.
 18. Taking into account the existence of the concrete pad measuring about 4.8 x 13 m, I am satisfied that the volume of concrete referred to in the invoices

would have been adequate for the area of hardstanding constructed. As it has been laid in sections, this is commensurate with deliveries of concrete over a period of weeks.

19. Reference is made by Mr Downes to a committee report for planning application 20140636 in which the text in two places refers to the hardstanding being 'installed in 2011' and 'first discovered in 2011'. I accept that both these references to 2011 were errors by the Council.
20. In drawing a conclusion it is apparent that both the appellant and the Council have been somewhat casual in failing to check their facts and, in particular, as a professional planning advisor responsible for ensuring the accuracy of information submitted as part of a planning application, Mr Downes has made significant errors, whether in terms of dates or areas. These errors have led the Council to pursue a line of argument relating to quantities of concrete that had no basis due to the incorrect area being used.
21. Notwithstanding the errors on both side, on the basis of the evidence before me, and in particular the evidence under oath of Mr Bennett and Mr Archbold, I am satisfied that on the balance of probability the hardstanding and inspection pit were constructed by July 2011. As this date is more than four years prior to the serving of the notice it is immune from enforcement action.
22. The appeal on ground (d) succeeds and it is therefore unnecessary for me to consider the appeals on grounds (a), (f) and (g).

Conclusions

23. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Formal Decision

24. The appeal is allowed and the enforcement notice is quashed.

P N Jarratt

Inspector

APPEARANCES

FOR THE APPELLANT: Mr S Downes, DipTP MRTPI

He called

Mr R Bennett
Mr A Archbold

Appellant
Transport Manager, Vigo Haulage Ltd

FOR THE LOCAL PLANNING AUTHORITY: Ms V Nutley, Solicitor for the Council

She called

R Hart
Ms S Coyle

Principal Planner (Major Sites)
Planning Enforcement Manager

INTERESTED PERSONS:

Mr M C Head

DOCUMENTS

- 1 Proof of evidence – Richard Hart
- 2 Statement of Common Ground
- 3 Extract from Gravesham Local Plan Core Strategy pp 25-36, pp 83-90, pp116-122 and pp 145-14
- 4 Opening Statement – Gravesham Borough Council
- 5 Summary proof of evidence, Stephen Downes
- 6 Photographs of portacabin (appellant)
- 7 Photographs dated 26/11/2010 (LPA)
- 8 Archbold email dated 4 April 2017 with yard measurements