



Appeal Decisions

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

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

Appeal A: APP/C1950/C/19/3226882

Appeal B: APP/C1950/C/19/3226883

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Gareth Isaacs (Appeal A) and Mrs Zoe Isaacs (Appeal B) 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, scalpings 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).
- Appeal A is proceeding on the grounds set out in section 174(2)(a),(c)&(f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
- Appeal B is proceeding on the grounds set out in section 174(2)(c) &(f) 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 as amended have lapsed.

Summary of Decisions: The appeals are dismissed, and the notice upheld as corrected and varied as set out in the Formal Decision.

Preliminary Matters

1. A separate appeal has been brought against the same enforcement notice by another landowner under Appeal Ref: APP/C1950/C/19/3226878 on a different ground. It is subject to a separate decision.
2. The numbering is wrong within paragraph 4 of the enforcement notice. Sub-paragraphs 10 and 11 should be 3 and 4. This is easily correctable as a minor typographical error. It would not cause any injustice.
3. The appellants own part of the appeal site described as the access track. Another landowner owns the main field area where car boot sales have taken

place. It is acknowledged that some of the field has been used for daily car parking. The appellants say this was intended to provide a temporary arrangement for students of the nearby college sites.

4. 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. As this reduces the area enforced against, no injustice would arise to any appellant by its substitution for the plan which was issued.
5. Some remedial works have already been undertaken in partial fulfilment of the enforcement notice. The appellants submit that the use of their land has ceased for parking. Early compliance with any of the requirements does not negate those provisions or the notice in any way.
6. As part of the remedial works, the appellants have erected post and wire fencing to separate their access from the land belonging to the other landowner. They have also undertaken some planting along the boundary.
7. 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 and continue either side of an established hedgerow. The amended plan now stops short of the hedge.
8. It is important that the allegation contained within the notice is accurate and precise. That is particularly so where there is a ground (a) appeal because the terms of the deemed planning application are derived from its wording. 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 as: "The material change of use of the land to a car park and the creation of hardstanding to facilitate that change of use". Such correction does not alter the substance of the allegation and having consulted the parties I am satisfied it can be made without injustice to any of the parties.

Appeals A & B – ground (c)

9. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellants.
10. Appellants A and B do not dispute that the use of the land for the parking of vehicles and the hardstanding that facilitates this use, do not benefit from the grant of planning permission.
11. The ground (c) argument is advanced in relation to that part of the appeal site which forms an access track. It is maintained that this is a pre-existing track which has been in place for many years. The appellants quote from the delegated officers report when planning permission was granted for a stable block on their land to the rear of the appeal site. The track had formed part of the application site. The Officer described "an existing vehicular access from the public highway of Hawkshead Road to the south of the site" which "consists of a track constructed from rubble...". In response, the Council points out that the Officer's report explains the history of the hard surface but did not say it

was authorised. It had explained how the County Council were considering enforcement action over the importation of hardcore into the site.

12. The enforcement notice does not allege that an unauthorised access has been created. Indeed, the Council does not dispute that there was "a simple farm track". It is the use of the land for car parking and the laying of hardstanding to which the notice is directed.
13. Some remedial works may now have been undertaken to remove the scalplings and reinstate part of the track to its former condition. Nevertheless, when the notice was issued there was a track used for parking and hardstanding, as alleged. The Council's evidence from its inspections indicates that the hardstanding was laid at a time when the parking use had commenced in order to facilitate that use. That position is reinforced 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 Officer's report states that the hardstanding was installed in January 2016. The application was refused in October 2018.
14. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement. There is no evidence before me to demonstrate that the hardstanding is lawful.
15. The appellants have failed to discharge the burden of proof and I find as a matter of fact that a material change of use of land has taken place with hardstanding laid in breach of planning control. That being so, the ground (c) appeals must fail.

Appeal A - ground (a) and the deemed planning application

16. The deemed planning application is for the development as built on the date the enforcement notice was issued. In this case, the appellant does not seek planning permission for the use of the land as a car park. He seeks to retain the part of the hardstanding within his ownership to a single vehicle width along the pre-existing access to link up with hardstanding approved as part of the stable block development approved in 2012. It is asserted that this would fulfil a functional need for large vehicles to access and collect manure from the stables where the appellant's horses are kept.
17. However, it is not proposed to keep the hardstanding as it was when enforced against. Instead the proposal is for a two-line track to secure improved vehicular access to the stables. This would involve undertaking re-surfacing works for a sub-base and a top finish of planings and with a central grassed strip. It is suggested that this should be secured by a planning condition for approval of the details. It is further suggested that a hedge be planted along the appellants boundary to screen views of the track across the adjacent field. There are already trees and hedgerow screening the eastern boundary.
18. The deemed planning application is for a change of use and works which facilitate that use. While it is possible to grant permission for the whole or part of that development, that is not what the appellant suggests. Planning permission could potentially be granted for the hardstanding or part thereof,

¹ Council ref: 6/2018/1963/FULL

but that is not what I am being asked to do. The appellant does not seek permission for the development which was there when the notice was issued, but for an access which involves other works. What is proposed is a different development comprising the construction of a two-line track (of a different specification) rather than part of a hardstanding. Essentially, it would be a partially hard-surfaced access rather than the hardstanding of a car park as enforced against and existed previously.

19. To grant permission for the works now suggested would intrinsically alter the nature of the deemed planning application. It goes beyond the scope of what can be granted permission under a ground (a) appeal.
20. The arguments are more pertinent to a ground (f) appeal which has also been brought and I address the matter further under that ground.
21. For the reasons given above I conclude that the ground (a) appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeals A & B - ground (f)

22. The ground of appeal is that the steps required by the notice to be taken are excessive. No issue is taken with the requirement to cease the use as a car park. The submissions concern the requirement to remove the entire hardstanding.
23. The first step is to identify the purpose or purposes of the notice. 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)). This is consistent with the notice requiring the use to cease and removal of the hardstanding in its entirety. The notice also identifies Green Belt harm which corresponds with protection of visual amenity.
24. The works were done as part of the material change of use to a car park. In such circumstances, it is necessary to consider whether what is required by the notice is proportionate.
25. The appellants wish to partly retain a hard surface within their land ownership as a lawful access. The Council objects to the retention of any form of hardstanding as being harmful to the Green Belt within which the appeal site lies. This appears to be a reference to the hardstanding as enforced against because the Council also accepts that "lesser steps of a single track access only, as a far reduced amount of hardstanding compared to the previous situation, with no use of the land for car parking, would be acceptable in Green Belt and visual amenity terms." It goes on to say that there "would be no harm upon Green Belt openness and, with the forthcoming hedge planting along the newly erected wire fencing, this would screen views of the track and enhance the rural character of the site."
26. Conditions cannot be imposed for the approval of details or for landscaping under ground (f). That could only occur under ground (a), but as already established that cannot be achieved when the development sought differs in key respects from that enforced against. Thus, there is no obvious alternative to complete removal that could be undertaken at less cost and disruption.

27. It is not disproportionate or excessive to require removal of works that facilitate the breach. The appeal on ground (f) cannot succeed but given the Council's response I shall extend the period of compliance to 4 months before the hardstanding and resultant waste must be removed. This will allow opportunity for a planning application to be progressed for the proposal if the appellants so wish. If in the meantime permission is forthcoming, then the notice shall cease to have effect so far as inconsistent with that permission under section 180(1) of the 1990 Act.

28. I shall vary the enforcement notice prior to upholding it.

Formal Decisions

Appeal A

29. 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.

30. Subject to these corrections and variation the appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

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

- (i) renumbering the paragraphs under the heading of "4. REASONS FOR ISSUING THIS NOTICE" 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.

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

KR Saward

INSPECTOR



Plan

This is the plan referred to in my decision dated:

by K R Saward Solicitor

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

References: APP/C1950/C/19/3226882 & 3226883

Scale: DO NOT SCALE

