



Appeal Decision

Site visit made on 14 February 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2023

Appeal Ref: APP/C3810/C/22/3296912

Land to the southwest of Maidenhead Aquatics & The Arundle Gardener, Crookthorne Lane, Climping, West Sussex BN17 5SN

- 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 Mr David Lawrence of Maidenhead Aquatics Limited against an enforcement notice issued by Arun District Council.
 - The enforcement notice was issued on 15 March 2022.
 - The breach of planning control as alleged in the notice is: 1. Without planning permission, the laying of hardcore with aggregate over. 2. Without planning permission, change of use of the land for use in connection with adjacent existing garden centre business.
 - The requirements of the notice are: (a) Enact the removal, in its entirety of the items then described in the notice. (b) Cease, in perpetuity, the unauthorised use of the land for all purposes associated with the existing adjacent garden centre. (c) Enact the removal, in its entirety, the laid hardcore with aggregate over situated on the land. (d) Following removal of the laid hardcore with aggregate over, restore the land to its former open grassland/agricultural condition, to be agreed in writing with the Local Planning Authority.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with corrections.

The Enforcement Notice

2. The notice is directed against the use of only a small part of the site (as shown edged blue on the plan attached to the notice) for the retail sale and associated storage of garden related goods, as well as the laying of a larger area of hardstanding (as shown edged red). The allegation then need not describe all the ancillary developments or items connected with the unauthorised use, such as trellising.
3. The requirements of the notice can then only require the cessation of the use enforced against, in the small part of the site (as edged blue), given the land could potentially be put to another lawful use associated with the adjacent

garden centre. The notice can therefore not seek to prohibit a multitude of potential future uses, only what has been enforced against.

4. A notice also cannot require details to be agreed in writing with the Council.
5. I will therefore correct the allegation and requirements to this effect as I do not consider that injustice to the parties would arise.

The ground (c) appeal

6. For an appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that when the notice was issued, there had not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
7. In respect of the use of the land the appellant states the use will be limited to the cultivation of plants and not for the display of these plants for sale. However, stating that the use '*will be limited*' indicates a future intention. Indeed, I could see during my site visit that the area was no longer used for retail sales and items had been removed. Nevertheless, this does not demonstrate on the balance of probabilities that there had not been the alleged breach of planning control when the notice was issued.
8. I however accept that the land could be put to a use which does not require planning permission, such as for agriculture, and which could then potentially be associated with the adjacent garden centre. I have however already dealt with this in my corrections to the notice. Any future use of the site is however a matter for the parties because the notice can only remedy the breach that has been enforced against, namely retail sales and associated storage.
9. In respect of the area of hardstanding, it is contended that this was permitted development by virtue of Schedule 2, Part 6, Class B of the Order¹. A letter is then provided from the Council which is said to confirm that the site is an established agricultural unit.
10. That letter however dates from some time ago, 2014, and only relates to the proposed flexible change of use of a polytunnel to use as a restaurant/cafe. Whilst it refers to the flexible change of use of the polytunnel as lawful because it was within an established agricultural unit, it is silent in respect of any other areas of land. Furthermore, the letter states that any confirmation contained therein only relates to that proposed flexible change of use. Moreover, there are no plans before me to demonstrate that the letter relates to the part of the site now enforced against and during my site visit, I could see there was no polytunnel located on it.
11. Accordingly, the appellant has not demonstrated on the balance of the probabilities that the hardstanding was in an area forming part of an agricultural unit which qualified for permitted development. There is then very limited evidence to demonstrate that the hardstanding did not constitute development or had the benefit of planning permission.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015

12. Thus, I find as a matter of fact and degree that the appellant has not demonstrated on the balance of probabilities that when the notice was issued there had not been the breaches of planning control.

13. The appeal on ground (c) therefore fails.

Overall Conclusion

14. For the reasons given above I conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice with corrections.

Formal Decision

15. It is directed that the enforcement notice be corrected by:

- deletion of section 3.2 of the notice in its entirety and replacement with the words: *'3.2 Without planning permission, the material change of use of the land within the north-east section (as shown edged in blue on the attached plan which accompanies this notice and referenced to as Appendix B) for the retail sale and associated storage of garden related goods.'*
- deletion of section 5. (b) in its entirety and replacement with the words: *'(b) Cease the use of the land within the north-east section (as shown edged in blue on the attached plan which accompanies this notice and referenced to as Appendix B) for retail sales and associated storage.'*
- deletion of the words; ', to be agreed in writing with the Local Planning Authority' from section 5. (d) of the notice.

16. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR