



Appeal Decision

Site visit made on 25 June 2020

by M Madge Dip TP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th July 2020

Appeal Ref: APP/R5510/C/19/3243369

Land at Pond Farm, New Years Green Lane, Harefield, Uxbridge UB9 6LX

- 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 Campbell McAuley of UKMGT Limited against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice, numbered HS/ENF/016289, was issued on 28 November 2019.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land for open storage and distribution facility for aggregates, cement and concrete (Use Class B8).
- The requirements of the notice are:
 - (i) Cease the use of the land for open storage and distribution facility for aggregates, cement and concrete;
 - (ii) Remove from the land all aggregates, cement and concrete;
 - (iii) Remove from the land all vehicles, plant, machinery and other paraphernalia associated with the unlawful use; and
 - (iv) Demolish and remove the boundary fence as shown in the approximate position lined in blue on the attached plan and remove all resultant debris.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with corrections and variation in the terms set out in the Formal Decision.

Preliminary matter

1. The description of the land affected by the breach is set out in paragraph 2. of the notice as "Land at Pylon Farm, (New Years Green Pond Farm) New Years Green Lane, Harefield, UB9 6LX". The land affected by the breach is correctly identified on the plan attached to the notice. The appeal form confirms the land to be located at Pond Farm, and not at Pylon Farm. This is a minor matter and so I can make the necessary alteration to the notice without causing injustice to the appeal parties.
2. As set out in the notice, the breach is not identified as a "material change of use of land", only a "use of land". Furthermore, the inclusion of (Use Class B8) is unnecessary. The wording of the alleged breach should be changed to become "Without planning permission, the material change of use of land for open storage and distribution facility for aggregates, cement and concrete". I am satisfied that such a change is able to be made without prejudice to the appeal parties.
3. The development identified in the breach was carried out by a tenant, who has now vacated the premises. The Council has confirmed in their statement of

case that requirements 4 (i) to (iii) have been complied with and I saw this to be the case during my site visit. The Council also confirms, that the removal of the fence exceeds what is necessary to remedy the breach.

Ground (f)

4. For the appeal to succeed on ground (f), I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
5. It is clear from the requirements of the notice that its purpose was to remedy the breach of planning control. Where a material change of use has occurred, section 173(5) of the Act¹ gives power to require the removal of buildings, which would include a fence, for the purpose of remedying the breach. Such a building, or in this case a fence, would have to have been erected to facilitate the breach.
6. Paragraph 4 (iv) of the notice requires the removal of a boundary fence shown in the approximate position lined in blue on the plan attached to the notice. The fence referred to in the notice is the profile mesh fence that currently secures the site. I have nothing before me to confirm that the fence was erected to facilitate the development identified in the breach.
7. Historic photographic imagery of the former manège shows that it benefitted from a timber boundary fence, wall and flood lights. The wall has been removed, the flood lighting is still in place and I saw that the timber fence no longer encompasses the whole area lined in blue on the plan.
8. The appellant argues that the profile mesh fence is required to ensure that the site is not subjected to unauthorised activity, such as fly tipping. Furthermore, a fence would be required to revert to the former lawful use of the site as a ménage. The Council do not dispute the lawful use of the site as a ménage. The appellant confirms that if the fence is removed, they would erect a replacement fence of similar height and construction, which would put them to unnecessary and unreasonable cost.
9. I find the appellant's arguments persuasive and consider the boundary fence to be a reasonable provision. I concur with the Council, that the removal of the fence exceeds what is necessary to remedy the breach. No injustice would result from the deletion of this requirement from the notice. For these reasons, I allow the ground (f) appeal, in so far as the notice is varied.

Decision

10. It is directed that the enforcement notice be corrected:

- In paragraph 2 by the deletion of the description of the Land and the substitution of the words: Land at Pond Farm, New Years Green Lane, Harefield, Uxbridge UB9 6LX, as shown edged red on the attached plan.
- In paragraph 3 by the deletion of the words of the alleged breach of planning control and the substitution of: Without planning permission, a material change of use of land for open storage and distribution facility for aggregates, cement and concrete ("the breach").

¹ Town and County Planning Act 1990 (as amended)

11. The appeal is allowed on ground (f), and it is directed that the enforcement notice be varied by the deletion of paragraph 4 (iv) which states "Demolish and remove the boundary fence as shown in the approximate position lined in blue on the attached plan and remove all resultant debris".
12. Subject to these corrections and variation the enforcement notice is upheld.

M Madge

INSPECTOR