
Appeal Decision

Site visit made on 12 May 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 06 June 2017

Appeal Ref: APP/M3645/C/16/3157941

Land at Kingswood Farm, Tandridge Lane, Lingfield, Surrey RH7 6LP

- 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 John Young against an enforcement notice issued by Tandridge District Council.
 - The notice was issued on 22 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission the formation of a hardstanding on the Land shown in the approximate position and hatched black on the attached Plan B.
 - The requirements of the notice are:
 - (i) Remove the hardstanding from the Land.
 - (ii) Permanently remove from the Land all material arising from these works.
 - (iii) Restore the Land to its original condition prior to the breach of planning control.
 - The periods for compliance with the requirements are:
 - (i) and (ii) - within two months from the date on which this Notice takes effect
 - (iii) - within three months from the date on which this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

Matter concerning the requirements of the notice

2. The breach of planning control refers to hardstanding shown hatched black on Plan B. The appellant is aware of the extent of the breach and what is required to put it right but, rightly in my view points to an ambiguity where the notice refers to the requirement to remove the hardstanding from the "Land" but does not refer to the plan. As no injustice would result to the parties, I shall correct the notice under s176(a) of the Act so that requirement (i) refers to Plan B.

Ground (a) and the deemed application for planning permission

Preliminary matter and main issues

3. In a previous appeal decision of 12 October 2016¹ the Inspector dismissed the appeal against the Council's refusal of permission for hardstanding on the same part of the site as is the subject of the enforcement notice.
4. In light of the s78 appeal decision, this appeal proposes a reduced area of hardstanding, immediately next to the adjacent barn. It would measure some

¹ APP/M3645/W/16/3152934

18m x 11m with a permeable surface of planings at about 5cm deep for open storage. In an appeal on ground (a), s177(1) of the 1990 Act states that planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to "the whole or any part of" those matters or in relation to the whole or any part of the land to which the notice relates. I am therefore able to consider the proposed reduced area on this basis.

5. The appeal site is located within the Metropolitan Green Belt. The main issues are whether the development is inappropriate development in the Green Belt; and if so, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether inappropriate development

6. The development plan includes the Tandridge Local Plan Part 2: Detailed Policies 2014 – 2029 (DP). Policies DP10 and DP13 restrict planning permission for inappropriate development in the Green Belt, in line with national policy set out in the National Planning Policy Framework (Framework).
7. The hardstanding amounts to an engineering operation and Paragraph 90 of the Framework states that this type of development may not be inappropriate in the Green Belt provided it preserves its openness and does not conflict with the purposes of including land in the Green Belt.
8. Openness can be described as an absence of development such that any development will have an impact on openness whether or not it is visible from public viewpoints. The hard standing has been constructed on land that was grassed over and adjacent to similar grassed land to the east and adjacent to the open countryside beyond. The reduced area of hardstanding by itself has a relatively minor impact on openness being sited next to the barn and close to other buildings; however it has to be viewed in the context of the likely use to which it is put. I saw that it is occupied by several items of agricultural machinery and mobile attachments such as trailers and harrows. Due to their solidity, height and bulk, they would not preserve the openness of the Green Belt. The planned storage of haylage on this area would add to the loss of openness and whilst this element of storage would be seasonal, in overall terms the effect of the development on the openness of the Green Belt would be relatively permanent.
9. The development also represents an encroachment into the countryside. In that respect, it conflicts with one of the purposes of the Green Belt which according to Paragraph 80 of the Framework is "to assist in safeguarding the countryside from encroachment".
10. It follows, having regard to the Framework and DP Policies DP10 and DP13, that the development is inappropriate. Inappropriate development is, by definition, harmful to the Green Belt. The Framework at Paragraph 88 advises that substantial weight is to be given to any harm to the Green Belt. Such development should not be approved except in very special circumstances, which will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

Other considerations

11. As the previous Inspector noted the irregular appearance of the hardstanding and the outside storage are compatible with a farm and its rural surroundings, resulting in no harm to the character and appearance of the locality. I would agree. However this is a neutral factor and not a positive benefit.
12. Having viewed the site, I also agree with the findings of the previous Inspector that, despite it being said that the layout is restrictive with limited storage areas, the farm has a fairly large amount of buildings and hardstanding, estimated at some 1.36ha. I was able to see inside the buildings apart from one for which the key was unavailable. By and large the buildings are fairly substantially occupied for agriculture or the various diversified businesses that operate within the farm, although the barn next to the unauthorised hardstanding is very spacious and did not appear fully occupied during my visit. The barn used as a workshop was also spacious but the tools and equipment were generously spread around the floor in a somewhat disorganised fashion.
13. That said, other hardstanding areas exist that appear to be underused. This includes an area abutting part of the long flank elevation of the barn adjacent to the unauthorised hardstanding, which contained some disused or dilapidated agricultural equipment, and areas along the access drive. With respect to the latter, some areas are close to the main access and therefore could be regarded as less secure; however other areas extend further into the site. On balance I am not persuaded that the need to store the relevant items cannot be met by other hard surfaces, or by rationalising the use of existing buildings.
14. Reconfiguring the use of the premises would meet concerns raised in respect of security, and problems caused by rutting and I see no reason to disagree with the findings in the previous appeal decision on these matters. The potential penalties to which the appellant would be subject if rutting occurred, are noted, including the importance of the correct amount moisture in haylage, but this does not affect my view about the availability of other parts of the premises to accommodate agricultural equipment and produce. If anything, it would now be easier to find hard surfaces equivalent to the reduced area proposed.
15. The equipment and haylage could be stored outside without the need for planning permission; however the problems highlighted by the appellant would be likely to make this a less intensive activity on open land. Another fall-back position is suggested whereby a barn might be erected to store the agricultural equipment. Case law may be to the effect that even a slight possibility of the fallback position happening is a material consideration, but that is a different issue from whether a genuine fallback position can be said to exist in the first place. Currently there appears to be no permission for a barn upon which the appellant may fall back. Nor is there any permission under permitted development legislation, as a prior notification procedure needs to be pursued.
16. It is not my role to investigate whether permitted development rights may exist for a new barn but I note for example the need to show, in the case of the erection of a building, that it is reasonably necessary for the purposes of agriculture within that unit.² I am not convinced that other hard surfaces are not available to meet the needs of the business. Therefore on the current information it is not considered that such a genuine fallback position exists.

² The Town and Country Planning (General Permitted Development) (England) Order 2015, Part 6, Class A.

17. The Framework at section 3 supports a prosperous rural economy that includes development in connection with agriculture. This factor should be given some weight in favour of the appeal although, despite the clarification given about the extensive nature of the farming operations, there is no detail as to what significant economic benefits are derived from the development.
18. There is evidence to suggest that the unauthorised hardstanding has been used previously for the parking of vehicles in connection with the lorry builder's business unit directly opposite, although this is disputed by the appellant. On the day of my visit I saw that several cars and larger vehicles were parked tightly in the relatively narrow space between the hedge and the flank elevation of this unit. There was also a large vehicle protruding from its open bay onto the access, close to the hardstanding. Whilst not a critical part of my findings on the main issues, it is reasonable to assume that there would be some pressure for the hardstanding to be used as an adjunct to this business, which would be difficult to control. This adds to my concerns as to the potential further loss of openness.

Conclusions on ground (a)

19. The reduced area of hardstanding proposed has materially eroded the openness of the Green Belt and is inappropriate development which by definition causes harm to which substantial weight must be accorded. There would be no harm to the character and appearance of the area but this is essentially a neutral factor in the overall balance. For the avoidance of doubt I reach these same conclusions in respect of the larger area of land currently covered by hardstanding shown in the plan attached to the notice.
20. Some weight should be given in favour of the development due to the Framework's support for agricultural related businesses. However neither this nor any of the other matters raised amount to very special circumstances that would clearly outweigh the identified substantial harm to the Green Belt. In this regard the development fundamentally conflicts with DP Policies DP10 and DP13 of the Tandridge Local Plan: Part 2 – Detailed Policies.
21. The appeal on ground (a) therefore fails.

The appeal on Ground (f)

22. An appeal on this ground is that the steps required to be taken by the notice are excessive. When an appeal is made on this ground it is necessary to understand the purpose of the notice which may be (a) to remedy the breach of planning control or (b) to remedy any injury to amenity which has been caused. The notice requires the complete removal of the hardstanding from the site and therefore it appears that the purpose of the notice is to remedy the breach in accordance with s173(4)(a) of the Act.
23. I have addressed the possibility of granting a planning permission for part only of the land that is subject to the notice, under ground (a). With a notice intended to achieve a complete remedy to the breach of planning control it is not appropriate in an appeal on ground (f) to explore whether lesser steps would achieve the alternative purpose of remedying injury to amenity. As the notice requires the recipient to restore the land to its condition before the breach took place, it cannot by reliance on s176(1)(b) of the Act, be turned into a notice which requires something less.

24. The appeal on ground (f) therefore fails.

Conclusion

25. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the enforcement notice as corrected. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Formal Decision

26. It is directed that requirement (i) of the notice be corrected as follows:

- After “hardstanding” insert “shown in the approximate position and hatched black on the attached Plan B”

27. Subject to this correction the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR