



Appeal Decision

Site visit made on 19 October 2021

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 November 2021

Appeal Ref: APP/M1595/C/21/3267988

Land on the East Side of Sandy Lane, West Thurrock, Grays

- 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 Ms P O'Driscoll against an enforcement notice issued by Thurrock Borough Council.
 - The enforcement notice was issued on 28 January 2021.
 - The breach of planning control as alleged in the notice is:
 - i. Without planning permission the material change of use of the Land to B8 storage use.
 - ii. The unauthorised development of the creation of hardstanding to facilitate the unauthorised change of use to B8 storage use.
 - The requirements of the notice are:
 - i. The cessation of the unauthorised B8 storage use of the Land, including the cessation of any unauthorised incidental or ancillary uses.
 - ii. Remove from the Land the unauthorised hardstanding.
 - iii. Remove from the Land [of] all equipment, machinery, materials, vehicles, waste, rubble and debris associated with the works to comply the requirements i and ii detailed above.
 - The periods for compliance with the requirements are within fourteen days for step (i) and within three calendar months for steps (ii) and (iii).
 - The appeal was made on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected in paragraph 2 by the deletion of the words "outlined in red" and the substitution of the words "edged and hatched black"; by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice; and in paragraph 5 step iii by the deletion of the word "of" and by the deletion of the words "comply the" and the substitution of the words "comply with the".
2. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. At the start of the appeal process the Planning Inspectorate decided that the Hearing procedure was suitable, having applied the relevant criteria and considered all representations received. A hearing was arranged for 7 September 2021 but due to issues related to notification the hearing was cancelled shortly before it was due to take place.

4. The hearing procedure was reviewed taking into account various considerations, including the change in circumstances in respect of the grounds of appeal. Exercising the duty under section 319A of the Town and Country Planning Act 1990 as amended, it was determined to vary the procedure and the appeal is now proceeding on the basis of written representations.

The Land

5. The Land is shown outlined in red on the plan attached to the enforcement notice. The area outlined is roughly rectangular in shape and extends some distance northwards from the junction of Sandy Lane with Biggin Lane.
6. The aerial photographs included in the Council's evidence do not show all of the Land but focus on a smaller area in the south west corner. The Council's statement also refers to the Land comprising two parcels and distinguishes the Site, where the alleged breaches of planning control have occurred.
7. On the site visit, the smaller area was easily distinguishable from the remainder of the Land. The land parcel was enclosed by fencing and was at a much lower level than the land immediately to the north. A very noticeable feature was that the northern boundary was defined by a 'wall' of sand. This sandy bank continued along the eastern boundary, gradually reducing in height. Most of the ground surface was covered in road planings to form a flat hard surface, with a sandier top covering near the northern boundary. A low level of storage was taking place primarily near the Sandy Lane boundary consisting of building materials and equipment (such as timber, scaffold, ladders) together with an old car, a yellow box container and a small number of other items. The adjoining land within the area outlined in red appeared to be rough pasture or grazing land.
8. The description of the alleged breach of planning control is a change to a single primary use (not a mixed use) and is directed at the smaller land parcel. That being so I considered that the notice should focus on that smaller land parcel. The parties were consulted on the proposed correction to the Land affected.
9. The appellant's response outlined a chronology of matters that included reference to injunctions in respect of land north of Biggin Lane and east of Sandy Lane. An interim injunction order was made on 29 January 2021 and a final order was made on 8 October 2021. The appellant acknowledged that the injunction proceedings did not seek to take action against the smaller land parcel¹. The appellant concluded "It is not believed that the Inspector is able to modify the enforcement notice without changing the Court Orders sought and obtained under s187B".²
10. The Council was content with the suggested correction.
11. I note that the final order, in paragraph 2, allows for compliance with the requirements of the enforcement notice. The appellant has not explained why a correction to the notice would require a change to the Court order. Clearly I cannot interfere with the Court order. My expectation is that if a correction to Land affected and the notice plan would have implications for the order the Council would have objected to a reduction in the area of the Land. I conclude

¹ The information provided indicates that the Order is in respect of the area proposed to be excluded from the Land.

² Paragraph 4.2 of response dated 28 October 2021.

that no injustice would occur to either the appellant or the local planning authority by redefining the Land and substituting a new plan.

Grounds of appeal

12. The appellant confirmed by email dated 31 August 2021 that the appeal is now restricted to ground (d) and ground (g). I will take no further action on grounds (b), (c), (e) and (f).

Reasons

Ground (d)

Main issue

13. In respect of a material change of use of the land to a B8 storage use no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
14. The issue is whether the development took place before 28 January 2011 and whether the use of the land for storage continued thereafter without any substantial interruption for a period of ten years.
15. The notice alleges the hardstanding facilitated the unauthorised change to a storage use, as opposed to alleging the carrying out of an engineering or other operation as a separate act of development. Based on case law, where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate and were integral to the new use, the notice may require that the works are removed in order to restore the site to its previous condition and remedy the breach. That being so the relevant immunity period is ten years also.
16. The onus of proof is on the appellant and the standard of proof is the balance of probability.

Summary of cases

17. The appellant provided evidence, in the form of extracts from OS maps and photographs, to show that a dwelling house stood on the parcel of land at the junction. The adjacent land to the north and west (the larger area originally identified on the notice Plan) was allotment gardens. The dwelling was said to have been demolished in the mid 1990s.
18. The main points of the appellant's case are that there has been hardstanding on the land since at least 1995 when the dwelling was demolished. In 2004 a caravan and in 2006 a substantial building were sited on hardstanding. In 2013 the hardstanding was covered in road planings. The land has been used for storage since at least 2004. Containers and cabins were stationed there and were used to repair, store and maintain machinery throughout. Vehicles, machinery and building tools also were stored. The main evidence relied on is a series of aerial photographs.
19. The Council also stated that historically a dwelling was situated on the land parcel and that once it was demolished (in the late 1960s, early 1970s) the land returned to open pasture. The Council acknowledged that over the last ten years multiple unauthorised uses and developments occurred, including the stationing of a mobile home and the storage of materials. However, none were

consistent, uninterrupted or in place for any duration of time to gain immunity. At the beginning of January 2021 the Council investigated excavation works taking place together with the removal and importation of material to form a hardstanding. The works prompted investigation, the serving of a Temporary Stop Notice and the issue of the enforcement notice.

Evidence

20. As a matter of fact an enforcement notice was issued on 17 June 2005 alleging the erection of a large stable block and kennels. The Land affected was the smaller land parcel near the junction of Biggin Lane and Sandy Lane. The requirements were to cease the use of the land as stables and kennels, remove the stables and kennels, break up the concrete base and remove the resulting materials and restore the land to grass pasture land.
21. The Council's evidence as to the sequence of events linked to the issuing of the enforcement notice in 2005 has substantial weight because it is in the form of a detailed contemporaneous record of investigations at the time. The probability is that the land was used for horse grazing in the early 2000s but following a change in the leaseholder, stables and kennels were built and a mobile home was stationed on the land. After the issue of the enforcement notice the Council was in contact with the owners about compliance with the requirements of the notice. By October 2006 the large stable block and caravan had been removed, although the concreted hardstanding remained together with a disused lorry. The land changed ownership again in 2008 and the Council reported the new owner intended to graze horses there. The outstanding requirements of the notice, the breaking up and removal of the remaining hardstanding, were complied with and the investigation closed in January 2009. The use of the land returned to horse grazing. By all accounts the notice was complied with in full.
22. The aerial photographic evidence supports this description of the main changes to development on the land over the period 2005 to 2009. In the set of aerial photographs in January 1999 the land appears to be covered in vegetation with a single structure near to the south west corner. However, the image is not of good quality. In 2004 the land had significantly changed. The southern part was covered with hardstanding and two buildings had been erected. To the north the land was covered in vegetation and two smaller structures were visible. The probability is that the image is of the stables and kennels. In the image dated April 2007 the stable and kennel buildings were no longer present and it appears the hardstanding was in the process of being removed. By January 2010 much of the land was covered with rough vegetation with a few structures and vehicles on the southern part.
23. The image dated 2013 shows all the land cleared of vegetation, a small structure (possibly a vehicle or caravan) sited near the western boundary and a small structure sited on the southern boundary. A similar structure is shown on the western boundary in the image dated 2015, although the ground surface appears to have been covered in a different material. In 2018 the surface of nearly the whole site was covered in a dark surface material, with perhaps some building materials stored in the top corner and a vehicle and lorry body near the southern boundary. A similar picture is shown on the 2019 image, although with a few cars present and a different pattern of low level storage. Little appears to have changed in the images taken in March and April 2020.

24. The Council's photographs of the site on the 8 January 2021 show works concentrated at the northern end of the site where there were mounds of sand. Piles of road planings were deposited at the southern end of the site. On 11 January equipment had been removed and the ground was levelled.
25. The appellant applied for a certificate of lawfulness of use or development in January 2021 in respect of hardstanding, the standing of containers for storage and the storage of vehicles and tools. The Council found the application to be invalid and no certificate was issued.

Conclusions

26. The appellant has not shown on the balance of probability that once the dwelling was demolished the site acquired a lawful B8 storage use through the passage of time. The probability is that the land reverted to pasture and was used for horse grazing. The following chapter in the site history focused on the erection of stables and kennels and the laying of hardstanding. Enforcement action eventually resulted in hardstandings and bases being broken up and removed and the land returning to pasture and horse grazing by 2009.
27. There is little evidence about the use of the land thereafter, except the aerial photographs. Since around 2013 the use of the land for low level storage appears to have been facilitated by the laying of a new hard surface and covering and the extension of the hard surface across nearly all the land. The activity reported by the Council in early 2021 may have been connected with some subsidence of the retaining sandy bank.
28. The appellant has not demonstrated on the balance of probability that a material change of use to a B8 storage use took place before 28 January 2011 and that thereafter the storage use continued without any substantial interruption for a period of ten years. The use of the land for B8 storage is not immune from enforcement action due to the passage of time. The creation of a hardstanding to facilitate the change of use to storage also has not been shown to be lawful. The appeal on ground (d) does not succeed.

Ground (g)

29. The issue is whether the compliance periods stated in the notice are reasonable.
30. With reference to national policy and guidance, effective enforcement is important to maintain public confidence in the planning system and to tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area.
31. As a general rule, extending a period beyond 12 months requires some exceptional circumstances to justify doing so. It is in the public interest to ensure compliance with a notice expeditiously. In this case the length of the compliance period should take into account what has to be done to carry out the remedial steps and the need to remedy the identified harms as soon as reasonably possible, bearing in mind the location of the site within the Metropolitan Green Belt.
32. The appellant's request for the periods to be increased to three years was not supported by any explanation and in effect would be similar to a temporary planning permission. The appellant chose not to make an appeal under ground

(a) to allow the planning merits to be considered. There is no evidence to show that ceasing the storage use and removing the hardstanding could not be reasonably achieved within the stated periods.

33. The appeal on ground (g) fails.

Conclusion

34. For the reasons given above the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Diane Lewis

Inspector



Plan

This is the plan referred to in my decision dated: **04 November 2021**

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Scale: Not To Scale

Plan shown on next page

Annex 2

Site Plan



