



Appeal Decision

Site visit made on 4 July 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2023

Appeal Ref: APP/N0410/C/22/3298939

**Land adjoining Stoke Grange, Fir Tree Avenue, Stoke Poges,
Slough SL2 4NN**

- 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 Abid Hussain against an enforcement notice issued by South Bucks District Council.
 - The enforcement notice, numbered ES/22/00127/COU/EN/1, was issued on 4 April 2022 ('the Notice').
 - The breach of planning control as alleged in the notice is 1. Without planning permission, the unauthorised change of use of the Land for the parking/storage of motor vehicles. 2. Operational development facilitating and integral to the unauthorised change of use, comprising the following: Laying of hardstanding/hardcore on the Land ('the Hardstanding/Hardcore'); located in the approximate positions shown stippled on the Plan; The stationing of a cabin ('the Cabin') on the Land in the approximate position shown cross hatched on the Plan; The erection of close boarded fencing ('the Fencing') in the approximate location shown dashed on the Plan; and The erection of gates ('the Gates') in the approximate location shown with a black line at point A to B on the Plan.
 - The requirements of the notice are 1. Cease the use of the land for the storage and parking of motor vehicles; 2. Remove from the Land the cabin (shown in the approximate location cross hatched on the plan); 3. Remove from the Land the hardstanding (shown in the approximate location stippled on the attached plan) and reinstate the land its former grassed condition; 4. Remove from the Land all items, vehicles and paraphernalia that has been brought onto the Land in connection with the unauthorised material change of use; 5. Remove the gates from the Land (shown in the approximate location marked A to B); 6. Remove the fencing from the Land (shown in the approximate dashed on the plan); and 7. Remove from the Land all debris and materials resulting from compliance with steps 1 to 6 of this Notice.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended ('the Act').
-

Decision

1. It is directed that the enforcement notice is corrected by:
the deletion of the third item of operational development in paragraph 3.2 of the Notice ('The erection of a close boarded fence...the Plan') and its replacement with 'The erection of a timber trellis on the close boarded fencing ('the fencing') in the approximate location shown dashed on the Plan and the erection of close boarded fencing ('the fencing') in the approximate position shown in red on the Plan'.

And varied by:

Omitting the whole of requirement 5.6 in section 5 of the Notice 'What you are required to do' and substituting the words "Remove the trellis from the fencing shown dashed on the Plan and the fencing shown in the approximate position in red on the plan; and"

And the substitution of the plan annexed to this decision for the plan attached to the enforcement notice

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

The Notice and 'Hidden' Ground (e)

2. The Appellant made the case that the Plan that was attached to the Notice was inaccurate, and I saw that this was the case when I visited the site. I wrote to the Council requesting a revised plan be submitted; the Council agreed and a revised plan covering a smaller area was received by email on 19 July 2023. The Appellant was given an opportunity to comment and did so by email dated 24 July 2023.
3. In this, the Appellant stated that the revised plan still did not reflect the extent of the breach of planning control that had occurred. He said that a revised plan would be required, but as that would need to include land that was outside of the ownership of those served with a copy of the Notice this would lead to injustice. He attached a plan to his submissions showing what he said was the true extent of the breach.
4. The land covered by the original and revised plans produced by the Council falls within Land Registry ('LR') title number BM336399. This is owned by Yasmin Rauf, who was served with a copy of the Notice. Were the Appellant to be correct, the land attacked by the Notice would need to be extended into LR title number BM191569. Not all of those with an interest in this land were served with copies of the Notice. The Appellant claims that land within BM191569 has been used for the purposes alleged in the Notice. It is this land, he says, that should have been included and were it to be now there would be injustice.
5. I took this as a 'hidden' Ground (e) appeal. That is to say, that copies of the Notice were not served as required by s172 of the Act. Section 172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the LPA, is materially affected. The onus lies with the Appellant to make his case. I allowed the parties the opportunity to make further representations. Both did and I take all representations on the issue into account, below.
6. The Appellant states that the Council was being unreasonable and misleading in its submissions, and the plan he submitted "clearly outlined where the current use is occurring". However, the issue is what was occurring at the time that the Council issued its Notice, rather than that which is occurring. In this regard, the Council state that they are enforcing on the basis of the evidence they found at two site visits.

7. The Council said that at no time did they witness the breach to the north of LR title BM336399. I could see, when I zoomed into one of the Council's photographs, as requested by the Appellant, that there was a car on the 'disputed land'. However, this is under, and partially screened by, overhanging trees and might have been missed on the day. The Appellant draws attention to what he could only describe as a "white shade" in the background of others of the Council's photographs from these site visits. Like him, I am unable to discern what this is. Nonetheless, the other photographs from the visits show an intensive use of the land covered by the Notice that is entirely different from the scene of a single car partially obscured by branches on the disputed land. From that, I cannot determine that the land was being used for the purposes alleged in the Notice.
8. In any event, the land in LR title BM191569 is not enforced against by the terms of the Notice before me. The Council is clearly of the opinion that it was not under-enforcing and leaves the option of further enforcement action open. I do not have sufficient information to judge whether the Council should have done a more thorough job or that its actions amounted to under-enforcement. It is for the Council to determine whether it would be expedient and correct to take further action. If it did, then any party with an interest in LR title BM191569 would be able to make a case against the action at that time.
9. Although the Appellant queries the accuracy of the revised plan entitled 'Amended Enforcement Plan Post Inspector Site Visit', in terms of distorted axes associated with the mapping product, I find that it is suitable to identify the land on which the breach is alleged to have occurred. I shall correct the Notice by substituting this plan for that which was originally attached to the Notice. Further, I find that the people with an interest in this land have been correctly served with copies of the Notice. Therefore, I would not quash the Notice, and the hidden Ground (e) fails.

Ground (c)

10. An appeal made under Ground (c) is that those matters, if they occurred, do not constitute a breach of planning control.
11. The key to the Appellant's case in this regard is whether, as is his view, the land to which the Notice relates is within the curtilage of Stoke Grange. As such, he says, the enclosures and formation of hardstanding would be permitted development by reason of Classes E and F of Part 1 and Class A of Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('GPDO').
12. Save for that specifically relating to the conversion of agricultural buildings in Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order (England) 2015 (as amended) (the 'GPDO') there is no statutory definition of curtilage. The Oxford English Dictionary (OED) defines it as "A small court, yard, garth, or piece of ground attached to a dwellinghouse, and forming one enclosure within, or so regarded by the law; the area of land attached to and containing a dwellinghouse and its outbuilding". The Council has drawn my attention to the definition in the DCLG document 'Permitted Development for Householders Technical Guidance' (updated 2019) as "land which forms part and parcel with the house. Usually, it is the area of land within which the house sits, or to which it is attached, such as the garden, but

for some houses, especially in the case of properties with large grounds, it may be a smaller area”.

13. The established position is that, in planning terms, it need not be a small area of land but it should serve the purpose of a building in some reasonably necessary or helpful manner, though it need not be enclosed about the building. Assessing whether land is within the curtilage is a matter of fact and degree taking into account its physical layout, ownership - past and present, and its use or function - past and present.
14. Stoke Grange is a substantial detached residential property set in spacious grounds. The principal access to the property is from Fir Tree Avenue, which also serves two other dwellings. There is another from Stoke Poges Lane directly onto the appeal site.
15. The principal access gives onto a short drive leading to a formal parking area in front of the house; that is to say, facing the public road. To the southwest side of the house, and to its rear, is a conterminous area of grass that was mown and appeared to be maintained as such. That area to the side of the house is bounded by a belt of trees that, as it runs past the plane of the rear elevation of the house, becomes thinner and eventually becomes a line of trees.
16. To the south of the mown area, beyond the belt and line of trees, lies the area of dispute I refer to above and the land to which the terms of the Notice apply. At its furthest point from the rear of the house, the mown area is bounded by a thin line of trees. Beyond this, rough grass has been allowed to grow taller which has paths mown within it. It has a markedly different character. The mown land, together with the drive and parking area can undoubtedly be seen as being within the curtilage of the house.
17. That the appeal site has been in the same ownership as Stoke Grange and the mown area since 2005 is not countered by the Council. Evidence of the use of the land during this time is scant, and limited to comments of its utilitarian garden purpose, the burning of rubbish and storage.
18. Whilst the mown land and that to which the Notice relates are in the same ownership, and have been for some time, they are readily divided by the belt and line of trees. Therefore, in terms of physical layout, they are separate. The evidence does not lead me to find that the land has been used in the same manner as that immediately to the rear and side of the house.
19. As a matter of fact and degree, I find that the land affected by the Notice is not within the curtilage of Stoke Grange. As the permitted development rights referred to by the Appellant in Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ('GPDO') relate to land within the curtilage of a dwellinghouse, they are not applicable here and cannot be relied on in his Ground (c) arguments.
20. I find that the evidence points, in the main, to the refurbishment of an existing boundary fence that was in-situ prior to the breach occurring, rather than its replacement. The exceptions to this are where it has been increased in height by reason of the addition of trellis work, and the creation of a new set-back area with gates to the appeal site. All are in excess of the height limits set out in Part 2, Class A of the GPDO and are not permitted development.

21. I shall correct the Notice by omitting reference to the fencing, as a whole, in section 3 of the Notice, 'The matters which appear to constitute the breach of planning control', and vary its requirement 5.6 to refer only to the trellis and that part of the fence that runs perpendicular to the road at the set-back gateway.
22. The Appellant's claim that there was an existing hardstanding in the area around the newly formed set-back gateway is not countered by the Council. As it sets out, the terms of the Notice do not seek to have this removed. I have no need to correct or vary the Notice on this matter.
23. Although I shall correct and vary the Notice, the material change of use alleged in the Notice has occurred as a matter of fact. Therefore, the case made under Ground (c) fails.

Ground (d)

24. An appeal under Ground (d) is that, at the date the EN was issued, no enforcement action could be taken in respect of any breach of planning control alleged in the Notice.
25. The time limit in s171B of the Act is 10 years for the material change of use that is alleged in the Notice. The Appellant's case here relates to the operational development in the form of the hardstanding at the site entrance and boundary fence that are discussed in my assessment of the Ground (c) case, above. Such development becomes immune after 4 years. I found there that these features had been in-situ prior to the breach occurring; the evidence points to these having been put in place in 2008 and 2005, respectively. I do not include the new fence in the set-back leading to the gates in this analysis.
26. No reason as to why the fence was heightened by way of the addition of the trellis has been given. I find that, on the balance of probability, this was to provide additional screening to the unauthorised development. I do not see this as an alteration to a pre-existing fence that had been in-situ for more than four years. Even if this were wrong, settled case law has established that operational development that might be permitted development or otherwise immune from enforcement action can be removed through a Notice attacking a material change of use of land. I find similarly with regards to the fence either side of the set-back as well as the gates that have been erected.
27. The refurbished fence can remain as a result of my decision, and the hardstanding referred to by the Appellant is not challenged by the Notice. However, the material change of use that is the subject of the Notice has not become immune through the passage of time.
28. For the above reasons, the Ground (d) appeal fails.

Ground (f)

29. An appeal made under Ground (f) is that that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

30. Here, the purpose of the Notice is to remedy the breach of planning control. Given the purpose, and that no Ground (a) case is made, I cannot take any arguments regarding planning merits into account.
31. Although there was an access onto Stoke Poges Lane, that created was integral to and facilitated the change of use of the land. The requirement to have the entrance fencing and gates removed is not excessive. The hardstanding was created for similar reasoning and, again, the requirement for its removal is not excessive. As the land lies outside the curtilage of Stoke Grange, it could not be replaced under permitted development rights.
32. I have addressed the arguments that the Appellant makes about the pre-existing fence and latter trellis, above.
33. That the Appellant assumed that the Council did not find harm arising from the hardstanding and trellis when it previously investigated a breach of planning control on the land does not mean that the Council is precluded from subsequently taking action. Where, as here, a Council re-visits a site and finds that there is a breach of planning control and it is expedient to take action, it can do so as long as it has not thereafter become immune. This is what the Council has done here.
34. For the above reasons, the Ground (f) case fails.

Ground (g)

35. An appeal under Ground (g) is that the time given for compliance with the requirements of the Notice falls short of what should reasonably be allowed.
36. The Appellant's case is that the reinstatement of the land would take in excess of 3 months. In this regard, he points to the need to hire equipment and that building companies are very busy and, as a result of the pandemic, supply chains require longer lead-in times. A 9-month, or more suitably a 12-month period is requested.
37. Although covering a quite substantial area, with suitable equipment the hardstanding could be removed within the three-month period. Cars could be driven off immediately and the cabin removed quickly. No evidence, in the form, perhaps, of letters from equipment hire companies and builders, has been given in support of the time issues arguments. Given the time that has passed since the pandemic was at its height and the restrictions associated with it were lifted, I give little weight to this line of argument.
38. The Ground (g) case fails. In making my decision not to extend the time given for compliance with the Notice, I am aware of the powers given to the Council in s173A(1)(b) of the Act to extend the period for compliance.

Conclusion

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

Roy Curnow

Inspector



Plan

This is the plan referred to in my decision dated: 26 October 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

Land at: Land adjoining Stoke Grange, Fir Tree Avenue, Stoke Poges, Slough SL2 4NN

Reference: APP/N0410/C/22/3298939

Scale: Not to scale

