



Appeal Decisions

Site visit made on 25 January 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2021

Appeal A: APP/L1765/C/20/3256531

Land at Dradfield Lane, Soberton, Hampshire

- 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 Nicholas Butler against an enforcement notice issued by Winchester City Council.
 - The enforcement notice was issued on 19 June 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission: i) the material change of use of the Land from agriculture to use for the storage/parking of trailer units(s)/mobile unit(s) and vehicles, and the siting of containers/trailer units for the storage of items that are not associated with the lawful use of the Land for agriculture; and ii) the construction of a hardstanding and drainage runs/pipes associated with the material change of use of the Land.
 - The requirements of the notice are: 1. Cease the use of the Land for the storage/parking of trailer units(s)/mobile unit(s) and vehicles, and for the siting of containers/trailer unit(s) not associated with the agricultural use of the Land; 2. Remove all the trailer units(s)/mobile unit(s), vehicles, containers and all items stored within that are not associated with the agricultural use of the Land; 3. Remove the hardstanding and drainage runs/pipes from the Land; 4. Remove any resultant waste and restore the Land to its former condition prior to the breach of planning control.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) 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.
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Appeal B: APP/L1765/W/20/3263363

Southfield Nursery, Dradfield Lane, Soberton SO32 3QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr N Butler against the decision of Winchester City Council.
 - The application Ref 20/01508/FUL, dated 17 July 2020, was refused by notice dated 11 September 2020.
 - The development proposed is described as: Retrospective planning permission for an improved site access with new 2.05m high timber entrance gates, 1.8m high close boarded support and associated hardstanding and works.
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Summary of Decisions

Appeal A

1. The appeal is allowed, and the enforcement notice is quashed.

Appeal B

2. The appeal is dismissed.

Applications for Costs

3. Two applications for costs were made by Mr Nicholas Butler against Winchester City Council. These applications are the subject of a separate Decision.

Appeal A

Preliminary Matter

4. The notice should refer to the alleged breach of planning control as both storage and parking, as these are different uses. I will therefore consider the notice on this basis and take grounds (b) and (c) together.

The ground (b) and (c) appeals

5. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breaches of planning control have 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 then 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.
6. I appreciate there was an original discussion between the appellant and Council about his intentions for the site, namely for residential occupancy and for the conversion of trailers, but this has not occurred, perhaps owing to the service of a Temporary Stop Notice. That being the case, intentions are naturally not relevant to my assessment. However, the notice must be clear as to what the alleged use is.
7. The Council has enforced against a material change of use, to that of a storage use and parking use for what it describes as for trailer units, mobile units and vehicles, as well as the siting of containers and trailer units for the storage of items that are not associated with an agricultural use of the site. Furthermore, it has enforced against engineering operations in the form of a hardstanding and drainage runs/pipes associated with that alleged material change of use. All of the alleged breaches of planning control are accordingly cited as having occurred within the last 10 years.
8. The Council advise they have seen no evidence of livestock on the land or agricultural use. However, the appellant has maintained through correspondence with the Council, and for the purposes of this appeal, that the land remains in agricultural use; and it would not be necessary for livestock to be present in order to physically demonstrate this. The Council states that it considered the agricultural use to have ceased but offers no evidence to

support this contention. Moreover, the appeal site is of considerable size and the matters enforced against are predominantly located at a front corner of the site, with the remaining pasture unaffected.

9. The evidence then demonstrates on the balance of probabilities that an articulated lorry trailer and storage container have been present at the site.
10. The appellant maintains that the trailer is used for the storage of hay and the container for the storage of agricultural equipment, incidental to the lawful agricultural use of the site. That is consistent with what I observed during my site visit, albeit I appreciate my visit only represents a snapshot in time. The appellant's contentions and evidence of use, and in the absence of tangible evidence to dispute this, is therefore determinative in demonstrating on the balance of probabilities that an agricultural use of the site has subsisted.
11. Based on the available evidence, I am satisfied that it has been demonstrated on the balance of probabilities that the storage and parking or siting use had not occurred as a matter of fact, as the trailer and container were in agricultural use.
12. Whilst the engineering operations have occurred, given my conclusions above it follows they have not occurred to facilitate the alleged material change of use. In light of my findings, relevant agricultural permitted development rights would also be available at the site.
13. That said, the siting of a storage container associated with the lawful agricultural use of land may be held to be a building, but whether this amounts to an alternative breach of planning control is entirely for the Council in the first instance.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed on grounds (b) and (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the other various grounds set out in section 174(2) to the 1990 Act as amended, do not need to be considered.

Appeal B

Preliminary Matter

15. The developments the subject of the planning application related to a pair of entrance gates with sections of fencing alongside as well as a concrete hardstanding. It also related to an area of laid hardcore and replacement drainage pipes and water connection, but there are no scaled plans before me to expressly identify the extent of these developments. The Council has refused the application owing to the presence of the gates and boundary treatment (which are the sections of fencing), as well as removal of a section of hedgerow. As these matters are readily identifiable from the photographs provided and what I observed during my site visit, I shall restrict my assessment to those matters.

Main Issue

16. The main issue is the effect of the developments on the character and appearance of the area.

Reasons

17. The site is made up of a 1.8ha parcel of agricultural land that is predominantly set to grazing. The immediate area is rural in character, consisting of mixed farmland and woodland, although there are sporadically located residential and commercial properties in close proximity.
18. The site was previously served by a metal field gate with hedging alongside. This has been removed to facilitate the installation of a pair of gates that are 2.05m in height and a combined 10m in width, with short sections of close-boarded fencing either side.
19. The gates are of timber construction but are of a solid impermeable design. They are painted grey and have the appearance from the lane as being heavy metal industrial gates, as opposed modern looking.
20. They are therefore not a good low-key design or appropriate to the rural setting of the area. They detract from the rural location and appear dominant and unacceptable in moderate views, even though I accept they are not seen in wider views.
21. The gates in particular form an enclosure which is alien to the natural landscape character of the area, and now provide a distinctive and harmful presence along Dradfield Lane. This neither responds positively nor has a satisfactory impact. The distinctive rural character and identity of local minor roads, such as this, are therefore important to protect.
22. I accept that the gates and fencing are likely to provide more security, and that being set-back may improve highway safety and allow larger agricultural vehicles to access the site. There are also various other examples of boundary treatments along Dradfield Lane and there are no rights of way immediately adjacent to the site. Nevertheless, the gates are particularly conspicuous in this rural location owing to their design, height, extent and industrial appearance, and, this harm is not outweighed by security or highway benefits, and could not be adequately ameliorated by planning conditions.
23. I conclude that the developments are harmful to the character and appearance of the area in contravention of Policy CP20 of the Winchester District Local Plan Part 1 – Joint Core Strategy, adopted March 2013 (the LP), and Policies DM15, DM16, DM17 and DM23 of the Winchester District Local Plan Part 2, adopted April 2017. These policies, amongst other things, require development to conserve natural landscapes, respect the characteristics that contribute to distinctiveness, provide boundary treatments that respond positively to local context, are satisfactory in terms of impact, and, do not have an unacceptable effect on the rural character of the area. For the same reasons, the development contravenes the objectives of the Soberton and Newtown Village Design Statement.

Other Matters

24. The Council has evidence which identifies that the hedgerow at Dradfield Lane qualifies as “important” under the Hedgerow Regulations 1997. A section of this has been removed to facilitate the developments. It is only since the refusal of the appeal application that the parties have agreed a mitigation strategy in the

form of re-planting. That being the case, had I been allowing the appeal, the mitigation could have been secured by means of suitably worded planning conditions such that contravention with Policy CP16 of the LP and the National Planning Policy Framework, would not subsist.

Conclusion

25. For the reasons given above I conclude that the appeal should be dismissed.

Overall Conclusion

26. For the reasons given above I conclude that the enforcement notice in respect of Appeal A should be quashed, and that Appeal B should be dismissed.

Formal Decisions

Appeal A

27. The appeal is allowed, and the enforcement notice is quashed.

Appeal B

28. The appeal is dismissed.

Paul T Hocking

INSPECTOR