



Appeal Decisions

Hearing held on 4 August 2015

Site visit made on 4 August 2015

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 August 2015

Appeal Refs: APP/U1430/C/14/3003803 & 3002995

Land at Dens Wood, Kent Lane, Brightling, East Sussex

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Kevin Hatcher & Ms Mandy Wicks against an enforcement notice issued by Rother District Council.
- The notice was issued on 17 November 2014.
- The breach of planning control as alleged in the notice is without planning permission the erection of 2 structures shown coloured mauve on the plan accommodating stables and storage accommodation, fencing and gates shown by green lines on the plan and installation of a hardstanding surface shown coloured brown on the plan.
- The requirements of the notice are: (i) Dismantle the 2 structures and remove all materials from the land; (ii) Remove all unauthorised fencing and gates from the land, other than any existing fencing/gates on the site's south eastern boundary adjacent to Kent Lane; (iii) Remove the entire unauthorised hardstanding surface; (iv) Return the land to its former condition as undeveloped agricultural land.
- The period for compliance with the requirements is 4 months.
- The appeals are proceeding on the grounds set out in section 174(2)(c) 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 application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal partially succeeds. The enforcement notice is corrected, varied and upheld in the terms set out below in the Formal Decisions section.

Appeal Refs: APP/U1430/C/14/3002814 & 3002996

Land at Dens Wood, Kent Lane, Brightling, East Sussex

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Kevin Hatcher & Ms Mandy Wicks against an enforcement notice issued by Rother District Council.
- The notice was issued on 17 November 2014.
- The breach of planning control as alleged in the notice is without planning permission a material change of use of the land from agriculture to the keeping of horses and storage of animal feed.
- The requirements of the notice are: (i) Cease the use of the land for the keeping of horses; (ii) Cease the use of the land for the storage of animal feed; (iii) Return the land to its former condition as undeveloped agricultural land.
- The period for compliance with the requirements is 4 months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is corrected, the appeal

succeeds and the enforcement notice is quashed as set out below in the Formal Decisions section.

Preliminary Matters

1. I shall call the enforcement notice that alleges unauthorised operational development comprising the stables, gates/fences and hardstanding, Notice A. The material change of use notice will be referred to as Notice B.
2. At the hearing the Council accepted that the storage of animal feed referred to in Notice B is an activity ancillary to the keeping of horses on the land. It is not a separate use, or part of a mixed use, that needs to be attacked in its own right. As such the alleged breach of planning control should be corrected to just the keeping of horses. The narrowing of the alleged breach does not prejudice the cases of either main party. I shall correct the notice and consider the grounds of appeal accordingly.

The ground (c) appeals

3. In relation to both enforcement notices the appellants need to show that, as a matter of fact and degree, the matters attacked do not constitute breaches of planning control.
4. S55(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act) defines two limbs of development. The first limb is "*the carrying out of building, engineering, mining or other operations in, on, over or under land*". The second limb is "*the making of any material change of use of any buildings or other land*". Notice A is concerned with the first limb. The second limb relates to Notice B.

Notice A – operational development

The stables

5. The appellants dispute that the field shelters are buildings because they are mobile and can be moved around the site by being pulled on built in skids using a 4X4 vehicle. There are three well established tests used to assess whether a building operation has occurred. They are size, permanence and physical attachment.

Size

6. There are two shelters. One measures 30 feet by 12 feet approximately. The other is about 24 feet by 10 feet. These measurements do not include the roof overhangs. The walls are in my estimation about 10 feet tall. They are in my view sizeable buildings.

Permanence

7. The two shelters are usually sited facing into the area of hardstanding adjacent to the field entrance. From around November 2013 through to the end of May 2015 the shelters did not move from this location. They were not moved during the summer of 2014 as was intended due to birds nesting

in the rafters of the shelters. However, whatever the reason why the move did not take place, this lengthy siting in one place of about 12 months at the time the enforcement notice was issued means that the shelters had a substantial degree of permanence.

8. Moreover, it will be usual to only have the shelters in the new position over an approximately four months summer period when the ground has dried out meaning that the dragging manoeuvre does not churn up the grass. For the rest of the time the shelters will be next to the hardstanding where they are easily accessible, conveniently close to the main entrance and the water trough, and the use of the hardstanding protects the grazing land from poaching by the horses. The hardstanding is also well drained for horse welfare reasons and in this position the shelters best protect the horses from bad weather conditions such as cold northerly winds. In addition the fences and gates next to the hardstanding and the shelters provide an area where a horsebox/trailer can pull into the site to safely load and unload the horses.
9. It seems to me that the necessary functional relationship of the shelters with these fixtures and physical changes to the land for about 8 months of every year mean they are sufficiently permanent structures.

Physical Attachment

10. The shelters do not have floors and sit on the ground with very little preparation other than one edge needing to be propped up on a few bricks due to the slope of the land. Nevertheless, they are large and despite what the appellants assert about being constructed from lightweight materials they are solidly built. Due to their size and substantial timber construction they have a degree of physical attachment by virtue of their own weight.

The Stables Conclusion

11. I am aware that the appellants are frustrated that there is no guidance available about what may constitute a mobile field shelter and the Council has no policy on the issue. The appellants have thus relied heavily on the findings of an appeal decision (Ref: APP/B1225/C/01/1057144) in the Purbeck area by drawing parallels with that case and this one and suggested that it sets the template for other similar appeals. However, decisions like these are based on matters of fact and degree depending on the circumstances of each case.
12. In the Purbeck appeal there is no guide to the size of the mobile field shelter other than it being similar in appearance to a sizeable timber shed. The current shelters are larger than that in my view. Furthermore, there is no reference to the Purbeck shelter being related to other ancillary fixed development that would keep it in one place for long periods of time. The circumstances of the Purbeck decision do not thus seem to be comparable to these appeals and so it has only limited weight. It does not bind me to find the same particularly given the individual findings above.
13. It is noted that an Inspector who considered an appeal against the refusal of planning permission for timber stables and a barn at this site (Ref: APP/U1430/A/13/2199357) in November 2013 commented that when she

visited there were "two temporary field shelters". It would appear that those were the two that are there now. However, I do not think that too much can be read into the comment because she had not been appointed to determine legally whether the shelters constituted a breach of planning control.

14. As a matter of fact and degree the stables attacked in Notice A, even though they are capable of being moved, do constitute building operations and thus they are development within the meaning of S55 of the 1990 Act. S57 of the 1990 Act provides that planning permission is required for development. In the absence of planning permission for the stables there has been a breach of planning control. Thus the ground (c) appeal in this respect cannot succeed.

The hardstanding

15. The gravel hardstanding has an area of 100 sqm. Although the gravel was placed on top of the existing ground without excavating it first, the depth of the material that I could see at its edges is about 2-3 inches. Given this depth and overall area the amount of material used to create the surface was significant. The hardstanding falls to be classed as an engineering operation in its own right. Thus it is also development that required planning permission which has not been granted. This aspect of the development also constitutes a breach of planning control and therefore adds to why the ground (c) appeal should not succeed.

The fencing/gates

16. Notwithstanding that the stables will need removing due to my findings above, the gates and fencing inside the site entrance would still enclose an area of land where the loading and unloading of horses from a horsebox or trailer could take place securely. The fencing and gates are clearly means of enclosure not exceeding 2m in height. They are thus developments permitted by Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. As such, in relation to these aspects of operational development, there have not been breaches of planning control.

Notice A Ground (c) Conclusion

17. I have found breaches of planning control relating to the stables and the hardstanding, but not in relation to the fences and gates. Thus the ground (c) appeal under Notice A partially succeeds. The alleged breach of planning control set out in the notice therefore needs correcting and the associated requirements should be varied accordingly.

Notice B – change of use

18. The breach of planning control alleged is from agriculture to the keeping of horses. The appellants argue that there has not been a material change of use because the land is used for grazing. S336(1) of the 1990 Act defines agriculture to include a variety of functions. One of those is "the use of land as grazing land".

19. There are four horses and the appellants advise that three of those graze the land for 24 hours a day for 8 months each year. The fourth horse grazes 8 hours each day all year round. It has restricted grazing because of a condition called laminitis. Its diet is supplemented due to the need to restrict its grass intake. The grass from the two fields is the main food source for the horses and any hay brought to the site is in relatively small amounts each time it is needed. No exercising of the horses takes place and there are no jumps or associated recreational paraphernalia.
20. The appeal site is about 1.6ha in area. That may be a bit below the British Horse Society advice that average pasture will maintain approximately two horses per hectare as permanent grazing. Nevertheless, that recommendation is a guide and it can be subject to factors such as how well the pasture is managed and cared for and the size of the horses. In this case the grass is managed by rolling, fertilizing and seeding. The land is also divided into two, thus enabling the grass to recover and grow in one field while the other is grazed. A temporary electric fence also allows portions of each field to be kept free from grazing while grass seed grows. Moreover, the horse with laminitis is quite small and thus it eats less than a larger horse. It seems to me that on this basis the area of land is adequate for the purposes of feeding the horses for the majority of the time.
21. Therefore, in the context set by the relevant Court judgement *DJ Sykes v SSE and South Oxfordshire DC*, I have no difficulty in finding that the horses are not being fed wholly or primarily by other means. It is the case that the horses are kept there all of the time except when a couple are taken off for riding the local bridleways. However, the purpose of that is primarily for grazing which falls within the definition of agriculture.
22. Consequently a material change of use of the land has not occurred. Notice B will be quashed in view of the ground (c) appeal success. As such the merits of the ground (a) and (f) appeals do not fall to be considered.

Notice A – the ground (f) appeal

23. The purpose of the enforcement notice as discussed at the hearing is to remedy the breach of planning control by seeking to restore the land back to its condition before the breach took place. That does not mean leaving the land unattended so that weeds grow again so that it looks like it did before the appellants bought the site. The ground of appeal is based on whether, in the context of the purpose of the notice, the requirements go beyond what is necessary to remedy the breach.
24. Due to my findings above I shall be deleting requirement (ii) relating to the fencing and gates and the Council agreed at the hearing that requirement (iv) was unclear and could be deleted. The notice would then do more than require the structures and the hardstanding to be removed. On that basis the requirements would not be excessive. Therefore the ground (f) appeal does not succeed.

Other Matters

25. I recognise that my findings mean the horses could continue to be grazed on the land but that they may no longer have any shelter overnight or in adverse weather. I know that the appellants wanted me to consider the planning merits of retaining the shelters and to consider granting planning permission for them. However, as I explained at the hearing it is not possible for me to do that because there is no ground (a) appeal under Notice A and the appropriate fee was not paid either. Consequently there is no deemed planning application for me to consider except in relation to the change of use of the land under Notice B. Because of the ground (c) success under Notice B the deemed planning application does not fall to be considered anyway.
26. The situation is not helped from the appellants point of view because they have tried to obtain planning permission for buildings on the site twice before. However, I note that the Council would be flexible when it comes to the time allowed to comply with the requirements of Notice A which would allow the appellants more time if needed to consider alternative stabling arrangements. The Council has the power to relax the requirements of the notice under S173A(1)(b) of the 1990 Act. I do though make clear that this is not a matter within my control.
27. The appellants are also concerned about the processes that led the Council to take enforcement action particularly in relation to serving a Planning Contravention Notice (PCN). I said at the hearing I was not sure whether making any finding on this issue was within my remit. Having considered the matter further, an appeal under S174 of the 1990 Act provides a right of appeal against an enforcement notice served pursuant to S172, not against a PCN served under S171C. Given my appointment to determine the S174 appeal I thus make no further comments on the processes employed by the Council in relation to the PCN. Other procedural concerns raised cover the possibility of costs awards. However, the appellants did not make an application for costs. It would therefore be inappropriate to find on these matters too.

Overall Conclusions

28. Having had regard to all other matters raised it is concluded that the appeals relating to Notice A should be dismissed and a corrected and varied notice should be upheld. The appeals in relation to Notice B should be allowed and a corrected enforcement notice should be quashed.

Formal Decisions

APPEAL REFS: APP/U1430/C/14/3003803 & 3002995

29. It is hereby directed that the enforcement notice be:
- corrected by deleting paragraph 3 and replacing that with "The erection of 2 structures shown coloured mauve on the plan accommodating stables and storage accommodation and the installation of a hardstanding surface shown coloured green on the plan";

- varied by deleting requirements (ii) and (iv) from paragraph 6 and renumbering requirement (iii) to be (ii).
30. Subject to the above correction and variations the appeals are dismissed and the enforcement notice is upheld.

APPEAL REFS: APP/U1430/C/14/3002814 & 3002996

31. It is hereby directed that paragraph 3 of the enforcement notice be deleted and replaced with "A material change of use of the land from agriculture to the keeping of horses". Subject to this correction it is further directed that the enforcement notice be quashed.

Gareth Symons

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr Kevin Hatcher	Appellant
Ms Mandy Wicks	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms J Edwards	Rother DC
Mrs Holly Harrison	Rother DC

DOCUMENTS:

Doc 1	Letter dated 13 July 2015 from the Local Government Ombudsman to Mr Kevin Hatcher
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