



Appeal Decision

Site visit made on 7 January 2021

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 16 February 2021

Appeal Ref: APP/K3605/C/20/3249215

Land adjoining the Black Swan Public House, Martyr's Green, Cobham and Land north east side of Old Lane, Cobham, Surrey KT11 1NH

- 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 Hawksview Investments Limited against an enforcement notice issued by Elmbridge Borough Council.
 - The enforcement notice was issued on 19 February 2020.
 - The breach of planning control as alleged in the notice is: Within the last 10 (ten) years and without planning permission, a material change of use of the Land for the siting of storage containers and, within the last 4 (four) years and without planning permission, the unauthorised formation of hardstanding.
 - The requirements of the notice are to:
 - (a) Permanently cease the use of the Land for the siting of storage containers
 - (b) Permanently remove all storage containers from the Land
 - (c) Break up the hardstanding and permanently remove from the Land (the approximate location of the hardstanding is hatched in blue on the attached plan for illustrative purposes only)
 - (d) Reinstate the area, (as hatched in blue on the attached plan for illustrative purposes only) to its former condition by re-grassing.
 - (e) Permanently remove from the Land any waste associated with complying with steps (a), (b), (c) or (d).
 - The period for compliance with the requirements is two (2) calendar months from the date on which this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2) (d).
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Formal Decision

1. The appeal is dismissed and the enforcement notice is upheld, but subject to the following correction:

Delete Requirement (c), and re-word it "Break up the hardstanding, in preparation for its removal from the Land (the approximate location of the hardstanding is hatched in blue on the attached plan for illustrative purposes only)".

Application for costs

2. An application for costs was made by Hawksview Investments Limited against Elmbridge Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appellant indicates that the appeal relates only to the laying of the hardstanding, and the alleged unauthorised siting of the storage containers is not being challenged. My assessment, therefore, is limited only to the alleged breach of planning control arising from the laying of hardstanding.
4. Nonetheless, irrespective of the merits, or otherwise, of any appeal that might have been made against this particular alleged breach, I am satisfied that the allegation, as worded, correctly identifies the planning position insofar as it addresses the Council's belief that the siting of storage containers on the land has resulted in a material change to its use.
5. The photographs, both aerial and those taken at ground level, would suggest that a track, of varying definition and width, has existed in the same position across the field for a number of years starting from the gate which demarcates the field from the area of land which has been used in connection with the Black Swan public house (PH).
6. As the appellant has appealed only on ground (d) the Council is not being challenged on its assertion that the alleged breach is such as to constitute development. In the circumstances, on the basis of the photographic evidence adduced by both main parties, and in the absence of any argument otherwise, I am treating the operation identified as development for which planning permission is required. In support of this stance I refer to the court judgement of Lord Denning in *Parkes v SSE* [1979] 1 All ER 21172 where it was held that operational development comprises activities which result in some physical alteration to the land, which has some degree of permanence to the land itself. I will expound on this later in the decision letter.

The appeal on Ground (d)

7. On this ground the Appellant must successfully demonstrate, on the balance of probability, that the breach of control alleged in the notice commenced 4 years before the date of the issue of the enforcement notice, ie prior to 19 February 2016 (hereinafter referred to as "*the material date*") and has continued since.
8. It is clear from the various photographs, as produced by both parties and also letters from certain local persons, submitted by the appellant, that the purpose of the track is to provide access to an area within the field used each autumn for the building of bonfires. This event would appear to have taken place annually for at least the past fifteen years. From this, it would be expected that the line of the track would become more defined immediately before, to allow for the bonfire to be built, and then from use at the gathering itself. Accordingly, grass that might have sprouted through during the summer months would be trodden over.
9. The earliest aerial photograph produced, that dated 10 August 2015, shows a much fainter and seemingly narrower track than I noted was the case at my site visit. In fact, when examining the subsequent aerial photograph dated 26 September 2018 there is little difference discernible from that some three years earlier. The closer inspection from the ground photographs of June and September 2018 would suggest that grass has sprouted through and formed over the roughly linear track. When comparing these, however, to the

photographs taken during the autumn of 2019 the situation appears to have changed markedly.

10. Whether an operation or change of use will be too minor to constitute development and hence neither require permission nor be classed as permitted development will be a question of fact and degree to be determined in each case, having regard to its scale, nature and effect.
11. The photograph of 22 October 2019 shows a digger on the site, subsequent to which, as illustrated by those dated 11 November 2019, the track leading to the remains of the bonfire has clear definition from the significant amount of hardcore laid, and also has considerable width in its context. Accordingly, in applying the criteria from the *Parkes* ruling it would seem clear that the hardstanding laid in the autumn of 2019 led to a physical alteration to land. Indeed, it is evident that the nature and compaction of the hardcore would now preclude any meaningful seasonal grass breaking through, and has resulted in a degree of permanence. This was evident from my site visit observations some fourteen months after it was laid. Indeed, the extent of the hardcore now strongly suggests the formation of a hard accessway from the PH's car park up to the bonfire area within the field.
12. The appellant says that the hardcore needs to be topped up from time to time. That might be the case but, it seems to me that, due to amount of hardstanding laid in 2019, the Council then considered it expedient to issue an enforcement notice requiring for its removal. Given the unauthorised operational development identified, a matter which the appellant has not disputed in this appeal, I am satisfied that the operation has constituted development under s55 of the Town and Country Planning Act 1990 as amended, and also that the enforcement notice was issued correctly.
13. More to the point, in light of the material visual change to the land itself at this time, to a degree which crossed the threshold of what could be considered relatively minimal change during the years preceding this, the photographic evidence shows that the appellant is unable to convincingly demonstrate, on the balance of probability, that the unauthorised development, the subject of the enforcement notice, had taken place on or before the material date, as highlighted above.
14. In light of my findings, and as the wording of the notice's Requirement (c) is incomplete and, besides, is covered by Requirement (e) I have re-worded it, accordingly. This minor change merely provides clarity in the circumstances and does not prejudice either of the main parties.
15. Accordingly, the appeal on Ground D fails.

Conclusion

16. For the reasons given above I conclude that the appeal should not succeed. Accordingly, I shall uphold the enforcement notice, as corrected.

Timothy C King

INSPECTOR