



Appeal Decision

Site visit made on 10 February 2020

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 12 March 2020

Appeal ref: APP/C1950/C/19/3226878

Friday Grove Farm, Hawkshead Lane, North Mymms, Hatfield AL9 7TF

- 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 Leslie Heaton-Smith (The College of Animal Welfare) against an enforcement notice issued by Welwyn Hatfield Borough Council.
- The enforcement notice was issued on 22 March 2019.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to a car park and unauthorised hardstanding.
- The requirements of the notice are:
 - (a) Cease the use of the land outlined and shaded blue on the plan attached to the notice as a car park.
 - (b) Remove from the land all hardcore, scalplings and all other such hard surface materials used for the creation of the hard surface within the area outlined and shaded blue on the plan attached to the notice.
 - (c) Clear the land of any resultant materials, debris associated with requirements (a and b) and restore the land to the condition it was in prior to the commencement of the unauthorised use.
- The period for compliance with the requirements is 1 month for requirement (a) and 2 months for requirements (b) and (c).
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the notice upheld as corrected and varied as set out in the Formal Decision.

Preliminary Matters

1. This appeal is brought on behalf of the College of Animal Welfare which occupied the appeal site for parking. The land falls within different ownerships. The agent for the appellant is one of the landowners who owns the main field area where car boot sales have taken place. He has not appealed in his own right. Separate appeals have been brought against the same enforcement notice by the landowners of the access track which leads to stables beyond the appeal site. Those appeals proceed on different grounds under Appeal Refs: APP/C1950/C/19/3226882 and 3226883 and relate to their land only.
2. The numbering is wrong within paragraph 4 of the enforcement notice. Sub-paragraphs 9 and 11 should be 3 and 4. This is easily correctable as a minor typographical error without causing any injustice.
3. It became evident at my site visit that the plan attached to the enforcement notice cannot be right. It encompasses land where there is no hardstanding, including a mature hedgerow which separates the landholdings. Having checked its records, the Council produced a revised plan. The appellant claimed

that injustice would arise if the corrected plan was used on the basis that it implies a special surface was put down for cars to drive on. However, there can be no such implication from the revised plan. The only change would be that the allegation affects a smaller area. As the plan reduces the area enforced against, I cannot see how injustice would arise to any party by substituting the plan for the one originally used. If anything, it is less onerous to the appellants.

4. Some remedial works have already been undertaken in partial fulfilment of the enforcement notice by the neighbouring landowners. As part of those works post and wire fencing now separates the land lying in different ownerships. What now exists is essentially three tracks. One extends beside the field edge parallel with Hawkshead Road. Two parallel tracks extend in a northerly direction from the site entrance continuing on either side of an established hedgerow. The amended plan now stops short of the hedge.
5. It is submitted that the use of the land has ceased for parking. Early compliance with any of the requirements does not negate those provisions or the notice in any way. The appeal must be considered based on the position as things stood at the time of issue of the notice.
6. The appellant suggests that the hard surface is necessary because of waterlogging problems but he has not appealed on ground (a) and paid the requisite fee for the planning merits to be considered.
7. It is important that the allegation contained within the notice is accurate and precise. The notice is directed at a material change of use, but it also refers to works in the form of a hardstanding. The notice does not allege unauthorised operational development and so the hardstanding must have been included because it is considered to facilitate that use. For precision, the allegation should be framed to say: "The material change of use of the land to a car park and the creation of hardstanding to facilitate that change of use". Following consultation, the appellant asserted that injustice would arise, but did not elaborate further. I have a duty to ensure that the wording of the notice is in order. I consider that the notice should make clear that the hardstanding is facilitating development. Such correction does not alter the substance of the allegation and I am satisfied it can be made without injustice to any party.
8. The enforcement notice does not concern car boot sales which have taken place on the land and so I do not address submissions about these any further.

Whether the matters alleged have occurred

9. Whilst the appeal is brought on ground (d) only, it is stated that "There is no authorised or unauthorised hardstanding" and there "has never been any change of use of the land to a car park". This indicates an appeal on ground (b) where it is argued that those matters alleged in the notice have not occurred.
10. Elsewhere within the Appeal Statement reference is made to how it would not be possible to drive up the field to bring and collect sheep in a trailer if there was no hard surface. Further mention is made of the track next to the treeline being unusable in winter months without a hard surface and where students parked was no more than two farm tracks.
11. When the Council issued a Planning Contravention Notice ('PCN') in November 2015, the owner denied that the site was used for car parking but confirmed college students park on the tracks and the number varies between 30 to 55

vehicles per week. In the same reply, the owner stated that there are tracks with a hard surface.

12. Therefore, on the one hand the appellant appears to argue that the change of use never occurred and there was no hardstanding. On the other hand, the use of the land for student parking and the presence of the hard surfacing is clearly acknowledged. From the Council's photographs, the hardstanding is evident along with parking by several cars. On the facts, there clearly was hardstanding (which I also saw at my site visit) and there was use for car parking. I am reinforced in that view by the fact that a retrospective planning application¹ was made for the temporary change of use of the land for student car parking' along with associated hardstanding which facilitated that use. The application was refused in October 2018.
13. In the circumstances, a ground (b) appeal would be bound to fail.

Whether there is a breach of planning control

14. The appellant states that the farm tracks long predate the student parking, facilitated by the removal of a fence between them. In response to the amended plan, the appellant also submits that as the agricultural unit is over 5 hectares and being an agricultural business, it is reasonably necessary to have farm tracks within the unit. It is not entirely clear, but these comments suggest there is a hidden ground (c) appeal on the basis that the matters alleged in the notice do not constitute a breach of planning control because they are permitted development.
15. Pursuant to Article 3 and Class A of Part 6 of the Town and Country Planning (General Permitted Development)(England) Order 2015 ('GPDO') it is permitted development to carry out on agricultural land comprised in an agricultural unit of 5 hectares or more in area, any engineering operations which are reasonably necessary for the purposes of agriculture within that unit. This is subject to limitations and conditions.
16. The laying of a hardstanding would usually be regarded as an engineering operation. The appellant states that the unit exceeds 5 hectares. It is argued that as the site contains clay and gets waterlogged it would not be possible to operate the agricultural business without the farm tracks.
17. Even if the farm tracks predated the car parking, the point in issue is whether the hardstanding was laid for agricultural purposes or to facilitate the parking use, as alleged. Under ground (c) the appellant has the burden of proof. There is no substantive evidence before me to demonstrate that the hardstanding was laid for agricultural purposes. In fact, the evidence points to the contrary. The Council reported that hardcore was imported into the site between 2012-2015 which was investigated by the County Council. The hardcore remained in June 2015 when the land was in use for car parking. The hardcore was covered in aggregate and the hardstanding observed by Council Officers during a site visit in November 2015.
18. Based on the evidence, it appears probable that hardstanding was laid to facilitate the car parking use, as alleged. Indeed, there would have been no reason to submit a planning application which sought to retain the hardstanding for temporary car parking purposes if that was not the case.

¹ Council ref: 6/2018/1963/FULL

Moreover, there is insufficient information on whether all the conditions and limitations of Class A would be met.

19. In consequence, an appeal on ground (c) must fail.

The appeal on ground (d)

20. In a ground (d) appeal, the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is the balance of probabilities. The ground of appeal is that at the time the notice was issued it was too late to take enforcement action.
21. It is argued that there has been a farm track on the land for many years as shown on old maps dating back to 1766. The notice concerns a hardstanding on the land rather than the creation or use of an access. Even though a track may have existed before, it is the use of the land as a car park and the associated hardstanding which amount to the breach of planning control.
22. Where development has taken place involving a material change of use of land no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach (section 171B(3)). In cases involving a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed (section 171B(1)).
23. A notice directed at a material change of use can require the removal of ancillary operational development within the 10-year immunity period applying to a material change of use if the works were intended to facilitate the unlawful use. That is so even if the 4-year limit has passed.
24. In this instance the enforcement notice is directed at the material change of use of the land to a car park and unauthorised hardstanding. It does not allege that the hardstanding constitutes operational development. It refers to a material change of use and cites a 10-year immunity period.
25. The appellant argues that there were two existing farm tracks without a dividing fence and that the tracks had hard surfacing prior to student parking taking place in 2014. My attention is drawn to one of the Council's photographs to prove the point. However, whilst separate tracks can be seen in the internet image which is said to capture the site entrance in June 2011, the amount of hardstanding is not apparent. As set out above, the Council's evidence and inspections indicate that the hardstanding was laid in 2015 once the land was used for car parking.
26. Late on in the process, the appellant produced a letter from the Council's Parking Services Technician titled 'Swanley Bar – Parking survey – No2' which he considers is confirmation that the Council supported the parking at Friday Grove Farm. The letter refers to improvements made by Bolton Park Farm to their off-site parking facility. If this is a reference to Friday Grove Farm, the letter does no more than confirm car parking was taking place when the letter was written on 20 April 2015 and affirms improvements were made for parking purposes. There is no ground (a) appeal for the planning merits to be considered and so the letter does not help the appellant's case.

27. There is no evidence that the hardstanding as enforced against was laid for any other separate or lawful purpose. On the evidence, those works to lay the hardstanding facilitated and were part and parcel of the breach of control for a material change of use to a car park. As such, the 10-year immunity period applies to the hardstanding rather than the 4 years applicable if there were a separate act of operational development without planning permission.
28. Thus, to succeed on ground (d) the appellant must demonstrate that the development had occurred no later than 22 March 2009 and the use continued uninterrupted throughout the ensuing 10-year period.
29. The appellant says that the car park use by students from The College of Animal Welfare was temporary and has already ended. In the PCN reply the owner stated that the land had been used as a parking facility since September 2014. The year was confirmed in the appellant's final comments. Therefore, such use was not carried on for a period in excess of 10-years. Nor has the appellant produced any substantive evidence to demonstrate that on the balance of probabilities the hardstanding, as enforced against, already existed by the time of the material change of use.
30. The appellant has failed to discharge the burden of proof to demonstrate that it was too late for enforcement action. The appeal on ground (d) fails.

Whether the requirements are excessive

31. Although no appeal has been brought on ground (f) to argue that the steps required by the notice to be taken are excessive, I note that the appellant maintains the hardstanding is required for agricultural purposes.
32. Permitted development rights do not apply retrospectively and so the hardstanding cannot benefit from the provisions within Article 3 and Part 6 of the GPDO as discussed above even if the conditions and limitations were met. However, if hardstanding (or some part) could be laid in future as permitted development it raises the question of whether complete removal of the existing hardstanding would ultimately achieve anything bearing in mind that the enforcement regime is intended to remedial rather than punitive.
33. Nevertheless, there is insufficient information to ascertain if the requirements for permitted development for a hardstanding would be met. Ultimately, even if there were more details there is no ground (a) appeal and deemed planning application for necessary conditions to be imposed upon the future use.
34. The Council submits that the notice is directed at both remedying the breach of planning control which has occurred as provided in section 173(4)(a) and to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)). As there is no ground (a) appeal, then failure to require the removal of the hardstanding laid to sustain the unauthorised car parking use would not satisfy the purpose in section 173(4)(a) i.e. to remedy the breach by restoring the land to its condition before the breach took place.
35. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) and (b), it is not excessive. There is no obvious alternative which would overcome the harm at less cost and disruption than total removal.
36. Nothing in the notice prevents the owner from doing what he is lawfully entitled to do once the notice has been complied with.

Period for compliance

37. Notwithstanding that no ground (g) has been pleaded I have found it appropriate to extend the compliance period in the separate appeals referenced in my procedural note to 4 months for removal of the hardstanding. The same varied time limit will apply across the site as shown in the amended plan.
38. If the owner considers that there is planning merit to retaining part of the hardstanding for agricultural purposes this additional time period will afford opportunity for that to be explored further with the Council.

Formal Decision

39. It is directed that the enforcement notice be corrected by:

- (i) under the heading of "4. REASONS FOR ISSUING THIS NOTICE" renumbering the paragraphs that follow as 1.- 5.
- (ii) deletion of the words "unauthorised hardstanding" in paragraph 3. and the substitution of the words "the creation of hardstanding to facilitate that change of use";
- (iii) the substitution of the plan annexed to this decision for the plan attached to the enforcement notice

And varied by the deletion of 2 months and the substitution of 4 months as the period for compliance in paragraph 6.(b) and (c) of the notice.

40. Subject to these corrections and variation the enforcement notice is upheld.

KR Seward

INSPECTOR



Plan

This is the plan referred to in my decision dated:

by K R Seward Solicitor

Land at: Friday Grove Farm, Hawkshead Lane, North Mymms, Hatfield AL9 7TF

Reference: APP/C1950/C/19/3226878

Scale: DO NOT SCALE

