



Appeal Decision

Site visit made on 5 August 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2020

Appeal Ref: APP/L3815/C/19/3232846

Land at Witsend Nursery, Third Avenue, Batchmere, Chichester, West Sussex

- 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 Danny Knight against an enforcement notice issued by Chichester District Council.
 - The enforcement notice was issued on 6 June 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the change of use of land for the storage of caravans, motorhomes, boats and boat trailers.
 - The requirements of the notice are: (i) Cease the use of the land for the storage of caravans, motorhomes, boats and boat trailers; (ii) Remove the caravans, motorhomes, boats and boat trailers from the Land; (iii) Remove the hard core (in the approximate position shown on the attached plan) from the Land, and (iv) Following completion of step (iii) above, level and reseed the Land with grass.
 - The period for compliance with the requirements is Three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) 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.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with correction and variations.

The Enforcement Notice

2. The allegation does not specify that there has been a “material” change of use of the land. It is however plain from the notice that a material change of use is being enforced against and so injustice to the parties would not arise from making this correction.
3. The land where the unauthorised storage use is taking place is confined to that of a former ménage, which is hatched blue on the plan attached to the notice. However, the land affected, as edged in red, extends substantially further. The Council originally considered that the unauthorised storage use had taken place across this wider area of land, although this is disputed by the appellant as it is contended that other caravans were only present whilst works were being undertaken on the adjoining dwelling.

4. Notwithstanding this, the Council has now invited me to amend the plan using my powers under s.176(1) of the Act with '*the area of enforcement being reduced to the area of hardstanding in the southeast area of the EN plan.*'. The appellant has similarly made this request and the parties have since agreed an amended plan, which is now before me. I consider that this would correctly identify the planning unit given the physical and functional separation of the unauthorised storage use from the remainder of the site, and that substituting an amended plan, as means of correction, would not cause injustice to the parties.

The ground (b) appeal

5. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control had not occurred as a matter of fact at the time the enforcement notice was issued.
6. The appellant states that the area of land was rented to provide storage for 10 caravans and some boat trailers, but that the majority of these have been removed since the notice was issued, leaving only items belonging to the appellant. It is contended that this then does not amount to a breach of planning control.
7. However, there is very little evidence to demonstrate on the balance of probabilities why the appellant storing his own such items on what was a ménage, would not amount to a breach of planning control as a matter of fact. Moreover, any changes that may have taken place since the notice was issued are not relevant to my assessment, and the appellant accepts that a storage use had occurred at the time the notice was issued.
8. The appeal on ground (b) therefore fails.

The ground (c) appeal

9. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
10. It is asserted that the appellant should have the right to store his own caravans and trailers on his land. However, no planning permission or evidence that such a use would, for example, not constitute development, have been brought to my attention to demonstrate on the balance of probabilities why there has not been a breach of planning control in respect of the items attacked by the notice. That they are simply owned by the appellant and are said to be used in connection with his use and occupation of the land is not adequate evidence to demonstrate on the balance of probabilities that there has not been a breach of planning control in these regards, particularly as a separate planning unit has been identified.
11. The appeal on ground (c) therefore fails.

The ground (f) appeal

12. The purpose of the enforcement notice is to remedy the breach of planning control as it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives.
13. The appellant contends that there was previously a 300mm deep hardcore base topped with sawdust, given the area was in use as a ménage, and that the sawdust was then removed and replaced with a topping of 50mm deep road planings.
14. The notice can only seek to remedy the breach of planning control enforced against. It cannot secure perceived enhancements or address other potential breaches of planning control, such as whether the ménage was constructed in accordance with the previously approved plans.
15. In light of the evidence about the previous condition of the land, and which in many cases an appellant will be the person with the best knowledge of what that previous condition was, it would be excessive for the area concerned to be levelled and reseeded with grass. In order to remedy the breach of planning control it is therefore only necessary to require the hardcore/road planings be removed, which facilitated the unauthorised use, and for the land to be restored to its former level and condition.
16. The ground (b) and (c) appeals have already failed and therefore it is not excessive for items that are stored in contravention of the requirements of the notice, irrespective of their ownership, to be removed.
17. The appeal on ground (f) therefore succeeds to the extent described above.

The ground (g) appeal

18. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short.
19. The appellant states that there is a shortage of places to store caravans and that a period of up to 8 months is required; although there is very limited evidence before me to demonstrate any shortage. However, an additional month for compliance will provide the appellant with some additional flexibility, without unnecessarily perpetuating the breach of planning control.
20. The appeal on ground (g) therefore succeeds to this limited extent.

Overall Conclusion

21. For the reasons given above I conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice with corrections and variations.

Formal Decision

22. It is directed that the enforcement notice be corrected and varied by:
 - inserting the word "material" between "*Without planning permission the*" and "*change of use*" in section 3.

- deletion of the words "*(iii) Remove the hard core (in the approximate position shown on the attached plan) from the Land, and (iv) Following completion of step (iii) above, level and reseed the Land with grass.*" and their replacement with the words "*(iii) Remove the hardcore/road planings and restore the land to its former level and condition.*"
- substituting "*Four months*" as the period for compliance.
- substituting the Plan attached to the notice for the Plan attached to this decision letter.

23. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR



Plan

This is the plan referred to in my decision dated:

by Paul T Hocking BA MSc MRTPI

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Reference: APP/L3815/C/19/3232846

Scale: DO NOT SCALE

