



Appeal Decision

Site visit made on 2 July 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01st August 2024

Appeal Ref: APP/H2265/C/22/3310550

Land North of Oakenwood Cottage, Red Hill, Watlingbury, Maidstone, Kent ME18 5LB

- 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 Henry Boorman against an enforcement notice issued by Tonbridge and Malling Borough Council.
- The notice was issued on 7 October 2022.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the unauthorised erection of two stable buildings and the formation of two hard surfaces.
- The requirement of the notice is to remove the two stable buildings in their entirety from the Land and break up the hard surfaces created to facilitate the stable buildings and remove the resultant materials and debris from the Land.
- The period for compliance with the requirement is one calendar month from the date the notice becomes effective.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (e), (f), and (g) of the Act.

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

Preliminary Matters

1. The Council failed to attend the site visit at the pre-arranged time. Having waited a reasonable period, I carried out a delayed site visit in the presence of the appellant without discussing any matters relevant to the appeal.
2. An appeal has not been made under ground (a). As such, there is no deemed application for planning permission for me to consider, and the planning merits of the alleged breach of planning control are not relevant to the appeal under grounds (c), (d) and (e). The onus is on the appellant to demonstrate, on the balance of probabilities, that the appeal should succeed.

Ground (e)

3. To succeed under this ground of appeal the appellant needs to show that copies of the enforcement notice were not served as required by section 172 of the Act. Strike action taken by employees of Royal Mail resulted in the appellant first receiving a copy of the notice 2 weeks after it was issued.
4. In addition to the copy of the notice sent to the appellant by first class post, the Council claims one was fixed to a gate post at the site on the date it was issued. The appellant did not find the copy fixed to a gate post, and it is possible that it was removed by another person or weather conditions.
5. Even if I was not satisfied that the notice had been served as required, the appellant has been able to lodge an appeal against the notice with various

submissions. He has not therefore been substantially prejudiced by any claimed failure to serve him with a copy of the notice. In these circumstances, section 176(5) of the Act allows me to disregard any potential failure to serve the notice correctly.

6. The appeal under ground (e) therefore fails.

Ground (c)

7. To succeed under this ground of appeal the appellant needs to show that the alleged breach does not constitute a breach of planning control.
8. Section 57 of the Act sets out that planning permission is required for the carrying out of any development of land. Section 55 provides the meaning of development, which includes the carrying out of building, engineering, mining or other operations in, on, over or under land.
9. Hard surfaces have been laid. It is claimed that they comprise the reinforcement of an existing concrete surface and the laying of additional concrete screed. Claims that concrete hard surfacing previously existed in this location have not been substantiated. However, if concrete hard surfacing previously existed, any reinforcing and screed works since carried out have been significant. On the evidence, it is more likely than not that the formation of the hard surfaces comprised building operations requiring planning permission. I have not been referred to any planning permission that development may benefit from.
10. It is claimed that the stables have been relocated from other locations at Red Hill Farm and that they were 'flat packed'. In the absence of evidence to support this, I doubt they are the same buildings which may have previously existed elsewhere on the farm. They are large structures which would have been assembled in their current locations, with significant effort.
11. The stable buildings remain in position on account of their substantial weight, and they are significant enduring features of the land. Their size, degree of permanence and physical attachment to the ground lead me to find that their assembly comprised development which required planning permission. Even if skids were to be fitted to the stables, I am unconvinced this would make them moveable or ensure their assembly did not require planning permission.
12. Planning permission is granted for the erection of a building and any engineering works which are reasonably necessary for the purposes of agriculture on agricultural land comprised in an agricultural unit of 5 hectares or more by Article 3(1) and Class A of Part 6, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). That planning permission is subject to limitations and conditions set out in paragraphs A.1 and A.2 of Class A.
13. The stables house horses which are claimed to be livestock because they are employed in work and provide manure for the vineyard at Red Hill Farm. Amongst other things, limitation A.1(i) of Class A prevents planning permission from being granted for the erection of a building used for the accommodation of livestock within 400 metres of a neighbouring dwelling. The stables do not accord with this limitation and cannot benefit from the planning permission described at Class A of Part 6, Schedule 2 of the GPDO.

14. It has not been shown that the stable buildings and the hard surfaces do not comprise development requiring planning permission, or that they benefit from any form of planning permission. It has not been demonstrated, on the balance of probabilities, that they are not in breach of planning control.
15. The appeal under ground (c) must therefore fail.

Ground (d)

16. To succeed under this ground of appeal the appellant needs to show that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach. At the time the notice was issued, section 171B of the Act set out that no enforcement action may be taken in respect of unauthorised operational development after the end of the period of 4 years beginning with the date on which the development was substantially complete. The appellant therefore needs to show that the development was substantially completed on or before 7 October 2018.
17. An undated aerial photograph has been provided which is said to show that stables have been on the land for over 4 years, but this does not show the stables or hard surfaces the subject of the notice in the positions where they currently exist. Against this, the Council has claimed that the stable buildings and hard surfaces were constructed between June and July 2022. I note claims made in respect of a pre-existing concrete surface, but as explained above, those have not been substantiated.
18. It may be the case that stables existed in various other positions historically at Red Hill Farm. Any lawfulness that those stables may have gained under the provisions of section 171B of the Act does not transfer to the stables the subject of the notice. This is on account of them comprising different buildings erected as separate acts of development in different locations.
19. It has not been demonstrated, on the balance of probabilities, that the stable buildings and hard surfaces were substantially completed on or before 7 October 2018.
20. The appeal under ground (d) must therefore fail.

Ground (f)

21. To succeed under this ground of appeal the appellant needs to show that the steps required to be taken exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
22. The notice requires the stable buildings and the hard surfaces to be removed from the land. Its purpose is therefore to remedy the breach, rather than any injury to amenity. There are no obvious alternatives or lesser steps which could achieve the purpose of the notice with less costs or disruption.
23. As set out above, it has not been shown that the stables or the hard surfaces currently in place previously existed in their current location, and it is not therefore excessive for them to be removed. Compliance with the notice would create a modest amount of waste material, but this is an unavoidable result of the development being carried out in breach of planning control and is necessary to achieve the purpose of the notice.

24. The appeal under ground (f) therefore fails.

Ground (g)

25. To succeed under this ground of appeal the appellant needs to show that a period of 1 month from the date the notice comes into effect falls short of what should reasonably be allowed for the notice to be complied with. To clarify, the notice does not come into effect until the date of this Decision.
26. A period of 5 years to allow the appellant to complete a feasibility trial in accordance with their business model would be entirely inappropriate in the circumstances and would amount to a temporary planning permission. It would be unreasonable to allow 1 year for the notice to be complied with, taking the appellant's other land and operations into account, and any need to relocate the stables and find/train staff.
27. I appreciate that it may be difficult for the appellant to re-house animals and remove the hard surfaces within 1 month. Taking all matters raised into account, I see no reason why a period in excess of 2 months would be necessary or reasonable for the notice to be complied with fully.
28. The appeal under ground (g) therefore succeeds insofar as I shall vary the period for the notice to be complied with from 1 month to 2 months from the date the notice comes into effect.

Conclusion

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

Formal Decision

30. It is directed that the enforcement notice is varied by the deletion of the text 'One calendar month' under the heading 'Period for Compliance' within the notice and its substitution for the text 'Two months'.
31. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

L Douglas

INSPECTOR