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## Appeal Decisions

Site visit made on 21 September 2022

**by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 October 2022**

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### **Appeal A: Ref APP/Z3825/C/21/3272729**

### **Appeal B: Ref APP/Z3825/C/21/3272730**

### **Land at Brookhill Cottage, Horsham Road, Cowfold, Horsham, West Sussex RH13 8AH shown edged red on the plan attached to the notice (the Land)**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - Appeal A is by Mr Scott Christensen (Pottage 2000 Ltd) and Appeal B is by Mrs Jemma Christensen against an enforcement notice issued by Horsham District Council.
  - The enforcement notice, numbered EN/19/0400, was issued on 3 March 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the unauthorised operational development and engineering operations taking place on the Land including the importation of waste material and soil, works to the pond and its surrounding area and the laying of material to create a hard surface to the southwest of the pond.
  - The requirements of the notice are to: 1. Remove from the Land all materials which are stored on the land other than in connection with agriculture and restore the Land to its former condition; 2. Break up and remove from the Land the existing hardstanding; 3. Remove from the Land all materials and debris resulting from the compliance of the above steps; 4. Permanently cease the operational development and engineering works described above; 5. Remove from the Land all materials associated with the unauthorised operational development and engineering works arising from compliance with requirement (4) above; and 6. Restore the Land to its condition before the breach took place.
  - The period for compliance with the requirements is 2 months.
  - The appeals are proceeding on the grounds set out in section 174(2) (c) (e) (f) of the Town and Country Planning Act 1990 as amended.
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### **Appeal C: Ref APP/Z3825/C/21/3272743**

### **Land at Brookhill Cottage, Horsham Road, Cowfold, Horsham, West Sussex RH13 8AH shown edged red on the plan attached to the notice (the Land)**

- 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 by Mr Scott Christensen (Pottage 2000 Ltd) against an enforcement notice issued by Horsham District Council.
  - The enforcement notice, numbered EN/20/0542, was issued on 3 March 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from agricultural purposes to a storage use, including the storage of scaffolding and building materials.
  - The requirements of the notice are to: 1. Permanently remove from the Land all scaffolding and building materials which are stored on the Land; 2. Permanently cease the use of the Land for the storage of scaffolding and building materials; 3. Permanently revert the Land to its original use.
  - The period for compliance with the requirements is 2 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (b) (c) (e) of the Town and Country Planning Act 1990 as amended (the Act).
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## **Decisions**

1. Appeals A and B are dismissed and the enforcement notice is upheld.
2. It is directed that the enforcement notice in Appeal C be corrected by deleting "3. Permanently revert the Land to its original use" from Paragraph 5<sup>1</sup>.
3. Subject to the above correction, Appeal C is dismissed and the enforcement notice is upheld.

## **Procedural Matter**

4. Since the appeals have not been made under ground (a), and no deemed planning applications have been made, it is not for me to address the planning merits of the alleged development of the land.

## **Ground (e) – Appeals A, B, C**

5. For an appeal to succeed under this ground, an appellant must satisfy me on the balance of probabilities that copies of the enforcement notice were not served as required by section 172 of the Act. That section requires that copies should be served on the owner and occupier of the land to which the notice relates, and on any other person having an interest in the land being an interest which in the opinion of the authority is materially affected by the notice.
6. However, I may disregard non-service under section 176(5) of the Act provided that neither an appellant nor the person not served have been substantially prejudiced.
7. I note from the submissions that David Hiscock has an interest in the land, since he is the beneficiary of an overage agreement in respect of it, and it is common ground that he was not served with a copy of either notice when they were issued.
8. It is arguable that Mr Hiscock could have been materially affected by the notices due to his above interest. However, it is clear from the email chain between Mr Hiscock and the Council<sup>2</sup>, following copies of the notices being provided to him during the appeal process, that he did not wish to make appeal representations and did not consider the issue of the notices to be a matter in which he should be involved. Therefore, I do not find that any failure of the Council to serve Mr Hiscock with copies of the notices when issued has caused him (or the appellants) any substantial prejudice.
9. Accordingly, the ground (e) appeals do not succeed.

## **Ground (b) – Appeal C**

10. For an appeal to be successful under this ground, the burden of proof is upon the appellant to demonstrate on the balance of probabilities that the matters stated in the notice have not occurred as a matter of fact.
11. The appellant says that: *"The materials held on the site were solely for agricultural use"*.

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<sup>1</sup> I am using my powers to remove this requirement, without injustice to any party, as it is sufficient for the notice to require the unauthorised use to cease. A notice cannot require that a lawful use is actively carried out.

<sup>2</sup> Appendix 8, Council's Statement of Case

12. The appellant's case, in essence, is that the materials were not being stored on the Land but were there for the purpose of carrying out work to the pond and prepare it for use as an aquaponics facility as part of an agricultural smallholding. However, he has provided very limited substantive evidence to satisfactorily demonstrate how the scaffolding and building materials referred to in the notice – which I saw on my site visit and which are clearly seen to be present in large quantities upon the land in photographs submitted by the Council<sup>3</sup> – are connected to the stated proposal for an aquaponics facility.
13. The appellant also says that the alleged storage only took place on one part of the Land (1 of 3 land registry titles). However, the notice is correct in that it refers to storage on the Land and does not specify upon which part.
14. Accordingly, the appellant has not demonstrated to the required level of proof that the matters as stated in the notice have not occurred. The ground (b) appeal therefore fails.

### **Ground (c) - Appeals A, B, C**

15. For an appeal to succeed under his ground, the burden of proof is upon the appellant to demonstrate on the balance of probabilities that the matters stated in the notice (if they occurred) do not constitute a breach of planning control.
16. The appellants say, in respect of Appeals A and B, that the alleged operations benefit from general planning permission afforded by Article 3(1), Schedule 2, Part 6, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). In particular, that the operations are in connection with fish farming.
17. However, despite the burden of proof being upon them, the appellants have provided very limited substantive evidence (and none of sufficient detail) to demonstrate how the alleged operations in particular (the importation of waste material and soil, works to the pond and its surrounding area and the laying of material to create a hard surface to the southwest of the pond) are specifically connected with fish farming and are *reasonably necessary for the purposes of agriculture* (which is a condition of the Part 6 permitted development right asserted). While the appellants state that the pond has been registered with the Fish Inspectorate for aquaponics, no evidence of that registration has been provided. I see that the appellants refer to various reports and documents, which may have assisted in substantiating their appeal arguments were they submitted (though it is not entirely clear how) but I must determine the appeals on the evidence before me.
18. In respect of Appeal C, the appellant says that the material change of use alleged in the notice is not a breach of planning control as it is "*within the terms of the Town and Country Planning (Use Classes) Order 1987*". However, that statute does not preclude a change of use from agricultural to storage use (scaffolding and building materials) from being a material change and therefore development requiring planning permission.
19. For the above reasons, the appellants have not demonstrated on the balance of probabilities that the allegations in the notices do not constitute breaches of planning control. Accordingly, the ground (c) appeals do not succeed.

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<sup>3</sup> Appendix 4, Council's Statement of Case

### **Ground (f) – Appeals A, B**

20. For an appeal to succeed under this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose.
21. The appellants do not make a coherent case under this ground, but rather complain about the Council and that it reportedly took 8 months to provide pre-application advice. That is not a matter for me to address in the determination of these appeals.
22. The notice requirements properly seek to remedy the breach of planning control by requiring steps to restore the land to its condition before the breach, and are not excessive. Accordingly, the ground (f) appeals do not succeed.

### **Conclusions**

23. For the reasons given above I consider that appeals A, B and C should not succeed. I shall uphold the enforcement notices with a correction made to the notice which is the subject of Appeal C.

*Andrew Walker*

INSPECTOR