



Appeal Decisions

Site visit made on 20 July 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2022

Appeal A: APP/X4725/C/21/3276817

Land at Castlegate, Stanley, Wakefield LS26 8HH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Thomas Spaven against an enforcement notice issued by Wakefield Metropolitan District Council.
- The notice was issued on 7 May 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use of agricultural land to use of land for open storage and stationing of 2 No steel shipping containers and trailer for storage use associated with a commercial business activity; and associated unauthorised operational development comprising laying out of a hardstanding area; erection of a 2m high close boarded solid timber fence; the erection of steel boundary mesh fencing and gates and formation of earth bunds along the western boundary and northern in excess of 1 metre height adjacent to M62 strategic highway.
- The requirements of the notice are:
 - a) Cease the use of the land for open storage and siting of self-storage containers associated with a commercial business activity
 - b) Remove the 2 No Steel Containers and trailer from the land
 - c) Remove the hardstanding materials from the surface of the land
 - d) Remove 2m high close boarded solid timber fence from the land
 - e) Remove the steel boundary fencing and pair of gates from the land
 - f) Dismantle the earth bunds on the boundary and spread the material across 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)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Appeal B: APP/X4725/X/21/3268796

Castlegate, Stanley, Wakefield LS26 8HH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Elizabeth Spaven against the decision of Wakefield Metropolitan District Council.
- The application ref 20/02335/CPE, dated 20 October 2020, was refused by notice dated 26 January 2021.
- The application was made under section 191(1)(a) and (b) of the Town and Country Planning Act 1990 as amended.
- The use and development for which a certificate of lawful use or development is sought is a material storage compound and hardstanding.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by:
 - the deletion of all text in section 3 (the matters which appear to constitute the breach of planning control) and its replacement with the

following: *Without planning permission, operational development comprising the formation of a hardstanding.*

- The deletion of the following requirements from section 5 (What you are required to do)
 - a) Cease the use of the land for open storage and siting of self-storage containers associated with a commercial business activity.*
 - b) Remove the 2 No Steel Containers and trailer from the land*
 - d) Remove 2m high close boarded solid timber fence from the land*
 - e) Remove the steel boundary fencing and pair of gates from the land*
 - f) Dismantle the earth bunds on the boundary and spread the material across the land.*
2. Subject to those corrections, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

3. The appeal is dismissed.

Reasons - Appeal A

Ground (b)

4. To succeed on ground (b) the appellant must demonstrate, on the balance of probability, that the matters stated in the notice have not occurred. The matters stated in the notice include a change of use and operational development, but there is no doubt that the operational development – the hardstanding, bunds, fencing and gates – has taken place. The appellant's case is directed at the change of use alleged – specifically the change of use of agricultural land to use of land for open storage and stationing of 2 No steel shipping containers and trailer for storage use associated with a commercial business activity.
5. When I visited the site there was a single storage container. The appellant acknowledges that there has previously been a second container on the land. There were also various items dotted around the site, including some building materials and a car that had some damage and appeared unroadworthy. There were also piles of stone chippings and road planings. These appeared to be the same materials used in the surfacing of the site, so it is not evident that they were being stored for use elsewhere.
6. However, these items occupied only a small proportion of the site, which was mostly empty. The items were rather random in nature and appeared of little commercial value. I do not know what is kept in the container but the appellant states that it is for items associated with his own activities (such as animal feed) and I have no firm evidence to cast doubt on that. The overall impression was of a site in need of tidying up rather than one being put to any commercial storage use. Other than the second storage container and trailer, I have no evidence to show that the site has ever had more items kept on it in recent years. Moreover, the Council acknowledges that the site is still used occasionally for grazing horses.
7. The appellant clearly intended to use the site for commercial storage; Appeal B seeks an LDC relating to a storage compound and advertisements offering storage were placed on the site and on social media. Fencing and surfacing

were also installed at around the same time. This no doubt accounts for much of the concern about storage use raised by local people. However, the appellant states that the use was never carried out and there is no firm evidence to contradict that claim. Works carried out in preparation for a change of use do not, in themselves, amount to a material change of use; section 56(1)(b) of the Act establishes that development consisting of a change in use shall be taken to be initiated at the time when the new use is instituted.

8. For these reasons I conclude, on the balance of probability, that there had not been a change of use of agricultural land to use of land for open storage and stationing of 2 No steel shipping containers and trailer for storage use associated with a commercial business activity when the notice was issued. Accordingly, the appeal on ground (b) succeeds insofar as it relates to the change of use of the land. I will correct the notice to remove that element of the allegation and the associated requirements.

Ground (c)

9. Ground (c) is concerned with whether the matters stated in the notice constitute a breach of planning control. Given my finding on ground (b), the use of the land does not fall to be considered under ground (c). It is not argued either that the bunds or hardstanding is not development requiring planning permission. Accordingly, the appeal on ground (c) focuses on the fencing and gates.
10. The fencing is 2m high or less (the Council refers to it being 1.8m high in its statement) and the appellant argues that it is development permitted by Class A of Part 2 of Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 2015* (the GPDO). Class A permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. This is subject to certain limitations which, in this instance, means that any such structure is limited to 2m in height or 1m if constructed adjacent to a highway. Although some of the fencing in this case secures the southern boundary of the site, it is set back from the road behind a substantial hedge. Consequently, it is not adjacent to a highway in my judgement. The entrance gates are also set well back and angled so that they are not adjacent to the highway either. In these circumstances, the 2m height limit applies, and this is not exceeded.
11. The Council argues that permitted development rights relating to the appeal site were removed due to a condition imposed on planning permission reference 11/02053/FUL, which was for the erection of a stable and the use of land for grazing. However, I have significant doubts about that planning permission. A stable was built, but has now been demolished, and so I was unable to view it. However, the appellant says that the stable constructed on the land was not that permitted. This is set out in some detail in a letter dated 20 July 2020 responding to a Planning Contravention Notice. The appellant also argues that planning permission was not, in fact, needed to use the land for grazing, a use that was already taking place at that time.
12. I appreciate that a development may be said to have been implemented even where there are significant deviations from the approved plans. In this instance, however, I have no substantive evidence to contradict the appellant's claim that the planning permission was not implemented, notwithstanding the stable that was erected. Overall, therefore, on the evidence before me, and on

the balance of probability, it appears unlikely that the condition had lawful effect at the time the notice was issued. I therefore conclude that the fencing and gates were permitted development at that time.

13. I have also considered the Council's argument that the fencing is part and parcel of the creation of a storage compound, and is thus development which has facilitated a material change of use. However, the allegation refers to use for open storage without reference to a compound. Fencing is not necessarily indicative of a storage use - the appellant might well regard it as desirable to secure the site regardless of any such use. In any event, I have concluded that the change of use alleged has not occurred.
14. For these reasons I conclude that the wooden fencing, the steel mesh fencing and the gates erected at the site were permitted development that did not require planning permission when the notice was issued. To that extent, the appeal on ground (c) succeeds.

Ground (d)

15. To succeed on ground (d), the appellant must demonstrate that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. The standard of proof is the balance of probability. My conclusions on grounds (b) and (c) mean that the only elements to consider on this ground are the earth bunds and the hardstanding.
16. The notice was issued on 7 May 2021. Section 171B(1) of the Act, establishes that, where there has been a breach of planning control consisting of the carrying out without planning permission of building, engineering, mining or other operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Thus, the appellant must demonstrate, on the balance of probability, that the works were substantially completed by 7 May 2017.
17. I have been provided with a range of evidence from the appellant, the Council and interested parties. This includes photographs and aerial images of the site. Some of the images are clearer than others and the information relating to their capture date varies. I have reviewed all the images but highlight some key ones below.
18. The earth bunds have been created along the northern and western boundaries. It appears that this work was carried out, at least in part, around February 2015. An email from the Council to the appellant dated 25 February 2015 refers to 'complaints about earth moving machinery on the site this week, and stripping and mounding of topsoil materials.' The appellant's response confirms that a digger was on the site carrying out that work. The Council has provided photographs dated 23 February 2015 showing the site as mainly bare soil and also showing material heaped up on the western boundary. A further email dated 14 April 2016 refers again to the earth bund along the western edge of the field. A photograph attached to the email shows the bund along the western edge of the site with grass starting to cover the bare earth, indicating it had been there for some time. A bund on the northern boundary can be seen on a Street View image from May 2015, provided by an interested party. I conclude, on the balance of probability, that the earth bunds were formed in February 2015. They were substantially completed more than 4 years before

the date when the enforcement notice was issued. Accordingly, ground (d) succeeds insofar as it relates to the bunds.

19. When I visited the site the eastern half was grassed and there was no sign of any significant area of hardstanding there. A large area in the western half of the site had been loose-surfaced using dark-coloured road planings and could be reasonably described as a hardstanding. There was also evidence of a lighter material – probably limestone – below the planings. There were piles of road planings and limestone on the site. There was also a small concrete base, which appeared to be of some age and is visible in aerial photographs going back some time. It stands proud of the surface of the surrounding area and it seems to me to be separate from the hardstanding and therefore not part of the works targeted by the notice. Had I regarded it as a matter targeted by the notice, it could not have survived the appeal on ground (d), given its evident age.
20. The site was previously used in connection with the construction of the M62 motorway, which runs next to the site. That came to an end in 1974, although I understand it was subsequently used as a holding yard in connection with works to the motorway in the 1990s. An aerial (Google Earth) photograph of the site dated 2002 shows much of the western end of the site in a pale colour, which may be an indication of some kind of surfacing. If so, it is clear that the process of blending back into the landscape was well-advanced at that point. An image from 2006 shows the site in a similar state.
21. As I have indicated, the surface of much of the western half of the site was scraped at the time when the bunds were formed in 2015. It seems likely that this will have removed most of any loose surfacing that remained from the use of the site in connection with the motorway. This is confirmed by the Council's photographs from 23 February 2015, which show the site with an earth surface. Thus, whatever surfacing had been put down previously, it appears that the site was unsurfaced at that point in time.
22. When was the current surfacing added? The Council email of 14 April 2016 states 'The residents object as it appears to them that the site in its current form that a hardstanding area has been formed. It would be preferable to scarify and place some soil/organic matter and re-seed to promote rapid grass growth as soon as possible'. This wording (the use of the word 'appears' and the lack of any reference to any surfacing material in need of removal) suggests to me that the site had been scraped but not surfaced at that point in time.
23. A Google Earth image dated 2015 provided by the Council shows a fairly clearly defined square area in which most of the vegetation has been removed. This appears to me to be the site in its 'scraped' form. It has a similar appearance in an image from 2016. In images from 2018 and 2019 the scraped area has greened up significantly. Thus, it does not appear that any surfacing has been added at this point.
24. Undated photographs provided by the appellant show the site scraped and levelled and free from vegetation. The bunds can be seen in the photographs and, judging by the appearance of the site, it appears likely the photographs were taken fairly soon after the bunds were formed. While there is some lighter material on the site, this may simply be some remaining elements of previous surfacing. The site appears quite muddy and is not a hardstanding in

my judgement. The site has a similar appearance in a Street View image from May 2015, provided by an interested party.

25. The Council says that it first received complaints regarding the use of road scalping materials to create a hardstanding on the site on 20 May 2020. When I saw the site, an area had been surfaced predominantly with dark coloured road scalpings. That would plainly be different in appearance to the lighter appearance of the site after it had been scraped. This darker material is shown on a Google Earth image dated 23 April 2021. The contrast with the earlier images of the site in its scraped state is obvious.
26. From the above, it appears to me that the site was largely free of surfacing material since it was scraped in 2015 up until around May 2020, when a surface of road scalpings was formed. The fact that a small area of old tarmac appears to have survived the scraping process and remains does not alter my view regarding this, given its very small size in relation to the surfaced area as a whole. The septic tank on the site is of no relevance regarding the hardstanding. I have been referred to appeal decisions relating to the appellant's land, but nothing within them alter my view regarding when the hardstanding was formed.
27. The appellant refers to evidence to a planning appeal inquiry¹, which is said to have been agreed by the Council and which refers to 'a hardstanding on the site that probably dates back to around 2000'. It adds that 'this hardstanding is now lawful through the passage of time'. However, it is not clear whether that relates to this area of land or another hardstanding within the appellant's land. In any event, the statements regarding the history of the site are 'subject to other unknown information coming to light'. Overall, this evidence does not alter my view regarding when this hardstanding was created, given the other evidence before me.
28. The period of time between the scraping of the site (complete with the creation of the bunds) and the point at which surfacing was added leads me to the view that they were distinct operations rather than being elements of a single operation. Since the surfacing was added significantly later than 7 May 2017, it was not too late to take enforcement action when the notice was issued on 7 May 2021. Accordingly, the appeal on ground (d) fails insofar as it relates to the hardstanding.

Conclusion

29. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect and the appeal succeeds in part on grounds (b), (c) and (d). I shall uphold the enforcement notice with corrections.

Reasons - Appeal B

Procedural matters

30. On the LDC application form the appellant has ticked a box indicating that an LDC is sought in respect of an existing use, while the box labelled 'Existing building works' is left unticked. However, it is evident from the description that the application actually related to both the storage use and operational

¹ APP/X4725/W/17/3192150 & APP/X4725/W/20/3253311

development in the form of the hardstanding. While I have noted the Council's comments on this matter, it would be unnecessarily bureaucratic not to consider the hardstanding due to the unticked box and I have considered both elements of the proposal.

31. The Council considers that only the evidence available to it when it determined the LDC application should be considered. As it points out, on appeal the role of the Inspector is to consider whether the Council's decision 'is well-founded' (s195 of the Act). However, I am not persuaded that the wording of the Act is intended to unduly constrain the appeal process to the extent the Council suggests. The LDC provisions are intended to enable objective decisions to be made, based on the best facts and evidence available when the decision is taken. The information now submitted has been available to the Council to respond to as part of the appeal process and it would serve no purpose to set it aside if it is relevant to the appeal.
32. I accepted the late submission of a document from an interested party showing a screenshot from a Google Street View image from 2015. I sought the views of both parties on the document before reaching my decision.

Main Issue

33. The site is comprised of the western half of the Appeal A site. The main issue is whether, on the date of the application, the use of the site as a material storage compound and the hardstanding were lawful. This turns on whether, on the balance of probability:
- The site had been used as a material storage compound for not less than 10 years; and
 - The hardstanding had been in place for not less than 4 years.

Reasons

The relevant time periods

34. Section 191(2) of the Act states that:

For the purposes of this Act uses and operations are lawful at any time if—

- a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

35. It does not appear that any enforcement notice was in force at the date when the application for the LDC was made, which is the relevant date for the purposes of this appeal. Accordingly, my decision hinges solely on s191(2)(a).
36. The time periods for taking enforcement action (as referred to in s191(2)(a)) are set out in s171B of the Act. The hardstanding is operational development and the 4 year period specified in 171B(1) applies. In accordance with s171B(3), the relevant period in relation to the storage use is 10 years.

The material storage compound use

37. The appellant has provided photographs of the site, aerial images and email exchanges with Council officers in support of her case. The appellant advises that she had owned the site for 11 years when the LDC application was made and has always used it for storage for varied items such as storage containers, packs of bricks, piles of random walling stone, scrap metal, fencing material, potted trees, water drums, pallets, aggregates, cars and trucks. I understand that it was used as a compound during the construction of the adjacent M62 motorway in the early 1970s. The appellant says that the compound has been there since that time.
38. However, the appellant also advises that, 'After the motorway was built the compound and land became Meadow field nurseries'. Yet a nursery is materially different to use as a material storage compound, and so is not consistent with the claim of continuous use for that purpose. It is not clear when the nursery use ceased but it appears that the site has subsequently been used for grazing horses (whether or not in addition to other uses).
39. When I saw the site it was not in any obvious use. As described in relation to Appeal A, a single shipping container was on the site, together with a few other items. Most of the site, however, simply appeared overgrown and unused. I cannot say whether anything was stored in the shipping container or whether the items lying on the land were being kept for a reason or were simply discarded. Overall, the site did not have the appearance of being in active use for storage purposes.
40. Photographs provided by the appellant show the site in different states. I have also considered the images submitted by the Council and interested parties. The appearance of the site in these photographs is discussed in relation to Appeal A and the hardstanding. While the appearance of the surfacing changes, there is nothing in the photographs to show that the site has been in use as a storage compound. The claim of continuous storage use since its use in connection with the motorway is contradicted by the statement that the site was used as a nursery, which is a different use.
41. The appellant's evidence relating to previous appeals² referred to use of the appellant's land for 'the keeping of horses and the storage of machinery and materials unrelated to the use of land for the keeping of horses'. Even if that statement relates to the appeal site, it does not suggest that the site was used simply as a material storage compound. A second container was apparently kept on the site for a brief period of time, but that does not alter my assessment of the overall use of the site.
42. Considering the evidence as a whole, it has not been demonstrated, on the balance of probability, that the site had been used as a material storage compound for not less than 10 years prior to the application. Accordingly, it has not been shown that such use was lawful at that time.

² APP/X4725/W/17/3192150 & APP/X4725/W/20/3253311

The hardstanding

43. I have considered the hardstanding in respect of Appeal A, and concluded that it was formed in or around May 2020. It follows from this that it was not substantially completed 4 years or more prior to the LDC application on 20 October 2020. Accordingly, it was not lawful at that time.

Other matters

44. The appellant outlines a history of difficult relationships with various neighbours, but that has no bearing on the matter before me, which is determined solely on the evidence relating to the use and the hardstanding claimed.

Conclusion

45. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a material storage compound and hardstanding was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.

Peter Willows

INSPECTOR