Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/24/0197
Land at Fenlea, Furners Lane, Woodmancote, West Sussex, Horsham, BN5 9HX

DESCRIPTION:

Application to confirm the existence of hardstanding (operational development) on a date four years previous (Lawful Development Certificate - Existing)

RELEVANT PLANNING HISTORY:

DC/20/0893	Lawful Development Certificate in respect of the storage of a caravan on the land, as outlined in red on the attached plan, in addition to the use of land, as outlined in green on the attached plan, as a reservoir (Certificate of Lawful Development - Existing)	Application Permitted on 30.10.2020
DC/20/2421	Lawful Development Certificate in respect of the use of the building outlined in blue on the attached plan for B8 (Storage and Distribution) purposes; storage of a caravan on the land, as outlined in red on the attached plan; and, the use of land, as outlined in green on the attached plan, as a reservoir (Certificate of Lawful Development - Existing)	Application Permitted on 06.08.2021
DC/21/2352	Erection of an extension to existing B8 storage building (Lawful Development Certificate - Proposed)	Application Refused on 15.12.2021
DC/22/0583	Application to confirm the continuous use of the land for mixed use B8 storage (building materials/aggregate/hard landscaping materials) and for the depositing of waste purposes for a period in excess of 10 years (Lawful Development Certificate - Existing).	Split Decision on 04.10.2023

PLANNING ASSESSMENT

The application seeks a Certificate of Lawful Development Existing to confirm that the hardstanding at the north end of the site was laid in excess of four years before the date of the application.

Article (2) of Section 191 of the Town and Country Planning Act 1990 states:

"For the purposes of this Act uses and operations are lawful at any time if –

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

Summary of Applicant's Evidence

- *Location Plan*
- *Planning Statement*

The site itself comprises a parcel of land situated adjacent to a watercourse known as Turnhams Gill. The site forms the eastern slope of a shallow valley comprising a fold in the landscape adjacent to a stream and wooded area to the west and paddock land on rising ground to the east.

There is an existing track that leads from the entrance gate to a building further up the site. Behind the building, the land has been excavated by means of cut and fill method to form a level area upon which a hardstanding has been laid more than 4 years.

The Council acknowledge that pursuant to complaint reference EN/19/0563 (Alleged Unauthorised development involving importation of aggregate) that a Temporary Stop Notice was issued on 21.11.2019 following report of hardsurface area being laid at the north end of the site on levelled ground adjacent to the reservoir/natural spring.

The Applicants bought the land around July 2019. They were wholly familiar with the extent of the hardstanding and use of the land on the basis that the adjacent land at Pear Tree Farm to the immediate west has been within the family ownership for decades.

Photos taken on 24 October 2019 within the hardsurface area show the scraping back on the undergrowth to confirm the extent of the pre-existing hardstanding. The photos taken 4 November 2019 within the hardsurface area show the extent of the pre-existing hardstanding. All the Applicant has done is to maintain the existing hardsurface area. Section 55(2)(b) of the Town and Country Planning Act 1990 confirms that this is not development in any event.

Aerial photographs included dated 03.2022, 08.2020, 04.2020, 08.2018, 09.2015, 06.2013, 09.2012, 12.2009, where the application site has been circled in yellow.

Summary of Council's Evidence

- *Compliance investigation reference EN/19/0563*

  Unauthorised development involving importation of aggregate and laying of a hardsurfaced storage area.

  Temporary Stop Notice issued on 21.11.2019 following reports of hardsurface area being laid at the north end of the site on levelled ground adjacent to the reservoir/natural spring.

  Following the issue of the Temporary Stop Notice, it was agreed that all work should stop and the new Land Owners apply for a Certificate of Lawful Development Existing as it was claimed the site had always been used for storing material on this piece of ground, but the extent of use and nature of activity was unknown.

  Site photographs dated 21.11.2019 showing the area to the northern area consisting of compressed ground, with evidence of construction materials including bricks, tiles, gravel, sleepers, and timber stored to the corner of the site.

  Site photographs dated 27.11.2019 showing area of hardstanding to the north of the site, along with retaining walls and steps serving the reservoir.

  No further action taken and case closed 25.10.2021 following the grant of LDC applications DC/20/0893, DC/20/2421, and DC/22/0583.

  Closing Note…that the aerial photographic evidence points towards a discolouring of the ground at the top of the site, indicating that there may have been some form of hardstanding/storage use taking place on the land dating back more than 10 years. Thus, although it could be argued that new engineering works have taken place to create a consolidated and extended hardsurface area, it is more than likely the existing ground has been levelled, renovated and new aggregate laid in terms of tidying up the site and repairing the supporting wall where the spring is located. Thus, it is not considered expedient to pursue the matter further in terms of requesting a formal application to regularise the works that have taken place given the evidence of previous condition of the land and Certificates granted.

- *Certificate of Lawful Development Existing application reference DC/20/2421*

  Compliance response states that the introduction of gravel to the rear (northernmost) section of the site, together with works surrounding the reservoir (including retaining walls/staircases) are operations which presently do not benefit from consent. Outstanding breaches relate to the introduction of hardstanding, the provision of retaining walls/engineering operations surrounding the reservoir, and use of the land for B8 purposes.

- *Compliance investigation reference EN/22/0085*

Site photographs taken on 27.07.2022 show that part of the northern area laid to gravel base.

- *Enforcement Notice reference EN/22/0085:*

Without planning permission:

a. The material change of use of the Land from a mixed use of agriculture and the storage of a static caravan and a lorry body to a mixed use of agriculture and the open air storage of tyres, wheel hubs, building materials, metal containers, plant, equipment and vehicles normally associated with a civil engineer's/ highway maintenance contractor's depot, including, but not limited to: plastic piping, cable drums, manhole covers and frames, road traffic safety barriers, road cones, temporary road signs, temporary metal fencing panels and other miscellaneous paraphernalia, and waste materials.

b. The unauthorised laying of hardstanding at the north end of the Land in the approximate area shaded in grey on the attached plan.

Required to:

(i) Permanently cease the use of the Land for the unauthorised storage of tyres, wheel hubs, building materials, metal containers, plant, equipment and vehicles normally associated with a civil engineer's/ highway maintenance contractor's depot, including but not limited to: plastic piping, cable drums, manhole covers and frames, road traffic safety barriers, road cones, temporary road signs, temporary metal fencing panels and other miscellaneous paraphernalia, and waste materials.

(ii) Permanently remove all the items mentioned in (i) above from the Land;

(iii) Break up and remove the hardsurface area in the approximate position shown hatched grey on the attached plan;

(iv) Following (iii) above, permanently remove all the resulting rubble and debris from the Land and reseed the ground with grass.

Time for compliance:

Within six months after the date on which the Notice takes effect.

25.07.24 Enforcement Notice withdrawn

03.07.24 Legal agreement signed stating that The Council, as the LPA, will not take enforcement action against….

(iii) the operational development comprising the hardstanding (also known as The Hardsurface) annotated as "The Hardsurface" on the ENP attached to the EN and to this Agreement.

The hatched area shown on the plan attached to the Legal Agreement is identical to the area of hardstanding that is the subject of this application.

- *Aerial photographs dated 2001, 2007, 2012, and 2018*

2001: Land laid to grass. No evidence of hardsurfacing on the land

2007: Grass no longer present and evidence of disturbed ground

2012: Part of area returned to grass and disturbed ground to northern-most section

2018: Greater area of land returned to grass and disturbed ground to northern-most section

Discussion

Section 191(4) of the Town and Country Planning Act 1990 states that:

"If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application…they shall issue a certificate to that effect; and in any other case they shall refuse the application."

F W Gabbitas v SSE and Newham LBC [1985] JPL 630 held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the Local Planning Authority has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application; provided the

Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the "balance of probability".

The application relates to the area of hardstanding located at the northern end of the site which was investigated by the Planning Compliance in November 2019 when it was reported that HGV lorries were delivering aggregate to the site and ground works were taking place. The Council issued a Temporary Stop Notice to halt the work, however the applicants maintained the works were repairs to a pre-existing hardstanding and declined to submit a full planning application for the operational development. In response to this, the case was closed whilst the applicant submitted a number of LDC applications seeking a lawful use for the storage of building materials/aggregate/hard landscaping materials and for the depositing of waste purposes. As set out in the planning history above, the works to the hardstanding were not accepted as improvements to a pre-existing hardstanding, and following intensification of the use of the land (and hardstanding) for the storage of miscellaneous items on the land, the Council took enforcement action. This included taking enforcement action against the hardstanding, because it was considered part and parcel of the unauthorised change of use of the land and therefore subject to the 10 year rule for immunity from enforcement action.

However, the up-to-date position is that the enforcement notice was withdrawn and a Legal Agreement signed stating that the Council, as the LPA, will not take enforcement action against the hardstanding in question.

The relevant date for determining this application is any period before 05.02.2020 i.e. four years before the date this application was received by the LPA on 06.02.24. The evidence submitted by the applicant and as verified by the planning compliance investigation is that the hardstanding was substantially completed as an engineering operation by the end of November 2019. Therefore, it is considered sufficient evidence has been submitted to demonstrate, on the balance of probabilities, that the hardstanding in question has subsisted for a period in excess of four years from the date of the application. Accordingly, in planning terms the hardstanding as a form of operational development is now lawful.

Conclusion

For the reasons set out above, it has been demonstrated, on the balance of probabilities, that the hardstanding in question has subsisted for a period in excess of four years before the date of the application. There is no reason to withhold issuing a LDC for this development as the enforcement notice (which included a requirement to remove the hardstanding) has been withdrawn and it has been agreed the Council, as the local planning authority, will take no action in relation to this matter.

Recommendation: Application Permitted

1. It has been demonstrated on the balance of probability that the hardstanding shown edged in red on the accompanying plan, was substantially completed more than 4 years before the date of the application.

DELEGATED

Case Officer sign/initial	Reg Hawks	Date:	18.09.2024
Authorising Officer sign/initial	RHERMITAGE	Date:	19.09.2027

PLAN

