



Appeal Decision

Site visit made on 13 January 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal Ref: APP/U1430/C/19/3234251

Land at Boundary Farm, London Road, Hurst Green TN19 7QY

- 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 Mrs J Williams against an enforcement notice issued by Rother District Council.
 - The enforcement notice, numbered KEN/9/8/1211, was issued on 1 July 2019.
 - The breach of planning control as alleged in the notice is: i) the construction of a hard standing on the land and shown in the approximate position edged blue on the attached plan; and ii) the installation of lighting columns surrounding the hard standing.
 - The requirements of the notice are:
 - (i) Remove the hardstanding from the land.
 - (ii) Remove from the land all the lighting columns.
 - (iii) Restore the area shown of the land shown in the approximate position edged blue on the attached plan to its former condition by the reseeding with grass.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

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

Procedural matters

2. The appellant has put forward a case that the notice is a nullity. While the notice meets with all the necessary statutory requirements, the basis for the appellant's argument is that the plan attached to the notice is not to scale and does not precisely identify the breach.
3. An enforcement notice shall specify the exact boundaries of the land to which the notice relates, by reference to a plan or otherwise. The plan attached to the notice shows the boundaries of the land in red, together with the approximate position of the hardstanding. From the evidence I have it is not the boundaries of the land that is in dispute, but the position of the hardstanding and lighting within that Land. The notice makes it clear that the position of the hardstanding is approximate. The aerial photographs provided by the Council in their statement shows that the land was previously not developed. I saw from my site inspection that the hardstanding has been positioned some distance away from the other buildings. It was also the only hardstanding area that was

surrounded by lighting columns.

4. The notice does not need to specify the exact measurements of the surface, provided the allegation is clear. I noticed at my site visit that a building has been sited behind the mobile home, and the surfacing appears to have been extended in the same area. I have no information to indicate whether this was carried out prior to the issue of the notice. Consequently, I consider that this additional area falls outside the scope of the notice. However, this aside, I find that the allegation for both the hardstanding and the lighting columns are set out sufficiently clearly, so the recipient of the notice would be in no doubt as to the breach of planning control. I therefore do not find that the notice is invalid.

Ground (c)

5. The appeal is proceeding on ground (c), that the matter alleged in the notice does not constitute a breach of planning control. The burden of proof is on the appellant.
6. The appeal site is set down a long shared access from London Road (A21). It is in a relatively isolated position within a small cluster of outbuildings to the south west of the former dwelling which has now been demolished. Planning permission has been granted (RR/2016/2933/P) for the demolition of the existing dwelling and the erection of a replacement dwelling on 19 December 2016. It is this permission that is understood to have led to the demolition of the original dwelling. It is not disputed that this permission remains extant.
7. It is the appellant's case that there has been no breach of planning control, as the hardstanding and lighting columns are required temporarily in connection with the permitted construction of the new dwelling.
8. At the time of my site visit there was a very small quantity of building materials being stored on the hardstanding. These comprised approximately six bags of sand and a small quantity of blocks on pallets. There were several cars parked close to the mobile home but there was no plant or machinery on the site. The works to construct the new dwelling did not appear to have commenced. The lighting columns were ornamental in nature and have been located around the perimeter of the hardstanding. They were more akin to garden lighting, than those normally associated with lighting for safety and security of builders, their materials, plant and equipment.
9. Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, sets out a number of permitted development (PD) rights for temporary buildings and structures. These include 'The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.' Development is not permitted where planning permission is required for those operations but is not granted or deemed to be granted. It is not in dispute that the adjacent land has the benefit of the above planning permission, or that the works that have been carried out to create the hardstanding and lighting columns constitute development falling within the scope of s55(1) of the Act.
10. The rights conveyed by Part 4 set out above, applies both to the land that benefits from the planning permission and adjacent land. It is the appellant's

case that the development has been carried out in connection with the replacement dwelling, rather than to provide a hardsurface within the curtilage of the original dwelling. Accordingly, the Council through their notice, seek to target the hardstanding and lights as shown on the plan, irrespective of whether they are sited within the original curtilage or not.

11. I acknowledge that Class A does not provide a time scale for when the rights conveyed would apply. Nonetheless, the basis of the provision is to provide temporary buildings and structures for the duration of works and therefore is not open ended. I also recognise that it is not unusual for such works to be put in place a short time before the main development commences.
12. From the evidence I have, the works to create the hardstanding and other excavation works on site, appear to have commenced during 2017, although may not have been completed until May 2018. The lighting columns are likely to have been provided on, or close to, completion of the surface. Commencement of the demolition appears to have taken place during June 2019, over 12 months after the hardstanding was completed. I do not consider that given this extended timescale, the works can reasonably be described as being required temporarily for the duration of the permitted work, which save for the demolition, has not been progressed.
13. The responses to the Council's planning contravention notice confirms that the hardstanding was used for the parking and storage of business related vehicles during March 2019. I have no evidence that the use of the land for business related storage and parking of vehicles, had planning permission or would not have required permission. Additionally, I have no evidence that the hardstanding was used for any purpose connected with the new dwelling, prior to being used for the commercial parking of vehicles. This unauthorised use therefore took place following the construction of the hardstanding, but it predates both the demolition of the original dwelling a year later, and the subsequent issue of the notice on 1 July 2019.
14. PD rights cannot be gained retrospectively. Overall, on the evidence I have before me, given the timescales involved, the design of the lighting and the intervening unauthorised use, I cannot conclude that, on the balance of probability, that the hardstanding and lighting columns, have been constructed for a purpose required temporarily in connection with, and for the duration of, the development of the permitted replacement dwelling.
15. Pulling all of the above together, I find that express planning permission is required for the matters alleged and ground (c) must fail.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Hilary Orr

INSPECTOR