



Appeal Decision

Site visit made on 6 September 2022

by Sandra Prail MBE, MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 4 October 2022

Appeal Ref: APP/K3605/X/21/3282961

Land at Ditton Hill Farm, Summerfield Lane, Long Ditton, Surbiton, Surrey KT6 5DZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a lawful development certificate (LDC).
- An appeal is made by Graham Stride against a decision of Elmbridge Borough Council.
- The application Ref 2021/1643 was dated 4 May 2021 was refused by notice dated 1 July 2021.
- The application was made under section 191(1)(a)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is hardstanding and parking.

Summary of decision: the appeal is dismissed

Preliminary matter

1. For the avoidance of doubt, I should explain that the planning merits of any operations are not relevant, and they are not therefore an issue for me to consider, in the context of this appeal which relates to an application for a lawful development certificate. Comments by interested parties concerning traffic generation and any impact on the character and appearance of the area are not within my remit to consider. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

3. The appeal concerns an application for a lawful development certificate (LDC) for an area of hardstanding and parking at Ditton Hill Farm. The hardstanding is located to the south of the Ditton Hill Farm complex. Livery stables are located near the appeal site. The description of development in the application is 'hardstanding and parking' and the refusal notice refers to 'hardstanding and associated parking'.
4. The Appellant claims that the hardstanding was in place for more than four years before the date of the application for the LDC and that the continuous use

for parking of vehicles in association with the nearby livery stables occurred more than ten years before the relevant date and therefore both hardstanding and parking are lawful by virtue of being immune from enforcement action.

5. In support of the application the Appellant produces a statutory declaration as owner of the land, and statutory declarations from Richard Aird, a contractor from 2001 to 2017 and Rosemary Aldridge who has had a grazing licence for no.2 yard from 1999 to the present day. The Appellant also produces aerial photographs to 2020. The Appellant says that he recalls road planings being in existence at the site in the Summer of 1999 and that the use of the area for customer parking intensified about this time leading to a need for additional parking. He says that every few years road planings have been added to the site to top up and re-level the site for the parking of vehicles by customers to the nearby livery yards. He says that the last such works were effected in Summer 2020. He draws attention to the absence of other provision for customer parking nearby, that 8 out of 9 stables are let out with most customers attending twice a day. Mr Aird states that from 2001 the area was treated with broken chippings of tarmac to form a workable surface for the parking by stable customer cars and horse boxes and that this process was repeated when it grassed over. Mrs Aldridge confirms that she often passes the site usually four times a day as she rents a stable yard nearby. She says that the parking area has benefitted from laid road planning for approximately 20 years.
6. The Council refer to satellite imagery and site visits. The satellite imagery from 2019 shows an area of grass. They argue that the photos from a site visit in 2021 show that works took place to either construct or redevelop the area of hardstanding and that has this resulted in development as it comprised physical alteration and visual change to the land. As this was during the relevant period for immunity they argue the hardstanding is not immune from enforcement action. They also say the Appellant has not provided evidence to demonstrate the relevant planning unit for the purposes of the alleged parking use. I have attached limited weight to the Council's satellite imagery as images of grass are consistent with the Appellant's version of events and might have coincided with grass growing through hardstanding. A comment from an interested party says that 'the area in question has always been grass' but with no supporting evidence I have placed limited weight on this comment.
7. The onus of proof in this appeal rests upon the Appellant and the test of evidence is the balance of probability. The Appellant's evidence does not need to be independently corroborated in order to be relied but it does need to be precise and unambiguous.
8. The three declarations provide first hand accounts that hardstanding has been topped up from time to time when it has grassed over. But they do not address the observations made by the Council in 2021 and the claim that operational development made physical alterations to the land in the period of four years before the application. Whether the works in 2021 were too minor to constitute development will be a matter of fact and degree and there is no clear and precise version of event before me from the Appellant to counter the Council's version of events.
9. I agree that aerial photos show the use of the appeal site by vehicles as far back as 2006 and that there is evidence of use by livery customers. But there is

insufficient evidence for me to conclude that there has been continuous use for the relevant period primarily or solely by livery customers. It is speculation to conclude that the absence of other parking provision for the livery means that the appeal site must have been used solely or primarily for parking to serve the stabling yard. Where a LCD application concerns a use it is relevant to consider the appropriate planning unit as a planning unit which is in a mixed use needs to be carefully reflected in the certificate. To do otherwise risks a loss of control over any future intensification of use. The Appellant argues there is no requirement to assess uses beyond the hardstanding area but on the evidence before me I cannot determine the correct planning unit in order to properly consider the lawful use of the hardstanding area.

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a lawful development certificate was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Formal Decision

11. The appeal is dismissed.

Sandra Prail

Inspector