



Appeal Decisions

Site visit made on 26 November 2019

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2020

Ref: APP/T0355/C/18/3218796

Moor Farm, Ascot Road, Holyport, Maidenhead SL6 2HY

- 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 Frankham against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead.
 - The enforcement notice was issued on 15 November 2018.
 - The breach of planning control as alleged in the notice is:
 - 1. Without planning permission the material change of the use of the ménage [sic] and surrounding paddock land to the storage of cars;
 - 2. Without planning permission the formation of a hard surface including but not limited to brick rubble and Type 1 MOT (granular sub base materials) to facilitate the storage of cars;
 - 3. Without planning permission the re-profiling of land and the formation of earth bunding outlined in green.
 - The requirements of the notice are:
 - a. Cease the use of land for the storage of cars;
 - b. Dig up and remove from the land all materials used to form the hard surface;
 - c. Re-distribute across the stripped back part of the land, the earth bunding; and restore the land to its former state.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended. As a related application for planning permission was made and an enforcement notice issued before the time for determining the application had expired, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act are prevented from being considered, under section 174 (2A) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected by replacing “ménage” with “manège” in the breach of planning control. Subject to the correction of this typographical error the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. This appeal is referred to by the appellant as ‘Appeal A’. I have dealt with other appeals on this site, which the appellant refers to as Appeals B¹, C², D³ and E⁴. These are the subject of separate decisions.

¹ APP/T0355/W/19/3223366

² APP/T0355/C/19/3225461

³ APP/T0355/C/19/3225462

⁴ APP/T0355/W/19/3223364

The ground (c) appeal

3. In terms of the re-profiling of land and the formation of earth bunding (indicated in green on the enforcement notice), the appellant considers this is permitted development. They have drawn my attention to Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. This grants planning permission for means of enclosure subject to specific limitations including a limitation on height.
4. The bunding which is subject to the enforcement notice is of a substantial height. No evidence has been provided which satisfies me these works comply with the limitations of this class of permitted development, specifically in terms of height, and so I am not satisfied they do not constitute a breach of planning control. It is open to the appellant to produce evidence to demonstrate compliance with this class of permitted development and apply to have this matter determined by the Council under section 191 of the Act. Any such application would be unaffected by my determination of this appeal.
5. In terms of the formation of a hard surface to facilitate the storage of cars, the appellant states that a pre-existing surface has been 'repaired'. The appellant says the hard surface consists of a manège and an extension to the manège which benefit from historic grants of planning permission. It is said that the top of these areas of manège have been taken up and the sub-base relayed. These arguments are relevant to ground (c) i.e. that what has occurred does not constitute a breach of planning control, either because it is not development (in respect of repairs) or because planning permission has been granted (albeit for areas of manège rather than a hard surface to facilitate the storage of cars).
6. At my site visit the hard surface appeared as a single entity. Overall, it was clean, free of debris and generally uneven. In my judgement, it has the appearance of a recently laid hard surface. In particular, there was no discernible level change between it and the vehicular access running immediately along its east side i.e. what was the eastern edge of the manège. The above characteristics are not as might be expected if the hard surface were merely the repaired exposed/excavated sub-base of a manège.
7. The appellant states the hard surface has been subject to rainfall, giving the impression of new stone. The onus of proof in this regard is on the appellant. Taking account of all of the information provided and what I have seen on site, I am not satisfied the hard surface is the repair of a manège for which planning permissions have been granted.
8. There is no evidence which demonstrates the material change of the use of the manège and surrounding paddock land to the storage of cars is not a breach of planning control. Accordingly, considering all of the above points, the ground (c) appeal fails.

The ground (d) appeal

9. In terms of the formation of a hard surface to facilitate the storage of cars, the appellant indicates that ground (d) is relevant as an area to the south of the manège is said to have been hardstanding since around 2004. The implication is this area of hard surface is lawful due to the passage of time, and, as with the manège area, this area of hard standing is said to have been 'repaired'.

10. The onus of proof in this respect is on the appellant. An aerial photograph provided by the appellant, dated 2004, appears to show a grey coloured area south of the manège. But it is unclear what the grey coloured area consists of. Later aerial photographs provided by the Council, dated 2015 and 2018, appear to show this same area is green, suggesting this area was vegetated.
11. In any event, the grey coloured area from the photograph dated 2004 appears significantly less wide in an east-west dimension than the hard surface targeted by the enforcement notice and which I saw on site. Taking account of all of the information provided and what I have seen on site, on the balance of probabilities I am not satisfied the area of hard surface south of the manège has existed for more than 4 years.
12. There is no evidence to indicate that the material change of the use of the manège and surrounding paddock land to the storage of cars has been carried out for ten years. Nor is there any evidence the re-profiling of land and the formation of earth bunding was carried out more than 4 years ago. Accordingly, considering all of the above points, the ground (d) appeal fails.

The ground (f) appeal

13. The purpose of the enforcement notice is to remedy the breach of planning control. The appellant has not suggested any lesser steps to remedy the breach than those specified in the enforcement notice. Moreover, there are no alternatives which are obvious either. As such, the ground (f) appeal fails.

The ground (g) appeal

14. The appellant seeks that the compliance period is extended from 2 months to 6 so that approval may be sought for reserved matters for a replacement equestrian building which has been granted outline planning permission. I am not satisfied there is a relevant connection between what is described by the appellant as the 'temporary re-use of the manège' (where cars are being stored) and the replacement equestrian building referred to. Also, there is no evidence to indicate the requirements of the notice could not be complied with within 2 months.
15. In addition, the enforcement notice identifies harm arising from the development including harm to the openness of the Green Belt. The harm identified is not contested within the scope of an appeal on ground (a). Moreover, the Council have issued a stop notice for the breach of planning control. Taking all of the above points into account, there is no reason to extend the period of compliance. Accordingly, the appeal on ground (g) fails.

Other Matters

16. My attention has been drawn to an undertaking dated 27 November 2018. Amongst other things, this seeks to ensure that no more than the maximum of 130 vehicles already stationed on the land are stored or parked at any time on the appeal site. However, as there is no ground (a) appeal I cannot consider any planning merits of the development enforced against in this appeal.

Conclusion

17. For the reasons given above the appeal does not succeed.

L Perkins

INSPECTOR