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## Appeal Decisions

Site visit 30 June 2021

**by Simon Hand MA**

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

**Decision date: 26<sup>th</sup> July 2021**

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### **Appeal A: APP/X0360/C/20/3269351**

#### **Westwood Yard, land to the north west of Sheerlands Road, Arborfield RG40 4QX**

- 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 Colin Ray against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 21 January 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of land from agricultural use to use as a builder's yard.
- The requirements of the notice are 1. Cease the use of the Land as a builders' yard. 2. Remove all containers and equipment associated with the builders' yard use from the Land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

### **Appeal B: APP/X0360/C/20/3262643**

#### **Westwood Yard, land to the north west of Sheerlands Road, Arborfield RG40 4QX**

- 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 Colin Ray against an enforcement notice issued by Wokingham Borough Council.
  - The enforcement notice was issued on 30 September 2020.
  - The breach of planning control as alleged in the notice is 1. Without planning permission, the creation of an area of hardstanding (outlined in blue on Plan 1). 2. Without planning permission the erection of two buildings associated with the use of the land as a builder's yard (outlined in green on Plan 1).
  - The requirements of the notice are 1. Removed Structures A and B annotated and edged in green on Plan 1 from "the Land" and remove all resultant materials. 2. Break up and remove the hardstanding shown edged in blue on Plan 1 and return the land to its former condition prior to the breach by way of re-seeding using grass seed at 50 grammes per square metre.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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## Decisions

### Appeal A – 3269351

1. It is directed that the enforcement notice is corrected by deleting the words “to use as a builder’s yard” from the allegation and replacing them with “to a mixed use of builder’s yard and agricultural” and varied by deleting the words “Land as a builders’ yard” from requirement 1 and replacing them with “builder’s yard element of the mixed use”.
2. Subject to the correction and variation, the appeals is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

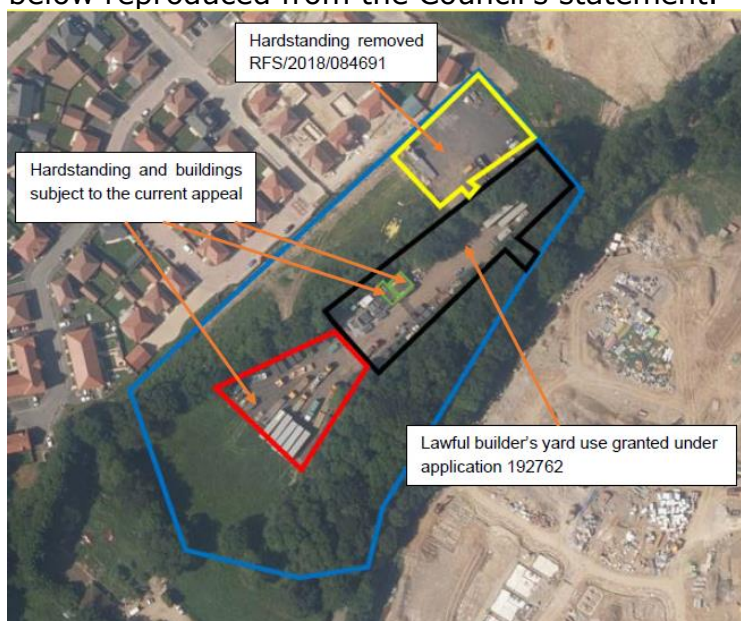
### Appeal B – 3262643

3. The appeals is dismissed and the enforcement notice is upheld.

### Background to the Appeals

4. The site occupies an area of land in the open countryside adjacent to an existing builder’s yard. That yard was considered by the Council to be unlawful. In October 2019 an application for planning permission to regularise the formation of a hardstanding and erection of 2 buildings was made and refused. That refusal was appealed (3255736). In the meantime an application for an LDC for use of part of the land as builder’s yard was granted by the Council. The appeal for the hardstanding and buildings was subsequently refused. Two enforcement notices were issued on 30 September 2020, notice A alleging a material change of use and notice B directed against the hardstanding and 2 buildings. Notice A was appealed (3262642) but was withdrawn by the Council as was the appeal, because of some confusion over the extent of the land subject to the allegation. The notice was reissued in January 2021 and is subject to this Appeal A. Notice B is subject to this appeal B.

The upshot of this is that the situation is as shown in the aerial photograph below reproduced from the Council’s statement.



5. The area outlined in black now benefits from the LDC as a lawful builder's yard, but there is no permission for any buildings on it. The hardstanding on the area in red and the two buildings outlined in green on the lawful area of yard were considered in the s78 appeal (3255736) and the appeal was dismissed. The red area is covered in hardstanding and the material change of use of that area to a builder's yard is the concern of Appeal A while the operational development of the hardstanding and the 2 buildings on the black area are the concern of appeal B.
6. Appeal 3255736 for the hardstanding and the buildings was refused so there is no ground (a) on Appeal B, this appeal relates only to grounds (f) and (g). However the principle of the material change of use of the land that is covered by the hardstanding to a builder's yard is considered as part of Appeal A and that has a ground (a). If I were to decide to allow Appeal A, that would have consequences for the outcome of Appeal B. Although the issue of the extended builder's yard has already been considered by the previous appeal Inspector, new evidence has been provided to rebut some of the Inspector's criticisms. Therefore I shall deal with Appeal A first and then B.

### **Appeal A – 3269351**

#### *The appeal on ground (b)*

7. Ground (b) is that the matters alleged have not occurred. Clearly they have and there is no dispute about that. The issue is the scope of the notice as defined by the plan attached. The plan outlines in red a large area of the appellant's land including the disputed hardstanding area and the land to the west and south of that, wrapping round the lawful builder's yard to a narrow point at the north-eastern corner of the land. Both parties agree a new plan can be substituted to just show the hardstanding area.
8. However, the appellant seems to accept that the change of use has occurred over an area of land somewhat larger than the hardstanding area but seeks only permission to use the hardstanding itself. On my site visit I noticed the rear of the hardstanding area was separated from the rest of the land by a low bank, but there were vehicles and other items stored in the field beyond so I consider that it is unclear exactly where the change of use starts. There would seem to be no uses going on in the southerly area which is a TPO woodland. Any lawful activities on the land beyond the LDC area are confined to agriculture, which includes forestry. It would therefore be simpler and more accurate to change the allegation to a mixed use of builder's yard and agriculture. There would be no injustice in doing so, as none of the arguments will change.
9. The appellant also argues the red line runs across the entrance to the site and so upholding the notice would, in some way, prevent lawful access to the area covered by the LDC. However, this notice, even as corrected, only deals with the use of the land as a builder's yard. There is no doubt what land it refers to and the right to access the hardstanding that has been found to be lawful by the issue of an LDC is not affected by the notice. Subject to the correction discussed above I shall dismiss the ground (b).

*The appeal on ground (a)*

10. The ground (a) appeal is limited to seeking permission for a material change of use of the hardstanding area to a builder's yard. The previous decision<sup>1</sup> was issued in December 2020. The Inspector found the site lay in designated open countryside where new development is strictly controlled in accordance with policy CP11 of the *Wokingham Borough Local Development Framework Adopted Core Strategy Development Plan Document 2010* (the Core Strategy). The site is surrounded by belts of protected trees located around the boundaries and these make a significant positive contribution to the visual amenities of the locality and typify its rural character. Access is from Sheerlands Road, which has a sylvan character, with no pavements and with trees and mature landscaping along the edges. All of this I would agree with. The wider area is part of the Arborfield Garrison Strategic Development Location (SDL) which covers a huge area of countryside. The appellant argues this somewhat negates the core strategy protections as there should be greater flexibility in area that is rapidly being developed. As I saw new houses are being constructed to the north and south of the site. However, the SDL allocates large areas of countryside as green space and this is true of the appellant's land. Although now the builder's yard is lawful, at the time of the SDL the whole area was considered to be open space as a buffer between the adjacent housing estates. It seems to me therefore the remaining, and still substantial undeveloped portion of the land has taken on greater significance and the case for protection, has if anything been strengthened.
11. The previous Inspector found the existence of the lawful yard did not justify an expansion which would harmfully encroach onto the countryside. The extra containers, materials, HGVs and traffic would all intensify the urbanisation of the land which "*would be harmful to the intrinsic landscape character of the undeveloped green landscape wedge*". Having seen the site I cannot but agree with this conclusion.
12. The Inspector was also concerned about noise from the extended yard harming the amenity of nearby occupiers of houses. The movement of vehicles, reversing beepers, alarms, people shouting instructions, metal crashing and banging, especially with the unloading of machinery and containers, would all inevitably be associated with a builder's yard and was potentially harmful.
13. Now the appellant has provided a noise assessment which largely agrees with this analysis. However, the assessment makes the point that noise will be generated by the lawful yard, so the main issue is whether a bigger yard would be materially noisier. The appellant argues that a turning circle can be created in the bigger yard so reducing the amount of reversing, but the assessment suggests this would have little overall impact. Equally a 4m acoustic barrier would help, but there is no room for this and the wall of stored containers, which are subject to constant change and so do not provide a proper acoustic screen. Indeed it seems to me they are part of the problem. Other mitigation could be turning off reversing beepers and encouraging the workers to be quiet out of hours. Neither of these seem particularly convincing to me.
14. The crux of the assessment is that reducing the size of the site would only marginally affect the level of noise generated. This however is a somewhat theoretical conclusion. It seems to me commonsense that if the site is smaller

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<sup>1</sup> APP/X0360/W/20/3255736

- (and it would be reduced by about a third) then there will be less activity, rather than the same amount of activity compressed into a smaller space. The recorded noise levels are significantly above background levels especially early in the morning and out of hours in the evening or at weekends, and all such times are essential to the operation of the appellant's business. I also agree with the Council that even if mitigation measures could be provided, they could only be enforced over the new area and not the main yard and so would not be greatly effective. All in all I consider the site is likely to be noisy and to allow it to get bigger will be likely to extend that noise nuisance to cause further harm.
15. The site is located within area of woodland covered by a series of TPOs. The Council are concerned that the hardstanding itself along with many of the containers are in conflict with the root protection areas of a number of TPO'd trees and with their canopies. The appellant's arboricultural report is probably best described as a high level commentary, which has no specific plans and shows no root protection areas. It comments generally that work needs to be done and a meeting on site would be helpful. There is a statement that there is no harm being caused by the containers but that is backed up by no evidence. I don't think this provides any useful support for this appeal at all. Policy CCO3 requires appellants to show how they have considered and achieved the protection and retention of existing trees. There is no evidence to suggest the requirements of policy CCO3 have been met.
16. I have considered the benefit of supporting a rural business and the useful work the appellant carries out, but as the previous Inspector noted the yard does not need to be in the countryside and these matters do not outweigh the serious harm I have identified. To allow the appeal would be contrary to the development plan as it would harm the countryside, protected trees and the amenities of neighbours by way of noise and no conditions have been suggested which could overcome these problems. The appeal on ground (a) is dismissed.

*The appeal on grounds (f) and (g)*

17. The ground (f) appeal really only refers back to the ground (b). As corrected the notice can be upheld. The mixed use will cease across any part of the red lined area, there would seem to be no overlap with any other lawful uses, but even if there were the notice cannot override a separate lawfully established use.
18. There is no reason why the appellant cannot cease the use and remove any containers and materials within 3 months. The appellant suggests he may have to find an entirely new site to carry on his business, but that is for him to determine it is not a pre-requisite of upholding the notice.
19. The appeal on grounds (f) and (g) is dismissed.

**Appeal B – 3262643**

*The appeal on ground (f)*

20. This ground is that the steps required in the notice are excessive and lesser steps would overcome the objections. Firstly the appellant argues the requirement to remove the structures A and B is void for uncertainty. This is clearly not the case. The "land" is Westwood Yard as identified in section 2 of the notice "The Land Affected". It is outlined in red on the plan attached to the

notice. There is no dispute as to what structures A and B refers to, and I do not see how the word "remove" can have any ambiguity. If the structures cannot be removed in one piece, as the appellant states, then they need to be reduced to a state in which they can be removed. The resultant materials also need to be removed. The requirement does not repeat the phrase "from the land", but that is clearly understood.

21. The appellant also argues the requirement to break up and remove the hardstanding is uncertain and ambiguous. This also is not the case. The area of the hardstanding is clearly defined in the plan attached to the notice as outlined in blue. That is the same area as outlined in red in the above photograph. The requirement does not require the resultant debris to be removed from the land, just to be removed. However, the land should be restored to its former condition. The 'land' in that context can only refer to the area edged blue in the notice attached to the plan, therefore the hardstanding needs to be removed from the area edged in blue. I agree, the resultant debris could be stored in the builder's yard if that was what the appellant wished to do, but if it was placed back onto the re-seeded blue land or anywhere else on the site that would probably amount to either the spreading of waste or the creation of a hardstanding, both of which would be likely to require permission.
22. The requirement to re-seed the blue land is merely to restore it to its former condition. The aerial photographs show the land appears to be pasture in 2017 so requiring it to return to pasture does not seem excessive. If the appellant wishes to plough the land instead, he can always ask the Council if that would be an acceptable form of compliance. The appeal on ground (f) fails).

### **The Appeal on Ground (g)**

23. The time for compliance is 3 months. At the time of making the appeal the Covid-19 situation was more uncertain than it is now but even so I can see no reason why it should take longer than 3 months to dig up a relatively small area of concrete and reseed the land. The appeal on ground (g) fails.

*Simon Hand*

Inspector