



Appeal Decision

Site visit made on 30 August 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28TH SEPTEMBER 2023

Appeal Ref: APP/M2270/C/22/3306739

Land at High Wood, High Woods Lane, Royal Tunbridge Wells, Kent

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Ian Bowman of Bowman and Sons against an enforcement notice issued by Tunbridge Wells Borough Council.
- The notice was issued on 10 August 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land from agricultural to a mixed use of agricultural and siting and storage of motor vehicles, non-agricultural vehicles and a storage container including the erection of perimeter fencing and gates in association with the use.
- The requirements of the notice are: 1. Cease the use of the Land for the siting and storage of motor vehicles, non-agricultural vehicles and the siting of storage containers. 2. Permanently remove from the Land all motor vehicles and non-agricultural vehicles. 3. Permanently remove from the Land the storage container shown in its approximate position in the shaded green area on the attached plan. 4. Permanently remove from the Land the perimeter fencing and gates shown in their approximate position in the shaded green area on the attached plan.
- The period for compliance with the requirements is 2 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Preliminary Matter

1. I carried out an unaccompanied site visit, with no other parties present, as I was able to see everything I needed to from publicly accessible land.

The Notice

2. The breach of planning control alleged in the notice refers to a material change of use of an extensive area of land from agricultural to a mixed use as agricultural and the siting and storage of motor vehicles, non-agricultural vehicles and a storage container, including the erection of fencing and gates in association with that use. I am advised that some of the land has been sold and planning permission relating to the change of use of an existing building on that land to a dwelling has been implemented since the notice was issued.
3. An amended plan has been provided by the Council, showing a reduction in the area of land which should form the subject of the enforcement notice to reflect the changes in land ownership since the notice was issued. A red line and an area shaded dark green are labelled 'Override 1' on the amended plan. This area of land shaded dark green is where the vehicles, storage container,

fencing and gates referred to by the notice are located, which is said to result in an unauthorised material change of use of the land edged in red.

4. The provisions of section 176 of the Act permit me to correct any defect, error or misdescription in the notice, or to vary the terms of the notice, if I am satisfied that such changes would not cause injustice to any parties. The appellant has been provided with an opportunity to comment on the substitution of the amended plan for the plan initially attached to the notice, and I take the comments received into account. In this particular case, correcting the notice so that it refers to the amended plan would not cause injustice to any parties, as it would reduce the area of land the subject of the notice to reflect current land ownership boundaries, consistent with the planning unit. I shall correct the notice accordingly, as set out in my formal decision.
5. Step 1 of the notice requires the land to cease being used for the siting and storage of motor vehicles, non-agricultural vehicles and the siting of storage containers. As the last lawful use of the land was for agricultural purposes, there should be no objection to agricultural vehicles being sited or stored on it in connection with the agricultural use of the land. I shall therefore vary Step 1 of the notice to allow such vehicles to be sited or stored on the land in association with any agricultural use of the land.
6. Step 1 obviates the need for Steps 2 and 3 of the notice, which require such items to be permanently removed from the land. I shall therefore delete Steps 2 and 3. I shall also vary Step 4 of the notice to ensure that it refers to the area shaded dark green and labelled 'Override 1' on the amended plan, in the interests of clarity.
7. The above variations will not cause injustice to any parties, as they merely clarify what is required to be done to comply with the notice without interfering with the lawful use of the land.

Ground (c)

8. To succeed under this ground of appeal the appellant would need to demonstrate that the breach of planning control alleged in the enforcement notice does not constitute a breach of planning control.
9. The appeal site is an area of woodland bordered to the north by High Woods Lane, which is a private road. A clearing within the woodland is being used for the storage of motor vehicles, non-agricultural vehicles, and a storage container, as described in the notice. Its northern boundary along the private road is secured with tall metal fencing and gates which are referred to as being in association with the use of the land in the notice. The appellant has explained that the fence and gates measure 6 feet in height and were erected in 2021 after vandalism to a vehicle parked on the land.
10. Section 57 of the Act states that planning permission is required for the carrying out of development of any land. Section 55 of the Act provides the meaning of development, which includes the carrying out of building or other operations on land, and the making of any material change in the use of any buildings or other land.
11. Section 336 of the Act provides a definition of 'agriculture', which includes the use of land for woodlands where that use is ancillary to the farming of land for

other agricultural purposes. The appellant has described High Woods and the appeal site as mainly comprising 30 acres of chestnut coppice with oak and beech standards, a 4 acre grass field, and a 3 acre wildflower meadow owned by the third generation dairy farmers as part of 450 acres of other farmland. High Woods is maintained by coppicing the chestnut every 20 years. The appeal site is surrounded by what appear to be agricultural fields.

12. Taking the above into account, it appears that the land the subject of the notice was previously used for agricultural purposes, as defined in the Act. Much of the land the subject of the notice remains in such use, but part is now used for the siting and storage of motor vehicles, non-agricultural vehicles and a storage container which has resulted in a significant change to the character and activities carried out on that land. This is clearly appreciable from High Woods Lane and the adjacent bridleway. The agricultural use and storage use are not related to each other and appear to be primary uses within the same planning unit, resulting in a mixed use of that land. I am satisfied that a material change of use of the land has taken place as described in the notice. No planning permission exists for that material change of use, which is therefore in breach of planning control.
13. With regard to the appeal under ground (c), the appellant has claimed that the fencing and gates referred to in the notice are 'permitted development' under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure are authorised by Article 3(1) and Class A, Part 2 of Schedule 2 of the GPDO, subject to limitations. Development is not permitted by Class A if the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic exceeds 1 metre above ground level, other than in the case of a school.
14. It is clear that the fence and gates exceed 1 metre in height and are not related to a school. High Woods Lane is a highway used by vehicular traffic, even if vehicular access to that highway is privately controlled. Parts of the fence and gates are located close to, and parallel with the highway, with there being no intervening features save for a short hard surfaced entrance. The fence and gates therefore exceed 1 metre in height and have been erected adjacent to a highway used by vehicular traffic. They do not accord with the limitations of Class A, Part 2 of Schedule 2 of the GPDO and do not comprise permitted development.
15. The fencing and gates referred to in the notice comprise development requiring planning permission. As they have been erected without planning permission, they are in breach of planning control.
16. The appeal under ground (c) therefore fails.

Ground (d)

17. To succeed under this ground of appeal the appellant would need to demonstrate that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control alleged in the notice.

18. The alleged breach of planning control includes operational development (the fencing and gates) and a material change of use. Section 171B(1) of the Act states that where there has been a breach of planning control consisting in operational development, 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. Section 171B(3) states that in the case of any other breach of planning control¹ no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
19. The appellant has explained that the fencing and gates referred to in the notice were erected in 2021 after a vehicle had been vandalised. They are not therefore exempt from planning control under the provisions of section 171B of the Act and there are no ground (d) arguments in favour of the gates and fence.
20. It is claimed that the area shaded dark green on the amended plan is an area of hardstanding constructed over 40 years ago, which has never been used for agricultural or forestry purposes, and that it has been used for car parking since 2001. An automatic gate was installed at the western end of High Woods Lane in 2012 to ensure that it was only used for private commercial parking. It has been claimed that LJ Marsh and Son Ltd used it as a staff and lorry parking area between 2010 and 2016, before it was leased to Daniel Kemp to use it as a store area for building materials from 1 September 2016, and then to William James to use it as a store area for vehicles from 16 November 2018 to the present day. The storage container is claimed to have been 'parked' on the land temporarily by William James in 2018.
21. I have been provided with a copy of a letter from the Council to the appellant, dated 29 September 2016, which refers to 'the storage area for building materials located by the bridle path' needing planning permission. This, it is claimed, shows that the Council had no objection to that land being used for the parking of vehicles at that time. I do not take that letter as suggesting the Council considered such a use of the land would be acceptable or lawful at that time. The letter does, however, suggest that the area of land shaded dark green on the amended plan was not being used for the purposes described in the notice at that time. This supports the appellant's claim that Daniel Kemp stored building materials there for some time starting in September 2016.
22. I have also been provided with various aerial photographs. The appellant has provided a Google Earth aerial photograph dated 1990, which shows the area of land shaded dark green on the amended plan as a bare patch of land protruding into the adjacent woodland.
23. The Council's aerial photographs have also been taken from Google Earth and the dates referenced by them have not been disputed by the appellant. An aerial photograph dated 23 May 2009 appears to show the area of land shaded dark green on the amended plan as a bare patch protruding into woodland, free of any items at that time. This is similar to an aerial photograph dated 3 May 2013, although an unidentifiable item, which may be a parked/stored vehicle, appears to be present on the land at that time. Other aerial photographs dated 6 June 2013, 9 July 2013, 26 July 2014, 20 April 2015, and 2 July 2017 appear to show the area clear of any items at those times.

¹ other than that specified in section 171B(1) and (2) of the Act

24. The aerial photographs start to show a notable change in the appearance of the area of land shaded dark green on the attached plan during 2018. Aerial photographs dated 5 May 2018 and 26 September 2018 show what appear to be a single vehicle in different positions on parts of the land in question closest to the road at those times. Coppicing appears to have been carried out in part of the adjacent woodland shortly before those photographs were taken, but there does not appear to be a storage container present at those times. Aerial photographs dated 15 April 2020, 23 April 2020, 5 September 2020, 9 June 2021, and 5 August 2022 appear to show the area of land used by a number of vehicles in a tightly compacted arrangement, similar to the existing situation shown in the photographs provided and what I saw during my unaccompanied site visit.
25. All of the aerial photographs provide limited detail as to how the area of land the subject of the notice has been used historically. Views of the area of land in the aerial photographs are partially obscured by shadows and overhanging trees, and the clarity of the small area the focus of each photograph is quite low. The aerial photographs provide snapshots in time which provide a basic indication as to how the land may have been used on the dates referred to. For example, the aerial photographs appear to show vehicles present on the land on 5 May and 26 September 2018, but it is unclear whether they were there for purposes associated with the agricultural use of the land. The aerial photographs show that a clearing has existed in the woodland since at least 1990, but the creation of that clearing and the laying of any hardstanding in that area does not form part of the alleged breach of planning control.
26. In conclusion, the aerial photographs appear to show a significant change in the use of the area of land shaded dark green on the amended plan which commenced at some point between 26 September 2018 and 15 April 2020. That change in appearance is consistent with the alleged breach of planning control. Prior to that period, the aerial photographs do not suggest that land was routinely used for the siting or storage of vehicles.
27. The evidence does not demonstrate on the balance of probability that the land shaded dark green on the amended plan has been used for car parking since 2001, or that its use as alleged in the notice had been ongoing for at least 10 consecutive years at any point prior to the service of the notice. The appellant has not demonstrated, on the balance of probabilities, that the breach of planning control alleged in the notice began and remained consistent for at least 10 years before the notice was issued.
28. The appeal under ground (d) therefore fails.

Conclusion

29. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

Formal Decision

30. It is directed that the enforcement notice is corrected and varied by:
- (i) the substitution of the plan annexed to this decision for the plan attached to the enforcement notice;

(ii) the deletion of the text at Steps 1, 2, 3, and 4 at Section 5 of the enforcement notice and its substitution with the following text: "1) Cease the use of the Land for the siting and storage of vehicles and a storage container, other than any vehicles associated with the agricultural use of the Land. 2) Remove from the Land the perimeter fencing and gates located in the approximate position of the area shaded dark green and labelled 'Override 1' on the attached plan".

31. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

L Douglas

INSPECTOR

Annex to Appeal Decision

Corrected Plan

This is the plan referred to in the appeal decision dated: 28TH SEPTEMBER 2023

by L Douglas BSc (Hons) MSc MRTPI

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Not to Scale

