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## Appeal Decision

Site visit made on 4 November 2025

by **Paul Dignan MSc PhD**

an Inspector appointed by the Secretary of State

Decision date: 17<sup>th</sup> November 2025

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### Appeal Ref: APP/Y3615/C/24/3348235

### Three Acre Barn, Guildford Road, Effingham, Leatherhead, KT24 5QQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
  - The appeal is made by Mr Roy McEntee against an enforcement notice issued by Guildford Borough Council.
  - The notice was issued on 25 June 2024.
  - The breach of planning control as alleged in the notice is 1. Operational development comprising the partial construction of a building through the construction of foundations and concrete slabs; 2. Operational development comprising an engineering and other operations consisting of the importation and laying of materials onto the Land to create a hard surfaced area; 3. Operational development comprising the construction of a sand bund; and 4. The material change of use of the Land from agriculture to the use of the land for agriculture and for storage purposes.
  - The requirements of the notice are: i) Dig up the unauthorised foundations and concrete slabs, highlighted in blue on the attached plan; ii) Make good the Land by levelling the Land so that it is the same height as that Land immediately adjacent to the unauthorised foundations and concrete slab and seed with grass seed; iii) Remove the material that has been laid to create a hardsurfaced area, approximately hatched in black on the attached plan; iv) Make good the Land where the hardsurfaced area was by levelling the Land so that it is the same height as that Land immediately adjacent to the hardsurfaced area and seed with grass seed; v) Remove the sand bund from the Land; vi) Make good the Land where the sand bund area was by levelling the Land so that it is the same height as that Land immediately adjacent to the bund and seed with grass seed; vii) Cease using the Land for storage purposes; viii) Remove from the Land all plant, equipment and paraphernalia being stored on the Land and not used for purposes ancillary to the lawful use of the Land, including but not limited to storage containers, portacabins, fencing, metal, plastic tubes, blocks, sand, drain covers and digger bucket heads; ix) Remove from the Land all debris and material linked to the abovementioned steps.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the ground[s] set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 (as amended).
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### Decision

1. It is directed that the enforcement notice is corrected and varied by: In section 3.1 and in section 5(i), the deletion of the words, "and concrete slabs"; in section 5(ii) the deletion of the words, "and concrete slab"; and in section 5(viii), delete and replace the requirement with the following: "(viii) With the exception of the shipping container being used for the storage of mowing equipment and associated tools and equipment, remove from the Land all plant, equipment and paraphernalia being stored on the Land, including but not limited to a storage container, portacabins, fencing, metal, plastic tubes, blocks, sand, drain covers and digger bucket heads."
2. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

## **Preliminary Matters**

3. The appeal site is a roughly 3 ac (1.2 ha) field laid to pasture. It was in equestrian use at some stage and contained a barn and stable building, with a sand school alongside. In 2018 planning permission<sup>1</sup> was granted for “Conversion of two former equestrian buildings to form a single two-bed residential dwelling, with a glazed link extension”. The buildings were subsequently demolished or burnt down, so that the planning permission could not be implemented. The notice relates to the current use of the site and operational development comprising building foundations, concrete slabs and hardstanding on or in the vicinity of the former buildings and sand school, and the piling of the sand to the south of the former sand school.

## **Ground (b)**

4. The basis of an appeal on ground (b) is that the matters alleged have not occurred, as a matter of fact. It is claimed that the foundations and concrete slab on the site are the those from the now demolished equestrian buildings, a barn and an L-shaped stable building, that the sand has simply been removed from a former sand school, that the hardstanding underlaid the sand school, and that the use of the land is for agriculture only, any items being stored on the land being for the purpose of agriculture on the land.
5. The burden of proof on this ground is on the appellant, the test being the balance of probabilities.
6. I shall deal first with the operational development components of the notice. At a site visit in July 2020 following a complaint that foundations were being laid at the site along with evidence provided of concrete tankers leaving, a Council officer observed foundations laid at the site and concrete blocks being unloaded. The officer at the site visit was shown plans that were being worked to, which were materially different, including in terms of outline/footprint, to the buildings approved for conversion in 2018. A photograph of those plans is provided in evidence. The Council confirmed to the owners in writing on 13 July 2020 that planning permission was needed if they intended to rebuild the barn and stables, and advised that no further construction works should be carried out. In a telephone call with the Council in February 2021 the owner advised that at that stage all that he had constructed were the foundations.
7. It is now claimed that the foundations evident on the site are in fact the foundations from the previous buildings on the site. However, while the current foundations in the vicinity of the now demolished barn align reasonably closely with the footprint of the barn, the extent of the foundations overall differ significantly from the outline of the buildings formerly on the site. On the site of the former stables building the foundations appear to align with the building plans photographed on the July 2020 site visit, which as I noted above, are quite different to the approved conversion plans, and furthermore could not possibly be the foundations of the former stable, or indeed of the link between the barn and stable which was part of the approved conversion plans. There are also new foundations laid to the east of the former barn site which are claimed to be for a patio, and which do not relate to any former structure on the site.

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<sup>1</sup> Council Ref. 18/P/00209

8. There is a possibility that some remnant of the foundations of the former barn remain, but the photographs taken on the July 2020 site visit clearly show newly laid concrete foundations on that part of the site, and I also formed the view on my site visit that all of the visible foundations were recently laid and had not been built upon. Further, the broken edged concrete slab on the former barn footprint, to which I return below, indicates some excavation of the foundations. On the balance of probabilities I consider that the foundations are not the foundations of the former buildings on the site. To the extent that they may be in the same place, I consider that any old foundations, if there were any, have been replaced entirely or significantly augmented, such that what is there now is, as a matter of fact and degree, new foundations comprising the early stages of the construction of a new building.
9. Turning to the concrete slabs, although these could not be seen clearly in the July 2020 photographs, what is there is within the footprints of the former buildings and has the appearance of old concrete. Within the old barn footprint the edges are broken suggesting some demolition rather than sharp-edged if they had been formed after the foundations had been poured. On the old stables side, the concrete slab is not uniform, one part being raised and clearly quite old concrete, but again, it appears to be within the footprint of the former stables which in turn is much smaller than the extent of the new foundations. It did not have signs of recent laying. From my observations I consider, on the balance of probabilities, that the concrete slabs are remnants of the former buildings on the site and hence not new development which would require planning permission. Unlike the new foundations, I do not consider that they are for the purposes of, or the early stages of, the erection of a new building.
10. The hardstanding enforced against is an area used for parking and turning, located roughly where the former sand school was located, though it appears somewhat smaller. The appellant claims that it is what remained when the sand was removed, but the surface material is identical to the hardstanding forming the access road. If there had been a sub-base to the sand school that would not have amounted to hardstanding. While a sub-base may be a component of, or integral to, the construction of both sand schools and hardstanding, they are not the same thing. I am satisfied, on the balance of probabilities, that a new hardstanding has been formed as alleged. The appellant's evidence to the contrary falls well short of discharging the burden of proof.
11. The sand bund is the mound of sand formed by the piling of the sand from the former sand school. It is a substantial feature that amounts to an engineering operation as a matter of fact and degree. The appellant's intention is to use the sand in the construction of service trenches if he gains planning permission for a new dwelling, but that does not alter the fact that the construction of the sand bund has amounted to a significant alteration of the land surface that has been in place for some time and so has a degree of permanence. .
12. The final component of the breach alleged is the material change of use of the Land from agriculture to the use of the land for agriculture and for storage purposes. When the site was visited in August 2022, concrete blocks, 2 portacabins, 2 shipping containers, a truck, an old silo and 2 further containers were on the site along with some items in open storage. Only the blocks, 2 shipping containers and some open storage items now remain, and the appellant claims that these are being used for purposes incidental to the agricultural use of

the land. However, it is not disputed that the other items were either being stored on the land for future purposes or were being used for storage unconnected with the agricultural use of the land. The significant quantity of concrete blocks which were evidently brought onto the land for the construction of a building also have no clear agricultural purpose and are being stored on the land. Ground (b) refers to what has occurred, not what is occurring at present. It is clear therefore that the Land has been in the mixed use alleged, which includes storage, and the appeal on this ground, so far as it relates to the use, must fail.

13. However, the laying of the concrete slabs, which I consider to be a remnant of the buildings formerly on the site, is not part of the partial erection of a new building. I shall therefore correct the notice to remove reference to the laying of concrete slabs, and I shall vary the requirements as a consequence to remove the requirement to remove them. The appeal on this ground succeeds to that limited extent.
14. For completeness, I will address the appellant's arguments concerning the use of the 2 shipping containers which remain on the site. One is used to store an excavator and some other plant, including 2 concrete cutting machines and a large spraying unit on my site visit. The other was being used to store a compact tractor and mower, tools and some building materials. Stored around the containers are attachments for the digger, some Heras fencing and miscellaneous non-agricultural items such as plastic barriers.
15. The appellant claims that both containers are in use for purposes ancillary to the use of the land for agriculture, and that the other items stored on the land are to be used for agriculture on the holding. The excavator is said to be used for agricultural purposes only, such as fence repairs, access road maintenance and soil rotation, while the tractor and mower are for grass maintenance.
16. I accept that the storage of the tractor and mower can be considered to be ancillary to the agricultural use insofar as it is in use for the maintenance of the grassland, and so the shipping container within which it is stored when not in use can also be considered as ancillary to the lawful use for agriculture. However, there remains considerable doubt about the purpose of the excavator and other plant stored in the other shipping container. It has been reported to the Council that the excavator leaves the site most days, and on my visit it was absent, the appellant claiming it was in for a service. The excavator has evidently been stored on the land for some time, and there is no evidence that it has ever been used for agricultural purposes. On a small holding such as this which is not in active agricultural use I cannot see how such an expensive machine could rationally be justified, and having regard also to the other plant stored in the second container, which have little or no agricultural utility, I consider that this container cannot be considered as being used for purposes ancillary to a lawful agricultural use.
17. Similarly, the other items in open storage around the containers could conceivably be used for agriculture, but I consider that to be highly unlikely, being items more typically associated with construction works. In short, I accept that one container is being used for purposes ancillary to the agricultural use, which is no more than land maintenance at present, but the other container and the items in open storage around the containers are not. Although no appeal has been brought on ground (f), which is that the requirements exceed what is necessary to remedy the breach of planning control or harm to amenity, I consider it appropriate in the circumstances

to vary the requirements to allow the retention on the Land of one container for purposes ancillary to agriculture. But for clarity I shall also vary the requirement, having regard to the purposes of the notice being to remedy the breach of planning control, to require that all other items being stored on the land are removed because I find that they comprise a primary storage use and not one that is ancillary to the lawful use of the land for agriculture.

#### **Ground (d)**

18. This ground is that it is too late to take enforcement action. Insofar as it relates to the laying of foundations, I consider this to be for the purposes of the erection of a building rather than stand-alone operational development. The period for immunity only starts when operational development, the erection of a building in this case, has been substantially completed, hence the foundations cannot be considered in isolation and cannot have achieved immunity from enforcement.
19. So far as the sand bund is concerned, while the sand itself has evidently been on the site for many years, the appellant has not provided evidence to show that the engineering operation comprising the works to erect the bund was substantially completed more than 4 years before the notice was issued. The bund appears first in aerial images nominally dated June 2021, having been absent in imagery nominally dated April 2020. It is for the appellant to show that it was completed before 25 June 2020, but he has not done so and so has not discharged the burden of proof in relation to the sand bund.
20. He has claimed, without evidence, that the containers have been on the land for more than 4 years, but it is the purpose of the containers that is relevant, namely for storage purposes not ancillary to the use of the land for agriculture, and the appropriate period for immunity from enforcement is 10 years for the material change of use enforced against. No evidence has been provided to support an assertion that the use of containers on the land for non-agricultural storage, or any of the other non-agricultural storage, had occurred continuously for 10 years or more before the notice was issued.
21. I have already explained that I do not consider any sub-base to the sand school to be hardstanding, and no other evidence has been provided to show that the hardstanding enforced against was substantially completed by 25 June 2020. Again, the burden of proof has not been discharged by the appellant.
22. It is for the appellant to show, on the balance of probabilities, that the matters alleged are immune from enforcement action, but he has not done so, and the appeal on this ground cannot therefore succeed.

*Paul Dignan*

INSPECTOR