The Planning Inspectorate

Appeal Decisions

Site visit made on 3 October 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2023

Appeal A Ref: APP/L1765/C/22/3313365
Appeal B Ref: APP/L1765/C/22/3313452
Land at Greenclose also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton, Hampshire SO32 2DA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr John Newbury (Appeal A) and Mr Stuart McNee (Appeal B) against an enforcement notice issued by Winchester City Council.
- The notice was issued on 15 November 2022.
- The breach of planning control as alleged in the notice is without planning permission:
- (i) The making of a material change of use of the land from an agricultural use of the land to a mixed use of the land for B8 storage (both open storage and storage within the barn) and equestrian purposes; (ii) The erection on the land of buildings, fencing and a storage container to facilitate the unauthorised use in (i); (iii) The laying of hard-surfacing to facilitate the unauthorised development in (i) and (ii) above.
- The requirements of the notice are: (i) Cease the use of the land for storage and equestrian purposes; (ii) Remove from the land the buildings, fencing, storage container, caravans, vehicles and other paraphernalia brought onto the land to facilitate the unauthorised use in (i); (iii) Dig up and permanently remove from the land the hard surfacing (in the approximate position hatched in blue on the plan attached to the notice); (iv) Remove from the land all materials, rubble, rubbish and debris arising from steps (i) to (iii); (v) Reseed the land to grass.
- The period for compliance with the requirements is six months.
- Appeal A is proceeding on the grounds set out in section 174(2) (b), (c) & (d) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2)(f) & (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Decision

1. It is directed that the enforcement notice be corrected by substituting the plan attached thereto with the plan attached to this Decision and in paragraph 2 ("the land affected") substituting "edged red" with "edged black". Subject to these corrections, Appeals A and B are dismissed and the enforcement notice is upheld.

Preliminary Matter

2. The plan attached to the enforcement notice includes a dwelling and its associated grounds within the area of the land edged red affected by the notice. As residential use is not a component of the unauthorised mixed use alleged in the notice this means that either the allegation is incorrect, or that the notice does not specify the precise boundaries of the land to which it relates. Having sought the views of the main parties, I consider that the latter

is the case. The dwelling and its grounds are largely separate, physically and functionally, from the rest of the land within the red edged area and although in the same ownership are, as a matter of fact and degree, in a different planning unit. Even if I had concluded otherwise, 'permitted development' rights in Part 1 of the GPDO[1] would have been relevant only to the curtilage of the dwelling. Therefore, I shall correct the notice by substituting its plan with that found at the end of this decision, which excludes the dwelling and its grounds from the land affected by the notice. There is also a consequential correction to the description of the affected land in the notice. I am satisfied that there would be no injustice to either the appellant or the Council.

Appeal A

Ground (b) appeal

3. The ground of appeal is that the matters alleged in the notice have not, in fact, occurred. It is for the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.

4. The appeal site contains a modern barn and a field. During my visit, I saw that a significant quantity of household appliances-mostly fridges, freezers and washing machines-occupied around half of the barn, the other half being vacant. Land to the north, east, south and west of the barn has been laid to hard surfacing. I am given to understand that the storage of caravans on the hard surfacing has ceased; no caravans were present at the time of my visit. A timber field shelter and another timber structure together with a metal container were stationed on an area of hard surface within the field. A number of horses were present in the field. Fencing has been erected adjacent to the hard surfaces and in the field.

5. There is no dispute that the mixed use for storage and equestrian purposes has occurred, the appeal on this ground relating to the structures, fencing and hard surfaces also described in the allegation. However, those works are clearly present at the site. It was not in dispute that the works were in situ immediately prior to the issuing of the notice.

6. Therefore, on the basis of the available evidence and on the balance of probability, the matters alleged in the notice have in fact occurred.

7. The ground (b) appeal fails.

Ground (c) appeal

8. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. It is also for the appellant to show why their appeal should succeed on this ground, applying the same evidential test set out above.

9. The appeal on this ground relates to the fencing and hard surfacing. Additionally, whether the setting up of the structures amounts to development and the purpose of the works, referred to by the appellant in their submissions on the previous ground, is more relevant to ground (c).

[1] Article 3, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

10. It is not disputed that the mixed use of the site for storage and equestrian purposes has resulted in a material change of use falling within the definition of development at s55 (1) of the Act. The notice alleges that the structures, fencing and hard surfacing facilitate the mixed use. The allegation does not refer to the undertaking of works that are separate and unrelated to the material change of use. There is no firm evidence of the structures having been set up, the fencing erected and the hard surfacing laid for purposes other than to facilitate the mixed use. An enforcement notice directed at a material change of use can require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not amount to development or be 'permitted development', so that the land is restored to its condition before the change of use took place. As a result, the structures, fencing and hard surfacing cannot be considered in isolation from the mixed use.

11. In any event, copies of dated aerial photographs supplied by the Council show that at some time between 2013 and 2015 hard surfacing was laid to the north of the barn and that by the latter date, this hard surfacing was being used to store caravans. They also show that additional hard surfacing had been laid to the south of the barn by 2017 and was in use to store further caravans. To my mind, the photographs are supportive of the hard surfacing having facilitated the mixed use and not being laid in connection with agricultural activity. Moreover, there is little to show that the hard surfacing would otherwise have met the requirements, including the limitations and conditions, of agricultural permitted development set out in Part 6 of the GPDO.

12. Planning permission is required for carrying out any development of land, by virtue of s57 (1) of the Act. However, no planning permission exists for the mixed use. At s171A (1) of the Act, the definition of a breach of planning control includes carrying out development without the required planning permission. Accordingly, on the balance of probability the matters alleged in the notice constitute a breach of planning control; the appellant has been unable to show otherwise.

13. The ground (c) appeal fails.

Ground (d) appeal

14. The ground of appeal is that it was too late to take enforcement action against the breach of planning control alleged in the notice. In this ground too it is for the appellant to show why their appeal should succeed, the relevant evidential test being the same as in the above grounds.

15. The appeal on this ground also relates to the fencing and hard surfacing. Had such operations been undertaken in isolation, the four-year time limit for taking enforcement action following substantial completion would have applied, having regard to s171B (1) of the Act. However, in the case of an unauthorised material change of use an enforcement notice can require the removal of works which facilitate that use, even where such works would otherwise have been immune from enforcement action. There is no dispute that the mixed use, having been continuous for a period of less than ten years prior to the date of the notice, is not immune from enforcement action, having regard to s171 (3) of the Act. Therefore, any works which facilitate that use are similarly not immune from enforcement action.

16. An enforcement notice cannot require the removal of works undertaken for a different and lawful purpose which could be utilised for that purpose if the unauthorised use ceased. The appellant claimed that the hard surfacing was laid prior to their acquisition of the site in March 2014 and that any works they had carried out were largely limited to removing vegetation. In a witness statement, the former owner of the site between October 2011 and March 2014 recalled, amongst other things, that the hard surfacing had either been in existence at the site or was laid during that period. However, other than perhaps in relation to the incomplete manège south of the barn, the witness provided little detail concerning the location and extent of the hard surfacing that they referred to, or of the nature and duration of the works and the relevant dates. I cannot reasonably be assured that the hard surfacing described by the witness accurately reflects the extent of that referred to in the notice. The witness evidence is of insufficient clarity and precision in respect of the extent of the hard surfacing as it existed during their ownership of the site. Consequently, even if the witness's statement had met the requirements of a Statutory Declaration, I would have given their evidence little weight.

17. Moreover, the Council's aerial photographs cast significant doubt on the appellant's claim. From the photographs it can be ascertained that the hard surfacing is highly unlikely to have existed prior to 2013 and that it was subsequently laid in stages, the areas to the north and west of the barn being in situ by 2015, with the area on the incomplete manège present by 2017 and the area further to the east by 2019. The hard surfacing can clearly be distinguished in the photographs from adjacent land. The photographs show that the hard surfacing was therefore highly likely to have been laid within the ten-year period prior to the issue of the notice. Furthermore, there is little firm evidence to support the appellant's claim that all the fencing was already in situ prior to their acquiring the site.

18. Accordingly, on the basis of the available evidence and on the balance of probability, the appellant has been unable to show that it was too late to take enforcement action against the breach and the ground (d) appeal fails.

Appeal B

Ground (f) appeal

19. The ground of appeal is that the notice requirements are excessive.

20. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place as provided by s173 (4)(a) of the Act, or it can remedy any injury to amenity which has been caused by the breach as provided by s173 (4)(b). The requirements of the notice include to cease the mixed storage and equestrian use and to remove the structures, fencing and hard surfacing facilitating that use. Therefore, although the notice does not state as such its purpose must be to remedy the breach of planning control by restoring the site to its condition prior to the breach taking place. Given that context, any requirement which stopped short of ceasing the mixed use and removing the facilitating works would sustain part of the breach and so would not achieve the purpose of the notice.

21. The appellant argued that the storage use occupying part of the barn is small-scale, low-key and supports local business whilst safeguarding the countryside.

However, those are matters largely relevant to the planning merits of the development. Such considerations are not before me, as there is no deemed planning application for the development arising from an appeal under ground (a) and the relevant fee has not been paid. General planning considerations cannot be entertained when determining an appeal made on ground (f) where there is no associated ground (a) appeal, and the powers in s176 (1) of the Act cannot be used to vary the notice to attack its substance. No other alternative to the notice requirements was advanced and to my mind, there are none that would also remedy the breach.

22. Accordingly, the notice requirements are a proportionate remedy and are not excessive, being the minimum steps necessary to remedy the breach by restoring the site to its condition before the breach took place.

23. The ground (f) appeal fails.

Ground (g) appeal

24. The ground of appeal is that the time allowed for complying with the notice requirements falls short of what is reasonable.

25. The six-month period specified in the notice affords the appellant sufficient opportunity to search for and secure suitable alternative premises and to relocate their business in an orderly fashion, whilst also allowing the remedial works to be completed without causing undue disruption to the use of adjacent land. There is no firm evidence before me of any significant shortfall in the availability in nearby urban areas of suitable premises capable of meeting the appellant's storage requirements. The specified period therefore strikes an appropriate balance between ensuring that the planning harm identified in the notice is remedied as soon as is practicable, whilst also minimising the disruptive effects on the appellant's business as far as is reasonably possible to avoid imposing a disproportionate burden on them. It follows that extending the compliance period by up to twelve months would achieve little beyond perpetuating the planning harm identified.

26. Consequently, I conclude that six months is a reasonable period for complying with the notice requirements and that it would not be appropriate to extend that period.

27. The ground (g) appeal also fails.

Conclusions

28. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

Stephen Hawkins

INSPECTOR

The Planning Inspectorate

Plan

This is the plan referred to in my decision dated:26 October 2023

by Stephen Hawkins MA, MRTPI

Land at: Greenclose also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton, Hampshire SO32 2DA

References: APP/L1765/C/22/3313365 & APP/L1765/C/22/3313452

Scale: Not to scale