



Appeal Decision

Site visit made on 3 August 2017

by **B M Campbell BA(Hons) MRTPI**

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

Decision date: 16 August 2017

Appeal Ref: APP/A2280/C/16/3162879

Land adjacent to Rainbow's End, Sundridge Hill, Cuxton, Rochester, Kent ME2 1LB

- 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 Ms C Herridge against an enforcement notice issued by Medway Council.
 - The enforcement notice was issued on 7 October 2016.
 - The breach of planning control as alleged in the notice is:
Change of Use without the benefit of planning permission the change of use of the Land for open storage and the storage and repair of motor vehicles.
Operational Development without the benefit of planning permission the erection of structures and the laying of a concrete hardstanding on the Land.
 - The requirements of the notice are:
 - 1) Cease the use of the Land for open storage, the storage of waste and the repair and storage of motor vehicles.
 - 2) Permanently remove all materials associated with the open storage use from the Land.
 - 3) Permanently remove all materials associated with the repair and storage of vehicles from the Land.
 - 4) Demolish the structures marked X and Y on Plan B from the Land.
 - 5) Remove the caravan marked Z on Plan B from the Land.
 - 6) Permanently remove all hardstanding from the Land shown in the approximate location hatched on Plan B.
 - 7) Remove all resultant debris and rubbish from the Land arising from requirements 3, 4, 5 and 6.
 - 8) Restore the land to its condition prior to the commencement of the unauthorised use by spreading a minimum of 300mm topsoil and seed with grass.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (b)

2. The ground of appeal is that the matters alleged in the notice have not occurred. The onus is on the Appellant to make out her case on the balance of probability. The fact that some or all of the matters might not be occurring now does not mean that they have not occurred, but simply that some or all of the requirements of the notice have been complied with.

3. Looking first at the alleged change of use for open storage, at the time of my visit there was one car on the site and a caravan. Neither appeared to be "parked" rather than "stored" as the caravan did not look as if it had been moved for some time and the car was covered with sheeting and had flat tyres. There is thus open storage taking place on the site currently, including the storage of a motor vehicle. The Council's historic photographs show a greater degree of storage activity on the site in the past, with materials and waste along the eastern side (including waste material in a skip) and cars towards the front and to the western side. Some of these cars might have been parked but at least one can be seen to be un-roadworthy and thus stored.
4. The alleged use includes the repair of motor vehicles. There was no evidence of that at my visit nor is any such activity readily apparent from the Council's photographs although the number of vehicles on the site including the un-roadworthy one and a wheel without a tyre could be indicators of such a use. The Appellant, however, in a letter dated 5 February 2015 said that the vehicles on the site were 'being used as "homework" for my son in his first job since leaving school' which suggests to me that he was working on them. Thus the car repair use would appear to have occurred. The Appellant has not shown that it has not.
5. Turning then to the operational development, there is no suggestion that the structures marked X and Y on Plan B accompanying the notice were not erected. Although they have now been removed so that requirement in the notice has been complied with, it is plain that those matters occurred as a matter of fact.
6. With regard to the concrete hardstanding, the Council's photographs show newly laid concrete, with timber shuttering in position to secure a straight edge in some places. The laying of the concrete hard surface has occurred.
7. All the matters alleged at paragraph 3 of the notice have occurred as a matter of fact. The Appellant has not demonstrated otherwise. The appeal on ground (b) fails.

The appeal on ground (c)

8. The ground of appeal is that the matters alleged do not constitute a breach of planning control. Once again the onus is on the Appellant to make out her case on the balance of probability.
9. The appeal site formerly formed part of the adjoining property, Rainbow's End. At that time it could be lawfully used for any purpose ancillary or incidental to the primary use of that property as a dwellinghouse. Subsequently the site was separated off so that it became a separate planning unit with no primary use of its own. Although the Appellant says there was a good deal of rubbish on the site when she bought it, there is no evidence that it had any other lawful use. Following purchase by the Appellant, the site has been used for open storage and for the storage and repair of motor vehicles (as I have found in my consideration of ground (b)). From the historic photographs it is clear that that brought about a material change in the character of the land. The number of vehicles present and the amount of open storage visible far exceeded that normally associated with domestic use. The uses gave the site a distinct commercial character and would have generated more vehicular movements than ancillary residential use in connection with a single

dwellinghouse. I conclude that a material change of use of the land has occurred and, since no planning permission had been granted in respect of it, that change of use constitutes a breach of planning control.

10. With regard to the erection of the two buildings and the laying of the hard surface, these operations fall within the definition of development as set out in s55 of the Act which includes the carrying out of building, engineering, mining or other operations in, on, over or under land. Section 57 of the Act states that planning permission is required for such development.
11. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015¹ grants planning permission for classes of development described as permitted development which are set out in Schedule 2 to the Order. In Part 1 of Schedule 2, buildings and hard surfaces incidental to the enjoyment of a dwellinghouse are permitted but only where the development would be carried out within the curtilage of a dwellinghouse. The appeal site no longer falls within the curtilage of a dwellinghouse and thus cannot benefit from the permitted development rights set out in Part 1 of Schedule 2. None of the other Parts of Schedule 2 apply to the appeal site.
12. I conclude that the erection of the buildings (X and Y) and the laying of the concrete hardstanding comprise development requiring planning permission. No permission has been granted either by way of a development order or by the grant of express permission and thus a breach of planning control has occurred.
13. The Appellant expresses her view that the land can be described as "brownfield". However, whether it is or is not has no bearing on the need for planning permission. In addition, the Appellant says that there was previously a hard standing on the site. Even if there was, the laying of a fresh concrete surface involves operational development requiring planning permission and no permission has been granted for it.
14. The appeal on ground (c) in respect of both the alleged change of use and the alleged operational development fails.

The appeal on ground (d)

15. The ground of appeal is that at the time the notice was issued, it was too late to take action. This ground is brought only in relation to the hardstanding. In order to succeed, the Appellant would have to show that the existing concrete surface was substantially complete more than 4 years before the notice was issued, that is by 7 October 2012. The Appellant says there was a pre-existing hard surface but the notice is clearly attacking the recently laid concrete hardstanding. There is no evidence that this was substantially complete prior to 7 October 2012. Indeed the Council's photographs taken towards the end of 2013 show freshly laid concrete and supporting shuttering.
16. The appeal on ground (d) fails.

The appeal on ground (f)

17. The ground of appeal is that the requirements of the notice are excessive. In this respect s173(3) of the Act says an enforcement notice shall specify the

¹ and the 1995 Order before it

steps which the authority require to be taken to achieve the purposes set out in s173(4) – which are to remedy the breach or to remedy injury to amenity. In this instance the Council is clearly seeking complete remedy of the breach by requiring the unauthorised uses to cease and everything associated with them to be removed and by requiring the operational development (the structures and concrete surface) to be removed. No lesser steps than complete removal would achieve the purpose of remedying the breaches of planning control which have occurred.

18. Furthermore, it is not excessive to require the land to be restored to a condition suitable for its previous lawful use as residential land associated with a dwellinghouse. Clearly the Council would not expect the topsoil to be laid so as to interfere with the opening of the garage doors or gate but it seems to me that once the unauthorised hard surface is removed a good depth could be made available. There is no evidence before me relating to the nature or extent of any pre-existing hard surface so as to make a saving for it.
19. The requirements of the notice go no further than seeking complete remedy of the unauthorised development that has occurred. They are not, therefore, excessive. The appeal on ground (f) fails.

The appeal on ground (g)

20. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. In this respect the Appellant does not specify what other period than the three months given would be acceptable. Her only concern is having to carry out the works during the winter months.
21. Given that many of the requirements of the notice have already been complied with, it seems to me that the three months given would be sufficient to comply with those outstanding and before the onset of winter. Thus I find the time given to comply with the requirements to be reasonable and the appeal on ground (g) fails.
22. I am aware that the Appellant is concerned about providing a drive to enable access to the garage but in the absence of an appeal on ground (a) – that planning permission should be granted – I am unable to consider whether any part of the development should be allowed to remain. The Appellant should discuss with the Council what surface, if any, might be acceptable. In the event that progress is made in relation to that matter, the Council has discretion to extend the compliance period should it consider it would be appropriate to do so.

Conclusion

23. The appeal fails on all grounds brought for the reasons given.

B M Campbell

Inspector