



Appeal Decisions

Site visit made on 9 October 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 23rd November 2023

Appeal A Ref: APP/J0405/C/22/3310131

Appeal B Ref: APP/J0405/C/22/3310132

Appeal C Ref: APP/J0405/C/22/3310133

**Land at Mount Pleasant Farm, High Street, Burcott, Buckinghamshire
LU7 0JS**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mr Harnak Aujla (Appeal A), Mr Gurmail Singh (Appeal B) and Mrs Amarjit Aujla (Appeal C) against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 21 September 2022.
- The breach of planning control as alleged in the notice is "Without planning permission: (1) The material change of use of the Land to a mixed use of residential, equestrian, agriculture, the sale, display and storage of motor vehicles and the storage of materials; and (2) Operational development consisting of the laying of hardstanding".
- The requirements of the notice are to:
 - Step 1: Cease the use of the Land for the sale, display and storage of motor vehicles.
 - Step 2: Permanently remove from the Land, all motor vehicles associated with the unauthorised sale, display and storage of motor vehicles.
 - Step 3: Cease the use of the Land for storage of items and materials not required for the lawful use of the Land.
 - Step 4: Permanently remove from the area shown cross hatched in black on Plan 2, all items and materials not required for the lawful use of the Land, inclusive of, but not limited to: metal, wood, gravel, glass, plastic, vehicles, tables, chairs, bath tub, weight bench, roll containers, lawn mowers, tyres, trolleys, mobile steps, scaffolding, barrels, boxes, fencing, insulation, chalk board, cement, bricks, roof tiles, drainage channels, gates, tarpaulin, trailers, buckets, corrugated iron sheets, pallets, air conditioning units, refuse bins, hose, underlay, water butt, boat and piping.
 - Step 5: Permanently remove (demolish) the hardstanding shown hatched in red on Plan 2, from the Land and ensure all materials used in its construction is removed from the Land.
 - Step 6: Permanently remove any debris or materials from the Land that arise as a result of complying with Step 1, 2, 3, 4 and 5 of this Notice.
- The period for compliance with the requirements is within four months of the notice taking effect.
- The appeals are proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended (1990 Act).

Summary decision: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Background and Preliminary Matters

1. The appeals are proceeding on ground (d) only, which is that, at the date the enforcement notice was issued, no enforcement action could be taken in respect of the matters of alleged. This means the planning merits of the matters alleged are not relevant to the outcome of the appeal. The burden is

on the appellants to demonstrate, on the balance of probability, that the breaches of planning control were immune from enforcement.

2. In accordance with s171B of the 1990 Act, to succeed on ground (d) with regards to the alleged material change of use (MCU), the appellants would need to demonstrate that the alleged mixed use had subsisted continuously for a period of ten years before the enforcement notice (EN) was issued. In terms of the operational development, there is no allegation that this was incidental to the alleged material change of use, and thus the appellants would need to demonstrate that the hardstanding was substantially completed more than four years before the EN was issued.
3. There are appeals against a further enforcement notice relating to the wider site address, which concern a change of use to five residential dwellings, together with associated operational development. Despite comprising part of the same address, the areas of land to which this other notice relates are entirely separate. The outcomes of the appeals against each notice are therefore independent of one another, and whilst I have also determined those other appeals, I have dealt with them separately.

Main Issue

4. The main issue is whether the development, or any part of it, was immune from enforcement at the time the enforcement notice was issued.

Reasons

Material Change of Use

5. Based on planning permissions previously granted in connection with the appeal site, the residential, agricultural and equestrian elements of the mixed use of the appeal site are understood to have been lawful. However, use of the site for the sale, display and storage of motor vehicles (Vehicles Use) and the storage of materials (Storage Use), has not been granted permission. It is these two elements of the mixed use which are in contention.
6. There appears to be no dispute between the parties that the Vehicles Use and/or the Storage Use have occurred, or that their addition to the mix of uses on the site would constitute development, as per s55(1) of the 1990 Act. Without any evidence to suggest otherwise, I have proceeded on this same basis.
7. In their response to the Planning Contravention Notice (ref 20/00622/CON3) dated 10 March 2021, the appellants indicated that the Vehicles Use had commenced in November 2020. This statement appears to reflect the Council's evidence in terms of when the use started. In turn, the mix of uses including the Vehicles Use had not subsisted continuously for a period of ten years before issue of the EN, which means it would not have been immune from enforcement at the time the EN was issued.
8. The Council says that the Storage Use began sometime around July 2020. Aerial images of the appeal site which are dated July 2018 show that the relevant parts of the appeal site were clear from obstruction, and were not being used to store materials at that time, which is consistent with the Council's position. The appellants have not presented any evidence to suggest an alternative timeline. In turn, the mix of uses, including the Storage Use, had

not subsisted continuously for a period of ten years before issue of the EN, which again means it would not have been immune from enforcement at the time the EN was issued.

9. On this basis, the appellants have not demonstrated on the balance of probability, that the MCU alleged in the EN, or any element of it against which the notice seeks to enforce, was immune from enforcement at the time the EN was issued.

Operational Development

10. The plan attached to the EN shows five separate areas of hardstanding within the appeal site, which correspond to my own observations during site visit. The Council says that these areas of hardstanding were laid out in or around July 2022.
11. The appellants contend that the areas of hardstanding have “always” been present within the appeal site, as shown in historical photos. It is true that some of the older historical aerial images do show what appears to be a track or area of hardstanding towards the rear of the appeal site (although it is difficult to determine the exact nature and character of this area from the images). However, more recent aerial images of the appeal site, dated March 2020, show that this area is no longer readily distinguishable from the surrounding fields, and is instead mostly laid to grass.
12. The hardstanding now in situ is laid out uniformly to concrete, and is visibly very different in character to anything that was there in 2020. It follows that the areas of hardstanding which are the subject of the notice could not have been considered substantially complete (in their current form), at least four years before the EN was issued.
13. I note the correspondence and invoices relating to the purchase and delivery of concrete which are dated 2016. However, in isolation, these documents are not sufficient to demonstrate that the concrete was actually used to lay out the areas of hardstanding now in situ, or indeed when that concrete was used. The photographic evidence dated March 2020 also clearly conflicts with any assertion that the hardstanding was laid out before this point.
14. On this basis, the appellants have again not demonstrated on the balance of probability, that the areas of hardstanding now in situ were substantially complete at least four years before the EN was issued. The operational development alleged in the notice would therefore not have been immune from enforcement at the time the EN was issued.

Other Matters

15. Whilst no appeals on ground (c) have been brought, the appellants have suggested that the areas of hardstanding were repairs to pre-existing hardstanding which would not have required planning permission.
16. As set out, the areas of hardstanding now in situ are very different in character to what was present in 2020. The works would therefore appear to go beyond what could reasonably be considered as repair. The areas of hardstanding are now also more numerous and extensive than anything shown in the historic photos, which is again indicative of the works going beyond repairs.

17. Notwithstanding this position, the appellants have advanced very little evidence to demonstrate how these works would have been permitted in the absence of planning permission, even if they were repairs. As with ground (d), the burden on a ground (c) appeal falls on the appellants to demonstrate their case, again on the balance of probability, here being that the matters alleged would not constitute a breach of planning control. Given the scant evidence presented on this point, the appellants have not discharged this burden.
18. Step 3 of the requirements of the notice requires the appellants to "Cease the use of the Land for storage of items and materials not required for the lawful use of the Land". Whilst the parties appear to accept that the site's lawful use is a mixed residential, equestrian and agricultural use, the EN is not explicit in this regard. To ensure sufficient certainty, I have therefore varied this requirement to refer to the site's residential, equestrian or agricultural use, rather than "lawful use". Given that the requirement would likely have been interpreted in this way in any event, I am satisfied that this amendment would not cause injustice to the parties.

Conclusion

19. For the reasons given, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation, as set out below in the Formal Decision.

Formal Decision

20. It is directed that the enforcement notice is varied by substituting reference to "lawful use of the Land" in Step 3 to "residential, equestrian or agricultural use of the Land".
21. Subject to this variation, the appeals are dismissed and the enforcement notice is upheld.

James Blackwell

INSPECTOR