

# Appeal Decision

Site visit made on 7 January 2020

**by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> February 2020**

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**Appeal Ref: APP/M3645/C/19/3234428**

**Land at Little Horseshoe, Effingham Lane, Copthorne, Surrey RH10 3HP**

- 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 Raymond Rodney Smith (RTS Property Investments) against an enforcement notice issued by Tandridge District Council.
  - The enforcement notice was issued on 10 July 2019.
  - The breach of planning control as alleged in the notice is without planning permission;
    - (i) The erection of outbuildings in the approximate position marked with a cross on Plan B attached to the notice.
    - (ii) The installation of a hard surface in the approximate area marked in black on Plan C attached to the notice.
    - (iii) The installation of a gate in excess of 1 metre in height adjacent to a Highway in the approximate location between points marked X and Y on Plan D attached to the notice.
  - The requirements of the notice are to:
    - (i) Remove the outbuildings in the approximate location marked with a cross on the attached Plan B.
    - (ii) Remove the hard surface in the approximate area marked black on the attached Plan C.
    - (iii) Remove the gate marked with a black line between the points marked X and Y on the attached Plan D.
    - (iv) Following compliance with steps (i), (ii) and (iii) above, remove all resultant debris and unused materials from the land to an authorised place of disposal. Reseed the land to grass.
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended (the Act). 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.

## Application for costs

2. An application for costs was made by Tandridge District Council against Raymond Rodney Smith (RTS Property Investments). This application is the subject of a separate Decision.

## Procedural Matters

3. A separate enforcement notice has been issued by the Council in respect of a mobile home on the same site, but this is not the subject of the appeal before me.

4. The appeal form states that "The two areas marked x have been there over 10 years.....x is a disposable toilet and x is a summer house not fixed". Whilst not expressly indicating a ground (d) appeal, that statement in my view formed a "hidden" ground (d) appeal in implying that, at the date the notice was issued, no enforcement action could be taken in respect to any breach of planning control constituted by those matters. Therefore, the main parties were contacted and asked to provide any comments or evidence in relation to that ground. I have taken the received submissions into account in my Decision.

### **Ground (c)**

5. For the appeal to be successful under this ground, the burden of proof is on the appellant to satisfy me on the balance of probabilities that the matters stated in the notice (if they occurred) do not constitute a breach of planning control.
6. The appellant says that planning permission was granted by an email sent to him on 16 January 2019 by Agnes Anyanwu, Planning Enforcement Officer. The email said:

*"Dear Raymond, Thank you for taking my call earlier. As discussed, I met with my manager Simon Rowberry earlier today who agreed the agricultural use of the hardstanding (tarmac) and the smallholding are appropriate for the site. Please advise when you are likely to complete the works and have moved the animals to the site so that I can carry out a compliance check."*

7. However, that email was not granting planning permission for any aspect of development. It was a follow-up communication to a telephone discussion with the appellant, confirming the Council's position as what would be appropriate within the site's existing planning context. In any respect, I note that the email does not deal with most of the matters stated in the notice (including the erection of outbuildings and the installation of a gate).
8. The emailed advice as regards hardstanding is connected with agricultural use, and the note of the telephone discussion reflects this in recording that the Council's understanding was that it would be temporarily present to facilitate the delivery of animals onto the land.

### **Outbuildings**

9. The outbuildings referred to in the notice consist of a wooden summer house sitting on wooden beams on top of hardstanding, and a toilet outbuilding with its frame bolted to a concrete base shared with adjoining stables but with no drainage connection. Notwithstanding their moderate size and limited attachment to the land, these structures possess a significant degree of permanence on the site with the appellant stating that they have been present for several years. I also note that the summer house is included in the estate agent particulars and photograph submitted by the appellant and an interested party, said to date from November 2018. Accordingly, I find as a matter of fact and degree that the structures are buildings on the land and represent operational development under the Act<sup>1</sup>.
10. No express planning permission has been granted for the outbuildings, nor do they benefit from planning permission granted by way of permitted development under The Town and Country Planning (General Permitted

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<sup>1</sup> Section 55(1)

Development) (England) Order 2015 (the Order). Further, there are no applicable exceptions to the requirement for planning permission for the development. Accordingly, these matters as stated in the notice do constitute a breach of planning control.

#### *Hard surface*

11. The hard surface as stated in the notice encompasses a significant area of the site, with tarmac covering much of the width of the front of the site and a kerbed track leading from it towards the rear. As an engineering operation that has changed the physical nature of the land it is clearly operational development under the Act. Further to my comments on the email from the Council dated 16 January 2019, it did not grant planning permission for the hard surface and there is otherwise no express approval in place for it. There are no applicable exceptions to the requirement for planning permission.
12. According to the Council's appeal papers, the site comprises 3.1 hectares and its lawful use is agricultural. I have not seen anything to the contrary from the appellant. There is permitted development under the Order in respect of agricultural units of less than 5 hectares, but the provision of a hard surface is permitted only where it is reasonably necessary for the purposes of agriculture within the unit<sup>2</sup>. While I note the appellant has said that the hard surface is necessary to deliver animals, including to the paddock at the rear of the site, the scale of what has been provided is significantly in excess of what would be required to do this. Further, and notwithstanding the laying of the hardstanding, there is no evidence that I have seen of any delivery of animals to the site or the agricultural use on which the above permitted development is contingent.
13. Additionally, the provision of a hard surface on agricultural units of such size is not permitted under the Order if the external appearance of the premises would be materially affected<sup>3</sup>. The extensive area of tarmac can be seen beyond the site, including from the direction of the entrance onto Effingham Lane, and the resulting appearance is considerably different to the largely verdant and relatively undeveloped nature of the pre-existing land.
14. Accordingly, this matter as stated in the notice constitutes a breach of planning control.

#### *Gate*

15. A new gate has been erected at the entrance to the site, over 1 metre in height adjacent to a highway. This constitutes development under the Act, since it involves the carrying out of building operations in, on, over or under land.
16. No express planning permission has been granted. Further, there are no applicable exceptions to the requirement for planning permission for the development. Development is not permitted<sup>4</sup> by the Order if the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level.

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<sup>2</sup> Article 3(1) and Schedule 2 Part 6 Class B Paragraph B

<sup>3</sup> Article 3(1) and Schedule 2 Part 6 Class B Paragraph B.1

<sup>4</sup> Article 3(1) and Schedule 2 Part 2 Class A

17. Therefore, this matter as stated in the notice constitutes a breach of planning control.
18. Overall, I consider that on the balance of probabilities there is no planning permission for the outbuildings, hardstanding and gate. There has been a breach of planning control, and the appeal on ground (c) therefore fails.

### **"Hidden" Ground (d)**

19. S171B(1) of the Act gives a time limit of 4 years for notices alleging operational development. It is clear from the appeal submissions that the hard surface and gate have been developed within this time, and there is no dispute between the parties as to this. Given what was said in the appeal form in respect of the outbuildings, the appellant and the Council were asked to provide further comments and/or evidence in respect to this matter.
20. The Council responded in producing aerial photographs of the site taken at different dates, starting from 2013, but due to the obscuring effect of the trees and stables at the location it is not possible to identify whether or not the outbuildings were present when the photographs were taken. However, the Council also provided a photograph of what appears to be a pre-delivery invoice for the summer house dated 11 June 2016, obtained from the previous owner of the land. This is within the 4-year immunity period.
21. Further, the burden of proof is on the appellant and while he has supplied undated estate agent particulars which include the summer house (but not the toilet), said by an interested third party to date from November 2018, he has not supplied any substantive evidence to show on the balance of probabilities that the outbuildings were present for more than 4 years at the time of issue of the notice. Accordingly, the appeal does not succeed under ground (d).

### **Conclusion**

22. For the reasons given above I consider that the appeal should not succeed.

*Andrew Walker*

INSPECTOR