



Appeal Decision

Site visit made on 3 December 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2025

Appeal Ref: APP/C3620/C/24/3346381

The land known as Berry Farm, Blanks Lane, Newdigate, Dorking, Surrey RH5 5ED

- 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 Dennis Wallis against an enforcement notice issued by Mole Valley District Council.
- The enforcement notice was issued on 30 January 2024.
- The breach of planning control as alleged in the notice is: A. Without planning permission, the material change of use of the land to:- (i) The storage of caravans or stationing of caravans for leisure use in the areas numbered 1 on the attached plan; (ii) The storage and distribution of scaffolding in the area numbered 2 of the attached plan; (iii) The storage of waste materials in the areas numbered 3 on the attached plan; (iv) The storage of vehicles including lorries vans and plant in the areas numbered 4 on the attached plan; (v) The storage of wood and pallets in the areas numbered 5 on the attached plan; (vi) The growing of vegetables/fruit/flowers/fungi in various separate areas on the Land. And all the associated development facilitating the material changes of use which includes: (vii) The formation of hardstanding in the locations numbered 6 on the attached plan; (viii) The erection of fencing or means of enclosure, the extent of which is shown on the attached plan; (ix) The formation of an access, culverted ditch and roadways within the site the extent of which is marked on the attached plan. B. Without planning permission:- (i) The erection of buildings in the locations numbered 7 on the attached plan; (ii) The erection of a scaffolding structure in the location numbered 8 on the attached plan; (iii) The erection of shipping containers and portacabins in the locations numbered 9 on the attached plan; (iv) The erection of decking and wooden platforms in the locations numbered 10 on the attached plan; (v) The erection of a low wall structure in the location numbered 11 on the attached plan.
- The requirements of the notice are: 1) Cease the use of the land for :- (i) The storage of caravans or stationing of caravans for leisure use; (ii) The storage and distribution of scaffolding; (iii) The storage of waste materials; (iv) The storage of vehicles including lorries, vans and plant; (v) The storage of wood and pallets (vi) The growing of vegetables/fruit/flowers/fungi in various separate areas on the land. 2) Remove from the land:- (i) All caravans; (ii) All scaffolding and associated paraphernalia; (iii) All waste materials; (iv) All stored vehicles including lorries vans and plant; (v) All buildings; (vi) The scaffold structure; (vii) All shipping containers and portacabins; (viii) All decking and wooden platforms; (ix) The low walled structure; (x) All hardstanding, in the locations shown on the attached plan; (xi) All fence and means of enclosure, the extent of which are shown on the attached plan; (xii) All roadways, the extent of which are shown on the attached plan. (xiii) The access gate and culverting of the ditch in the location shown on the attached plan.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision

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

Preliminary Matter

2. The enforcement notice has been issued over a comparatively large area of land, which is within multiple ownerships. Aside from my comments immediately below in respect of the enforcement notice, my assessment will be restricted to the developments which are brought to my attention by the appellant in the appeal before me.

The Enforcement Notice

3. The notice alleges as part of the breaches of planning control a material change of use of the land to the growing of vegetables/fruit/flowers/fungi. These however relate to an agricultural use of the land which is thus not development for the purposes of Section 55(2)(e) of the Act and for which enforcement action cannot be taken. The notice can however be corrected without injustice to the parties by omitting this part of the allegation and the consequent cessation requirement.
4. The notice also requires that all buildings be removed from the land. There is however one building located along the southern boundary which does not form part of the alleged breach of planning control and consequently is not annotated on the notice plan, given it has been present since at least 2018 and so has likely acquired immunity. Some ambiguity however could arise and so I will correct that requirement to the buildings already identified in the locations numbered 7 on the notice plan. Injustice would then not arise from making this correction.

The ground (e) appeal

5. This ground of appeal concerns whether the enforcement notice was properly served on everyone with an interest in the land.
6. The appellant highlights that an injunction was dismissed because it was not properly served on 31 January 2024 and contained incorrect information.
7. However, whether or not that was the case, my assessment concerns the enforcement notice issued on 30 January 2024, which is thus a separate matter. There is then very little evidence that the notice was not properly served on everyone with an interest in the land, with further copies also attached at site entrances, which is not disputed. Evidently, the appellant for this appeal has received a copy of the notice such that a valid appeal has been made. I have little evidence that substantial prejudice then otherwise arises to a party with a material interest in the land affected.
8. The appeal on ground (e) therefore fails.

The ground (b) and (c) appeals

9. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that an alleged breach of planning control has not occurred as a matter of fact. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could

be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.

10. The appellant contends there are 3 containers on their land which are used to store tools and equipment in connection with an agricultural use of the land. I appreciate they are then not provided with facilities such as electricity, are not for the purposes of habitation and might be used more generally by farmers. The relevant consideration is however whether they are buildings.
11. The containers are then of a considerable size and there is little evidence that they are transient or short-term features. They have significance in a planning context. Whilst they might be capable of being moved, there is little evidence that they have been. They therefore have permanence. They are then not fixed to the ground but are maintained by their own dead-weight.
12. On the balance of probabilities, the containers are therefore buildings and thus development for the purposes of Section 55 of the Act. I have little evidence from the appellant to demonstrate otherwise. There is also little evidence that the containers are a form of permitted development, noting also the small size of the appellant's land holding, or that planning permission has been granted.
13. Whilst I appreciate the fencing may have been erected to deter theft, there is reference to an Article 4 Direction removing permitted development rights for the erection of fencing, which is not disputed by the appellant. Planning permission would consequently be required for what has been erected and for which there is little evidence that it has been.
14. Reference is also made to a small lorry and/or other similar equipment being at the site. However, there is little evidence that the lorry or similar is reasonably required for the purposes of agriculture on the small parcel of land owned by the appellant, that the storage of it amounts to a form of permitted development or that planning permission has been granted.
15. The appeal on grounds (b) and (c) therefore fail.

The ground (d) appeal

16. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. To do so, any unauthorised use of the land enforced against would need to have taken place for a continuous period of 10-years, and any operational development undertaken substantially completed 4-years prior to the issue of the notice (relevant periods).
17. The appellant advises that he bought the first plot of land in February 2020. Given the enforcement notice was issued on 30 January 2024, it is therefore not possible for the appellant to demonstrate on the balance of probabilities the necessary relevant periods. In any event, there is very little evidence to demonstrate on the balance of probabilities that the relevant periods have been satisfied.
18. The appeal on ground (d) therefore fails.

The ground (f) appeal

19. The purpose of the enforcement notice is clearly to remedy the breaches of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.
20. I have already corrected the enforcement notice to enable an agricultural use of the land to subsist. The other grounds of appeal have then failed. As no lesser steps are then before me, the appeal on ground (f) must also fail.

Overall Conclusion

21. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice subject to corrections.

Formal Decision

22. It is directed that the enforcement notice be corrected by:
- deleting allegation 3. A (vi) from the notice
 - deleting requirement 5. 1) (vi) from the notice
 - substituting the words '*The buildings in the locations numbered 7 on the attached plan;*' for the words at 5. 2) (v) of the notice
23. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR