



Appeal Decisions

Site visit made on 7 December 2021

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 29th December 2021

Appeal A Ref: APP/X0360/C/21/3280763

Land at Sandford Mill, Sandford Lane, Woodley, READING, RG5 4TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr George Martin King against an enforcement notice issued by Wokingham Borough Council.
 - The notice was issued on 20 July 2021.
 - The breach of planning control as alleged in the notice is the formation of a hardstanding part of which is raised and retained by railway sleepers on the north, east and south sides and the erection of a 2m high timber fencing and gates and associated barbed wire.
 - The requirements of the notice are: (i) excavate the hardstanding (in the approximate location edged in blue on the attached plan); (ii) remove the gates, barbed wire and fencing between points A, B, C and D (in the approximate location of a green line on the attached plan); (iii) remove all railway sleepers retaining the hardstanding from the Land; (iv) spread the area, edged in blue on the attached plan, with topsoil to a depth of 20cm and sow with grass seed; (v) remove all materials and debris resulting from compliance with steps (i) and (iv) from the Land.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/X0360/W/21/3277317

Land at Sandford Mill, Sandford Lane, Woodley, READING, RG5 4TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr George King against the decision of Wokingham Borough Council.
 - The application Ref 203540, dated 5 February 2021, was refused by notice dated 22 April 2021.
 - The development proposed is raised lawn to residential garden and new splayed close boarded fence and replacement gates.
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Decisions

Appeal A Ref: APP/X0360/C/21/3280763

1. It is directed that the enforcement notice is varied by the deletion of requirement (iv) and the deletion of 6 months and the substitution of 9 months as the time for compliance. Subject to these variations, the appeal is dismissed and 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 Ref: APP/X0360/W/21/3277317

2. The appeal is dismissed.

Applications for costs

3. An application for costs has been made by the Council and is subject to a separate letter.

Preliminary Matters

4. Sandford Mill stands on a minor road, Sandford Lane, that winds across the flood plain of the River Loddon. The mill itself stands by a large pool created by the braiding of the Loddon at this point and has a garden the sticks out into one of the channels of the river. The Lane marks the edge of the garden and crosses the first channel of the Loddon on a bridge, travels across an island and crosses a second channel of the river on another bridge. The Lane therefore cuts off the tip of the island which forms the appeal site. It is linked to the garden of the Mill by a rope bridge. Beyond the second river channel the Lane passes through an area of lakes and the Lavell's Lake LNR and footpaths in the LNR run along the far bank of the second channel beside the island.
5. It seems at some point in the past previous owners began using the appeal site as garden land and an LDC has been granted for this use. The Council maintain however, the new garden is not within the curtilage of the Mill and so has not residential permitted development rights. This does not seem to be challenged by the appellant, which is sensible as it clearly is not part of the residential curtilage, being separated from the Mill by the river. Nevertheless, its use remains lawfully as garden land¹ and there is a picnic bench and table and chairs on it as well as a small shed.
6. The hardstanding is described by the appellant as a raised lawn, but as noted below it is made up materials very much as if it were a hardstanding and it would require further work to make it a lawn, if indeed that were possible, so I shall treat it as a hardstanding.

The Appeal on Ground (c)

7. This ground is that the matters alleged already benefit from planning permission. The matters alleged are a hardstanding and the erection of a fence and gates. There is no suggestion the hardstanding benefits from planning permission the argument is that it is such a minor work that it is not development at all. This is quite clearly not the case, it is a substantial area of raised hardstanding, held back by a double line of sleepers, on which you could easily park half a dozen cars. The appellant has left a small pit uncovered so that I could see how it was made, and, as the photographs provided by the Council also show, it is constructed from bricks, concrete blocks and rubble which have been tamped down to form a hard surface. I would imagine several tons of rubble were required to form this large area, it is not de-minimis but is development that requires planning permission.

¹ Technically speaking it has a residential use, but in this context 'garden land' is a realistic description of what is allowed.

8. The site has long been fenced with a pair of double gates allowing access to it from the Lane in the same place as the current access. The appellant has set the gates back further into the site and linked them to the Lane-side fence with two lines of similar sized fencing. This allow vehicles to pull off the road onto the site while the gates are opened. There is very little verge on the Lane at this point and previously vehicles would have to wait on the carriageway. All the old and new fencing and gates are 2m in height but the notice only affects the new fencing and newly positioned gates within the site.
9. The appellant argues the new fencing is not adjacent to the highway and so not subject to the 1m limit in Class A of Part 2 of the General Permitted Development (England) Order 2015. This class allows fences and gates up to 2m in height unless they are adjacent to the highway when the maximum height is 1m. However, I agree with the Council that the new gateway is part and parcel of the means of enclosure of the land. The fact that part of the fence is aligned perpendicular to the highway for a short distance to connect the Lane-side fence with the gates does not prevent the entrance, its gates and associated fencing as a whole from being adjacent to the highway. Consequently, as the fence and gates are more than 1m in height they require planning permission. The appeal on ground (c) fails.

The Appeal on Ground (a) and the s78 Appeal

10. The appellant applied for planning permission for the development which was slightly different from that enforced against. The gates remained in the same place but a length of fence on the Lane-side would be removed and linked to the gates by fences creating a splayed area in front of the gates which would improve visibility when leaving the site. Secondly a small structure called a 'wooden chicken coop' was shown in the corner by the road. The reasons for refusal for the hardstanding were that due to scale, massing and footprint it harmed the openness and rural character of the countryside and the River Lodden Valued Landscape (RLVL). The access splays were substandard and due to the likely increase in vehicular use would potentially be harmful to highway safety. There were no details of the chicken coop so it could not be assessed and finally the site lies in flood zone 3a and no flood risk assessment had been provided. These then are the main issues.

The shed

11. Taking the chicken coop first the appellant has now confirmed it would be a shed and if allowed he would remove a similar sized Wendy house on the site. Plans show it to be a small square structure of very modest size and I agree that as it is tucked away behind the fence and screened by bushes it has no real impact on the countryside or the RLVL.

The fences and gates

12. The Council are concerned the new access will encourage an increased use of the site. The appellant argues this is not the case, as it would just be used by his gardener once a week but I find it hard to believe he would have gone to all this effort to create a huge area of hardstanding just to facilitate the gardener's weekly visit. But in any case I consider the access and hardstanding are interlinked as described below.

13. In the past, photographs show the old gates to be somewhat overgrown, suggesting only occasional use. The Council suggest it was disused, but there were raised beds on the site in the past, made of sleepers that have been re-used with the hardstanding. These must have been brought onto the site from the road and there is no suggestion the access was abandoned or stopped up in any way. The use of the land as a garden is lawful and there is a lawful vehicular access onto it. There is nothing to stop the appellant from using the previous access, as unsafe as it was, in the future; and there is no limit to the number of vehicles that can use the access as long as they are all related to the lawful use of the land. Consequently, any improvement to the access are to be welcomed.
14. That said, the access and the hardstanding are interlinked as it seems the new access cannot be formed unless the ground is built up to provide a level area for the gates and for vehicles to manoeuvre once on the site. In the past, I should imagine, the soft nature of the ground made it difficult for vehicles to use the site unless it had been dry for a while. The new and extensive area of hardstanding will enable all year round use (except in times of serious flooding) and so is bound to increase the use of the access by vehicles in reality and potentially.
15. The proposed access splays are clearly an improvement over the previous arrangement as they would provide off-road space to park while opening and closing the gates and improve visibility along the Lane. The current arrangement is better than before as it does allow for off-road parking while dealing with the gates, but this is not necessarily essential as the site is only a few yards from Sandford Mill to the north and a layby outside the LNR to the south so the gardener could easily park their and walk to the site and open the gates. As the hardstanding and the fences and gates are part and parcel of the same development, they all need planning permission. If I were to grant planning permission for the hardstanding, then that would, as discussed above, lead to an increase in the use of the site by vehicles. The minor improvement currently afforded by the set-back gates would not be sufficient to enable me to allow the extra use of the access enabled by the hardstanding, as turning out onto the Lane would still be a dangerous manoeuvre. However, the visibility splays suggested in the planning application do offer a significant improvement.
16. I do not think it necessary or reasonable to require the full splays or a speed survey suggested by the Council, as if this were a new access being proposed. On balance I consider that the definite improvement offered by the planning application is sufficient to resolve the highway safety argument.

The hardstanding

17. The hardstanding was overgrown by moss when I made my site visit and the appellant has said he would cover it in grass. However, this would require topsoil and further buttressing so I do not think that could be achieved without further work on the site which might well require planning permission. I shall consider the impact of the hardstanding as I saw it. From the Lane it is hardly visible except from by the second bridge, and it is glimpsed through the branches lining the riverbank when on the path in the LNR. It is seen in the context of the mown lawn of the rest of the site and the low key domestic paraphernalia on the land. From further along the LNR path one can see into

the actual garden of the Mill and this looks very similar. In other words the hardstanding is hardly noticeable from outside of the site. The edges, made up of the railway sleepers, look like just the sort of thing one would see in a garden, and it is important to remember this is a garden, not open countryside.

18. The impact on the countryside and the RLVL is minimal. The hardstanding does not look out of place within the overall garden context. It was possible to see vehicles parked on the hardstanding, but they did not particularly stand out, especially as one might expect to see the occasional car parked on the site. Assuming the use remains as garden land then it is unlikely to be so heavily used by vehicles as to represent a threat to the character and appearance of the area. The hardstanding is not therefore contrary to CP11 of the Core Strategy, which deals with proposals outside of the development limits, nor with CP1 and 3 which set out general considerations for sustainable development. There is also no conflict with CC03 which seeks to protect green infrastructure.

Flood risk

19. The appellant argues that a Flood Risk Assessment is not necessary. The site lies in flood zone 3a, but the hardstanding is permeable and represents no risk to flooding at all. The fence is not solid and water can pass through, especially if the gravel boards are removed, which I noted they had been. There is no absolute requirement for an FRA for development in zone 3a.
20. I cannot agree with this approach. The 2018 NPPF has not been changed in this issue by the new update. It says at 163 *"where appropriate, applications should be supported by a site specific flood risk assessment"*. However footnote 50 at the end of this sentence says: *"a site-specific flood risk assessment should be carried out for all developments in Flood Zones 2 and 3"*. This seems pretty conclusive to me. Paragraph 164 goes on to suggest some minor developments need not be subject to the sequential and exception tests but *"should still meet the requirements for a site-specific flood risk assessment set out in footnote 50"*. There is no room for doubt that in flood zone 3a all development proposals need an FRA. The use of the phrase *"where appropriate"* is because footnote 50 covers all the flood zones and in some cases in zone 1 an FRA is not required, but not in zone 3a.
21. The advice from the Environment Agency is that applications *"may be refused"* if there is not a satisfactory FRA. I assume this also refers to the fact that some development in zone 1 do not need an FRA so Councils are not mandated to refuse all developments without an FRA. However, even if it did suggest an element of leeway that was contrary to the NPPF in this case it is clear an FRA is required.
22. The appellant argues the raised hardstanding is entirely permeable, which I find hard to believe. The Council's expert advice is that raised lawns should be resisted in flood risk areas as they displace the flood water. This seems obvious to me, as the raised area would just deflect the flood water to somewhere else, until it became so deep that it covered the bank. In the case of the hardstanding, it seems likely to me the sleepers would have the same capability of deflecting the flood water elsewhere. Possibly once the hardstanding was overtopped by water it would then sink into the hardcore, and it is possible the overall effect would be neutral, but this is far from certain and is why an FRA is required in the first place.

23. The proposed hardstanding thus requires an FRA and without one it is contrary to the NPPF and the Council's flooding policies. The fence and gates, while themselves not problematic in terms of flooding are reliant on the hardstanding. I doubt the fence and gates could be left in place if the hardstanding was removed so if planning permission is not granted for the hardstanding then the gates and fence will have to go as well. As for the shed, it could be placed on blocks and so allow flood water to move beneath it, but that would be something discussed in the FRA. I'm also not convinced it would be a like for like replacement for the Wendy house which might not be a building at all. Again the impact of the different structures would be something for the FRA.

The Appeals on Ground (f) and (g)

24. The appellant wishes to retain the sleepers as he could recreate the raised beds that were there before. I agree that some raised beds might be acceptable, although I note the Council's view they could amount to an engineering operation in their own right, that would depend on their size and scale. But in any event, there are a lot of sleepers and that would mean a lot of raised beds. The purpose of the notice is to remedy the breach and part of that is to remove the materials from the land that facilitated the breach. The sleepers fall into that category and so should be removed. If the appellant can come to an understanding with the Council as to what raised beds might be acceptable then I am sure he could retain sufficient of the sleepers.

25. I do agree that the final surface of the garden land is a matter for the appellant. Once the hardstanding is removed the resulting surface will hardly be visible from public view points at all. I shall delete requirement (iv).

26. The only harm I have found is the lack of an FRA, because I consider there is the potential for the development, even as relatively minor as it is, to create a flooding issue. It is entirely possible the FRA might show the opposite, that there is no flood problem, in which case there would be no objection to allowing the planning application. I shall therefore extend the period for compliance to 9 months to enable an FRA to be produced and if necessary, a fresh planning application to be made.

Conclusion

27. Despite being warned by the Council the appellant has refused to provide an FRA when one is clearly required. So although I have found no harm to the countryside, the RLVL or highway safety I shall dismiss the s78 and ground (a) appeals on the lack of an FRA. I shall uphold the enforcement notice as amended to allow the surface to remain unseeded and to extend the time limit.

Simon Hand

INSPECTOR