



Appeal Decisions

Site visit made on 04 October 2023

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2023

Appeal A Ref: APP/M3645/C/22/3299574

Land at Home Park Farm, Bones Lane, Newchapel RH7 6HR

- 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 Jonathon Moseley against an enforcement notice issued by Tandridge District Council.
 - The enforcement notice, numbered ENF/2021/112, was issued on 01 March 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the construction of a hard surface in the approximate area shaded blue on the attached plan.
 - The requirements of the notice are:
 - i) Excavate all hardstanding material from the area shaded blue on the attached plan to a depth where all the pre-existing earth prior to the formation of the hardstanding is exposed;
 - ii) On completion of step i. above regrade the land to match the profile of the land to the north and west (excluding any raised bund) and reseed the land with a native species grass mix; and
 - iii) Remove the material arising from compliance with 5(i) above to an authorised place of disposal.
 - The period for compliance with the requirements is within 5 months of the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/M3645/C/22/3299579

Land at Home Park Farm, Bones Lane, Newchapel RH7 6HR

- 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 Jonathon Moseley against an enforcement notice issued by Tandridge District Council.
- The enforcement notice, numbered ENF/2021/112, was issued on 01 March 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the change of use of the land in the approximate area shaded blue on the attached plan from agricultural land within the Green Belt to a mixed use as a builders storage yard (Use Class B8) and for the parking and storage of vehicles, trailers and containers, non-agricultural machinery, materials and equipment.
- The requirements of the notice are:
 - i) Cease the use of the land shaded blue on the attached plan as a builders storage yard (Use Class B8) and for the parking and storage of vehicles, trailers and containers, non agricultural machinery, materials and equipment; and
 - ii) Permanently remove from the land all vehicles, trailers, containers, non agricultural machinery, materials and equipment.
- The period for compliance with the requirements is within 4 months from the date the notice takes effect.

- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision in Relation to Appeal A:

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

Decision in Relation to Appeal B:

2. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. Notwithstanding that both were given the same reference number, the Council served two enforcement notices in relation to the land in question, one alleging a material change of use, the other alleging that operational development had taken place. Appeals have been made against both notices. Given that the two matters are closely linked I have dealt with both appeals in one decision letter.
4. Both appeals were made on grounds (b), (c) and (d). There is often some overlap between grounds (b) and (c) and the distinction between those grounds can cause confusion for professional practitioners, let alone unrepresented appellants as is the case here. An appeal on ground (b) is made on the basis that the matters stated in the notice have not occurred. The appellant does not dispute that the hard surface has been laid, nor does he dispute that the area has been used for the parking and storage of vehicles, trailers and containers, non-agricultural machinery, materials and equipment.
5. Having read the appeal form and supplementary submissions, the appellant's case is that the use and operations are related to the wider use of the farm and his attempts to diversify. In that respect it seems to me that the arguments presented would be more appropriately considered under ground (c) which is that the matters alleged do not constitute a breach of planning control. I shall proceed on that basis.
6. As noted the appellant is unrepresented. Within his appeal submissions he has made reference to the benefits of hardstanding in terms of pollution control and in relation to DEFRA standards and good farming practice. However, no appeal has been made on ground (a) and the relevant fee has not been paid. Consequently, I cannot consider the planning merits of the developments in question and must limit myself to consideration of the legal grounds of appeal that are before me.

The Appeals on Ground (c)

7. The appeal site is on land at Home Park Farm which is within the countryside to the north-west of Newchapel. More specifically, the land identified within the notice is located to the west of a number of pre-fabricated barns. The area is laid to hardstanding in the form of compacted aggregate, with an earth bund running along the western boundary. The front portion of the area is enclosed with fencing, with a lockable gate.
8. At the time of my site visit there were 2 shipping containers and nine vehicles within the compound, including various diggers and a builder's van. A number of the diggers and the van displayed the logo of CBC, the acronym of Conroy Builders Croydon. In addition, there were various items one would associate with a general builder's yard within the compound, including numerous

wheelbarrows, building materials and aggregate, drainage pipes and rainwater goods. Based on the evidence provided by the Council what I witnessed on site is consistent with how the site was being used in January 2022 when complaints from local residents were submitted on the basis that the compound was being used as a builder's yard.

9. The appellant's claim that the use of the compound is primarily associated with his paddock maintenance business is less than convincing given the nature of the vehicles and equipment that appears to be more associated with general building activity of CBC. Similarly, the appellant's claims that he purchased vehicles, building materials and equipment from CBC it is not backed up by supporting evidence and those claims do not over-ride the general impression that the compound has been used as a general storage yard not linked to any agricultural activity.
10. Outside of the compound, the area of hardstanding appears to be less intensively used with some items of equipment, including what appeared to be a hedge trimming attachment. However, there is no evidence to indicate that any agricultural activity is currently taking place at the site or the wider farm. The paddock maintenance, drainage and fencing activity referred to by the appellant is not an agricultural activity in itself and appears to be a service provided to local horse yards as opposed to anything that is ancillary to activities on Home Park Farm. The former barns appear to be either empty or in use for non-agricultural purposes.
11. Whilst the appellant has referred to growing haylage to sell to local horse yards, little evidence of the land in question being used for that purpose or storage of haylage has been presented.
12. In view of the above, the balance of the evidence presented indicates that the land in question has been used as a builder's storage and for the parking of vehicles, trailers and containers, non-agricultural machinery, materials and equipment. Moreover, the storage of equipment in relation to the appellant's paddock maintenance activities does not appear to be of an ancillary nature or directly connected to any on-site farming activity.
13. Consequently, it appears that the use of the land is essentially an independent planning unit being used for the purposes described in the notice. That would amount to a material change of use from the former agricultural use and no planning permission has been granted for that development. It follows that the material change of use does represent a breach of planning control and Appeal B on ground (c) must fail.
14. In terms of Appeal A, the appellant maintains that much of the hardstanding was pre-existing base that had 'greened over', including the area covered by a former riding arena towards the front of the site. He accepts that the area to the rear of the enclosed section is newly extended.
15. The overhead photographs provided by the Council from 1999 and 2001 do depict the former riding arena in use for the storage of manure which is consistent with the appellant's evidence. The western part of that area is within land covered by the enforcement notice. However, over time, the subsequent overhead photographs from 2005 and 2013 effectively show that the part of the former arena that is within the land identified by the notice had completely grown over to the extent that it was assimilated back into the

agricultural land to the west of the farm buildings. Photographs taken in relation to an enforcement investigation in 2009 and street view images from 2016 are consistent with the overhead images.

16. Thus, although I have no reason to doubt that part of the area within the notice had been covered in hardstanding at points in the past that area had long since become overgrown and dis-functional as a usable hard surface. In addition, the photographic evidence indicates that the pre-existing hardstanding immediately to the west of the barns was limited to a relatively narrow strip with agricultural land beyond. The hardstanding identified within the notice clearly extends further beyond the barns and onto land that was previously a field in agricultural use.
17. The photographic evidence from 2018 and 2019 does not depict an extension of an existing hard surface but the creation of a completely new surface with a consistent chalk base across the entirety of the land covered by the enforcement notice. In my view, given the overgrown nature of the site prior to the works and the fact that the new surface was of a consistent nature across the whole of the area that amounted to a single engineering operation rather than the extension of a pre-existing hardstanding.
18. Given the purpose of the works was not agricultural there is no suggestion that any permitted development rights applied. The laying of a hard surface was an operation for which planning permission would have been required and none had been sought or granted. Consequently, the works did amount to a breach of planning control and Appeal A on ground (c) must fail.

The Appeals on Ground (d)

19. An appeal on ground (d) is made on the basis that at the date the enforcement notices were served no enforcement action could be taken against the matters described therein. That links to the relevant time periods for taking enforcement action set out in s171B of the Town and Country Planning Act 1990. In this case, the Council has stated that it appears that the works for the formation of the hardstanding have occurred within four years of the date the notice was served and that the material change of use occurred within the last ten.
20. A notice aimed at a material change of use may also require the removal of works that were integral to that MCU within a ten-year period, even if those works would be subject to a four-year period if viewed in isolation. However, in this case, the Council has chosen to serve two separate notices and has made its case on the basis that the relevant period for enforcing against the hardstanding is four years.
21. In any event, that distinction has no bearing on the outcome because the appellant has not satisfactorily demonstrated that the hardstanding was substantially completed more than four years prior to the notice being served. In fact little evidence is provided at all within his statement in terms of the precise timing of the works. As set out above, the photographic evidence provided by the Council indicates that the hardstanding across the site was undertaken as a single operation covering the whole area.
22. The overhead image from September 2018 does show the majority of the area laid to hard surface but the street view photograph from May 2019 still depicts

piles of aggregate on the area which may indicate that the surfacing wasn't completely finished at that point in time. The onus rests with the appellant to demonstrate his case and the evidence before me does not demonstrate, on the balance of probabilities, that the hardstanding was fully complete more than four years before the service of the notice in March 2022. Thus, Appeal A on ground (d) must fail.

23. Given that the hard surface was not fully complete more than four years prior to the service of the notice it is self-evident that the storage use in relation to Appeal B has not continued for more than ten years from the date of that notice. The compound and fencing was completed after the hardsurfacing and was absent in 2019 but present in the overhead image from 2020. Thus, it would appear that the storage use commenced sometime between that time and the appellant is unable to demonstrate that the use had continued for the requisite ten-year period. Therefore, Appeal B on ground (d) must also fail.

Conclusion

24. For the reasons given above I consider that the appeals should not succeed.

Chris Preston

INSPECTOR