

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No: 2021/62/90727/E

Site Address: Land at Cockley Wood, Liley Lane, Grange Moor,
Huddersfield, WF4 4EN

Description: Formation of hardstanding

Recommending Officer: Kevin Walton

DECISION – Decline to Determine

I hereby authorise the recommendation of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Lee Stoney

AUTHORISED OFFICER

Date: 12-Mar-2021

OFFICER REPORT - 2021/90727 – Formation of hardstanding

1. Development

- 1.1 This retrospective application proposes the retention of an area of hardsurface formed to facilitate an unauthorised change of use of land as a wedding venue. The development essentially is for a large area of crushed stone hardsurfacing adjacent Liley Lane with crushed stone access tracks leading to openings within the woodland area. The applicant's planning statement refers at paragraph 4.1 to a plan appended 1(b) as the area of replacement hardsurface. Plan 1(b) has a reference 122(0-)01 rev B.
- 1.2 Surrounding the site is predominantly open land to the north, east, south and west of the site, with the village of Grange Moor further to the south east of the wood over 600m away. The site is allocated as Green Belt on the Kirklees Local Plan and is also identified as within the Kirklees Wildlife Habitat Network.

2. Salient Planning History

2019/93978 - Change of use from woodland to outdoor wedding venue with associated development – Refused – 02/06/2020

2020/92579 – Change of use from woodland to outdoor wedding venue with associated development – Refused – Appeal lodged not determined

2020/92697 – Deemed Application - Change of use from woodland to outdoor wedding venue with associated development – Refused – Appeal Dismissed

Enforcement Notice – EN1095 – Appeal Dismissed – 12/02/2021

3. Decision to decline to determine the retrospective planning application

Part 3, Section 70C. - (1) of the Town and Country Planning Act 1990 states the following:

'A local planning authority in England may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matter

specified in the enforcement notice as constituting a breach of planning control

(2) For the purposes of the operation of this section in relation to any particular application for planning permission, a “pre-existing enforcement notice” is an enforcement notice issued before the application was received by the planning authority’

4. Assessment

4.1 The submitted planning application for the formation of a hardstanding (2021/90727) relates to matters specified in the Enforcement Notice as constituting a breach of planning control. The Enforcement Notice specified the breach in planning control as

*The material change of use of the land for the permanent use of the site as a wedding/events venue and the associated siting of a tee-pee, shepherd style huts with attached decking skirts (used as a bar and DJ Booth), portable toilets, firepit and seating area, children’s play area, blessing area, pathways through the woodland and other wedding venue paraphernalia such as canopies, signage, benches, seating, tables and festoon style lighting and the **associated laying of a hard surface areas** (my emphasis) for access and for carparking to facilitate the use.*

4.2 The enforcement notice required the removal of the hardsurface as shown on plan ref: 121(0-) 01A attached to the notice. The plan is submitted with the planning application plan includes a second revision (B) to the enforcement notice plan although when comparing both plans the hardsurface areas are identical and consequently this application relates to the same associated laying of a hardsurface as specified within the enforcement notice. The only difference between the two plans is the omission of the other related paraphernalia in the north eastern area of the site.

4.3 It is recognised that the enforcement notice principally directed itself against a wider development including a change of use and other matters. However, following *Chesterton v Wokingham BC* [2018] EWHC 1795 (Admin), it is clarified that S70C is not concerned with the existence of differences between two developments, but with the existence of similarities. Thus, the discretion to decline to determine application is available to the Local Planning Authority where any part of an enforced against matter is involved in the application regardless of whether the application would involve consideration of different planning merits.

- 4.4 It is clear *Chesterton* is relevant in this instance as the application is seeking permission for a part of the development enforced against in light of the planning submission and plan attached to the enforcement notice. There is no doubt that the development to lay crushed stone is the same unauthorised development than that sought under the current application. Consequently, there can be no argument that the permission sought for the hardsurface forms part of the ***hard surface areas*** enforcement against. Section 70C is therefore engaged if it is considered the applicant is seeking permission for a development already considered and enforced against by the Local Planning Authority.
- 4.5 In fact there are no material differences in the circumstances or other mitigating measures proposed by the applicant.
- 4.6 The Inspector in considering the development concluded the change of use and associated structures and hardsurface was inappropriate development in the green belt and should not be approved except in very special circumstances. The Inspector also gave weight to the effects of the development upon the purposes of safeguarding the countryside from encroachment. While this was in consideration of the whole development the Inspector also commented that inter alia, *the extensive areas of hardstanding* have encroached into the green belt and are intrusive features that interrupt the openness of the countryside. Under such circumstances it is considered the Inspector would reach the same conclusion such this application be refused by the LPA and a further appeal is lodged.
- 4.7 Furthermore, the Inspector had discretion to vary the requirements of the enforcement notice to omit the removal some or all of the hardsurface if it was felt that this element of the development was acceptable. It follows therefore, that the Inspector considered the whole and any part of the development unacceptable.
- 4.8 By virtue of the Inspectors decision and the lack of material differences since the appeal decision, it appears the applicant is attempting to seek a further decision on a development the Local Planning Authority has made a decision on.
- 4.9 Consequently, it is appropriate for the LPA to decline to determine this application in light of the planning history and appeal decision.

4.10 The applicant relies on *R. (ex p. Gill) v Central Bedfordshire Council [2015] EWHC 3458 (Admin)* to argue the Local Planning Authority cannot decline to determine the application on the grounds it would be at fault to do so if the application affects the requirements of the enforcement notice. With respect to the applicant's submissions, it is considered this authority has no bearing in this instance. The Local Planning Authority is not refusing to determine the application on the grounds it would affect the terms of the notice or amend a development that is in itself unlawful. The basis for not determining, as set out above, is under section 70C is by reason the applicant is seeking permission for development which forms part of development specified in a pre-existing enforcement notice the Local Planning Authority is using its discretion to do so by reason of the Inspectors decision on the same development. The applicant's argument on this point carries no weight.

5. Recommendation – Decline to Determine

5.1 In accordance with Part 3, Section 70C (1) of the Town and Country Planning Act 1990 the Local Planning Authority exercise its discretion to decline to determine application no. 2021/90727.

Decision Notice Text

The Local Planning Authority exercises its discretion under section 70C of the Town and Country Planning Act 1990 to decline to determine the application no. 2021/90727 by reason that the granting of planning permission would involve granting permission for part of the land to which a pre-existing enforcement notice relates.

This decision is based on the following plans/documents:-

Plan Type	Reference	Version	Date Received
Location Plan	122 (0-) 02	C	23/02/2021
Block Plan	122 (0-) 01	B	23/02/2021
Planning Statement	Feb 2021		23/02/2021
Biodiversity Enhancement	JCA Ref 16077b		23/02/2021
Bat Activity	July 2020		23/02/2021
Trees Bat Roost Survey	07/01/2020		23/02/2021
Aboricultural Report	JCA 14727b	1	23/02/2021
Phase 1 Desktop Study	C66/19/E/127	1	23/02/2021
Woodland Management	JCA 14727/EW	3	23/02/2021

Plan			
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