

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**AREA 2 PLANNING COMMITTEE**

**29 June 2011**

**Report of the Chief Solicitor**

**Part 1- Public**

**Matters for Information**

**1 PLANNING APPEAL DECISIONS**

- 1.1 Site: **The Nursery, Taylors Lane, Trottiscliffe**  
Appeal **Against an enforcement notice issued by the Council alleging a breach of planning control namely, the change of use of land to a residential caravan site**  
Appellant **Mr C Luke**  
Decision **Appeal dismissed and enforcement notice upheld with a correction**

Background Papers file : PA/12/11

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The Inspector considered that the use of the word 'permanently' in the requirements is both unnecessary and inappropriate having regard to the provisions of s.181(1) of the Act, which state that compliance with an enforcement notice shall not discharge the notice and she corrected the notice accordingly using the powers available to her.

**The appeal on ground (b)**

The Appellant says that the appeal site has historically been used as a horticultural nursery and such usage has been confirmed by the recent grant of planning permission for a replacement agricultural building and replacement of glass houses with two polytunnels, parking and revised access<sup>3</sup>. This development is nearing completion ready for horticultural production to recommence.

The Appellant goes on to say that the residential caravan has been provided to assist with the horticultural use. The Appellant therefore contends that the proper explanation of the use should be the change of use from horticultural nursery to horticultural nursery with residential caravan and that the allegation that the planning unit is only a residential caravan site is incorrect.

The Council says that the recent permission for a replacement agricultural building and polytunnels associated with a horticultural use relates to operational

development. This operational development is being undertaken but at the time the notice was served there was no use as a horticultural nursery. Nor was the site being used as a horticultural nursery on 7 April 2011 when a site visit took place. The breach alleged in the notice is therefore correct and precise.

In an appeal on ground (b) the Appellant has to show that the breach of control alleged in the notice has not occurred as a matter of fact. There is no dispute by the Appellant that there is a mobile home on the site and that he and his family are living there. The Inspector noted that there were what appeared to be two polytunnel frames on the site but there was no evidence whatsoever of anything other than weeds growing under the frames or any horticultural use elsewhere on the site. A large amount of the area of the site is covered in either loose bound hardstanding or tarmac which is unlikely to facilitate any significant horticultural use. There were a number of empty trays for seeds and seedlings in the larger of the two buildings, but there was no indication that these were likely to be in use in the near future because of the absence of other materials such as compost.

Despite the Appellant's assertion that horticultural production was ready to recommence, the Inspector found no discernible horticultural activity, or evidence of such, during what is generally accepted to be the primary growing season. This led her to the conclusion that no horticultural use is currently taking place on the site, nor was there a horticultural use at the time the notice was served.

There is no need to state a previous use on a notice and although misstatements of fact in the allegation can be the subject of an appeal on ground (b), they do not necessarily defeat the notice, given the power to correct any "misdescription" in s.176(1)(a). In this case, however, it seems to me that there is no need to correct the notice because, as a matter of fact and degree, whatever the Appellant's intentions may be, no horticultural use is taking place on the site. In the circumstances the Inspector considered that the allegation is correct and precise.

The Appellant admits that the site is being used as a residential caravan site and the appeal under ground (b) fails.

#### **The appeal on ground (f)**

The Appellant says that the actual use of the appeal site is as a mixed use (horticultural and residential) and that the uses are interdependent. As such compliance with the requirements would bring an end to the horticultural nursery use. The Appellant seeks an amendment to the requirements so that the residential caravan should be removed when the horticultural use of the site ceases.

The purposes of the requirements of a notice are to remedy the breach by discontinuing the use of the land. The only submission in this case available to the Appellant is that, as a matter of fact, the requirements exceed what is necessary to remedy the breach. Among other things, the Appellant has raised planning

merits which should be considered under ground (a). However, in this appeal there is no ground (a) appeal and the deemed application fee has not been paid; it is therefore not appropriate for the Appellant to introduce arguments on the planning merits in the context of an appeal on ground (f). The requirements do not preclude the Appellant doing what he is lawfully entitled to do in the future once the notice has been complied with. 11. The appeal on ground (f) accordingly fails.

### **The appeal on ground (g)**

The Appellant says that he needs to live on the site to protect valuable plants and provide security and that removal of the caravan within one month is unreasonably short and will jeopardise the newly established business in which he has made a significant financial investment. The appeal site is his home and it will take longer than one month to find a suitable alternative home for himself and his family. He asks for a minimum period of 12 months.

The Inspector's visit took place on 24 May which is within the generally accepted main planting and growing season, but she saw no valuable plants on the site (indeed she saw no plants in a nursery context at all) or any evidence of a horticultural business. She appreciated that the site is now the Appellant's family home and that money may have been invested in the business, but no evidence has been provided that he would be unable to find a site for the mobile home, or an alternative place to live, within one month.

In the circumstances the Inspector considered that the period of one month is reasonable in which to comply with the notice and the appeal on ground (g) fails.

### **Adrian Stanfield**

Chief Solicitor

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	Information report

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	Information report
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*