The Planning Inspectorate

Appeal Decision

Inquiry opened on 25 May 2016

Site visit made on 10 August 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 28 October 2016

Appeal Ref: APP/A1910/C/16/3142602
Land at Woodlands, Noake Mill Lane, Water End, Hemel Hempstead, Hertfordshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr N Martin against an enforcement notice issued by Dacorum Borough Council.
- The notice was issued on 23 December 2015.
- The breach of planning control as alleged in the notice is, without planning permission, the operating of a commercial scaffolding business from a residential property resulting in a material change of use of the land hatched green on the plan attached to the notice.
- The requirements of the notice are:
  1. Cease operating the scaffolding business from the land hatched green.
  2. Cease the storage of scaffolding and any other items associated with the business use at the site.
  3. Remove all scaffolding and any other items associated with the business use from the site.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld as corrected and varied.

Application for costs

1. At the Inquiry an application for costs was made by Mr N Martin against Dacorum Borough Council. This application is the subject of a separate Decision.

Procedural Matters

2. This appeal is one of two enforcement appeals heard at the Inquiry (APP/A1910/C/16/3142602 and APP/A1910/C/16/3142948). Although the two appeals relate to the same property, they relate to different parts of the property, to different breaches of planning control, are made on different grounds and raise different issues. Accordingly, I have determined these appeals in two separate Decisions.

3. Because the grounds of appeal involved matters of fact, the evidence of all witnesses was taken on oath by way of affirmation.

4. As originally issued, the enforcement notice related to a discrete area within the site, shown hatched in green on the plan attached to the notice. In its Proof of Evidence, the Council proposed a variation to the notice so that the notice referred to the entire site, as edged in red on the notice. The Council also proposed an attendant variation to the breach of planning control, which was then alleged to be a change of use of the site from residential to a mixed use of residential and commercial scaffolding business. The requirements of the notice were similarly proposed to be varied by omitting reference to the area hatched in green.

5. The appellant acknowledges that the variations to the notice proposed by the Council are necessary to reflect the agreed position that the planning unit to which the breach of planning control relates comprises the entirety of the site. On the basis of my site visit and the evidence at the Inquiry, I am satisfied that the relevant planning unit is the entire site as edged red on the notice. The appellant has had an opportunity to modify his case in response, and I consider that the appellant has not been caused injustice by the amendment to the notice proposed by the Council. I shall therefore vary the notice accordingly.

6. The Inquiry opened on 25 May 2016 but was immediately adjourned in order that the appellant could prepare an appeal under ground (c) - that the matters alleged in the notice do not constitute a breach of planning control. This followed the amendment to the site area covered by the enforcement notice proposed by the Council in its Proof of Evidence. The Inquiry resumed on 9 August 2016 and sat for two days.

7. At the Inquiry, there was discussion as to whether the appeal as submitted under ground (c) should more properly be an appeal on ground (b) – that those matters have not occurred. It was agreed that, in this case, there was considerable overlap between these two grounds of appeal and that the appeal should be considered as encompassing both of these grounds. I have determined the appeal accordingly.

Reasons

8. The appeal site comprises a residential dwelling known as 'Woodlands' with garden and outbuildings. There is no dispute between the parties that the property was used solely for residential purposes. Similarly, there is no dispute that within the planning unit there is currently a mixed use comprising residential and the operation of the commercial scaffolding business referred to in the notice. The appellant explains that he began operating a business from the dwelling in 1997 under the name of Swilken of St Andrew. This business, described as the storage and distribution of golf equipment, comprised a wholesale business and transactions which were conducted from Woodlands. It is the nature of this business that was operated in the intervening period that is in dispute and goes to the heart of the appellant's grounds of appeal and the suggestion that the notice is incorrect. As it is relevant to all the grounds, I consider it appropriate to deal with this at the outset.

9. A notice need not recite the previous use, although it is of course better if it does so, because then the reasons why the Council consider there was a material change of use will be that much more obvious. Any mis-statements of facts that come to light in the allegation do not necessarily defeat the notice but may require correction. Such correction can include omission where uncertainty exists about a previous use.

10. The Council assert that the golf business was ancillary to the primary residential use of the property. In contrast, the appellant argues that the planning unit already comprised a mixed use comprising a residential use and the operation of a golf storage and distribution company, such that the description of the alleged breach of planning control is incorrect. In support of this position, the appellant relies upon the judgement in Hertfordshire County Council v SSCLG in which it was confirmed that a material change of use requires a material change in the definable character of the use of the land. The appellant also refers to the judgement in East Barnet UDC v British Transport Commission, in which it was confirmed that the purpose of an operation is immaterial to whether there has been a change in the definable character of the land.

11. It may perhaps be helpful at this point to explain the difference between primary and ancillary uses. The primary use is the main use of the planning unit. An ancillary use is one that would not be expected to be found as an integral part of the primary use but which is functionally related to the primary use. Thus, a primary use having an ancillary use functionally related to it would be different to a mixed use comprised of two or more primary uses. I must therefore first consider whether the appellant's business in relation to the storage and distribution of golf equipment was ancillary to the primary use of the planning unit, or whether it itself became a primary use as part of a mixed use of the premises.

12. In February 2015, the appellant submitted an application to the Council for a lawful development certificate for use of the land and buildings at Woodlands for B8 storage purposes. The application was refused in December 2015, partly because the applicant provided insufficient evidence to show that the land and outbuilding had been continuously used for B8 storage purposes and partly because the evidence available to the Council demonstrated that the B8 use had not taken place during the relevant period. No appeal was lodged against that decision.

13. As part of this appeal, I have been provided with a sample of the evidence that was submitted in support of that application for a lawful development certificate. That evidence includes a number of invoices for golf equipment together with bills of lading, company accounts and correspondence with customers. It is clear from this evidence that the storage and distribution of golf equipment did take place from Woodlands for at least some time after 1997. However, at no time has the storage and distribution of golf equipment from Woodlands been found to be a lawful primary use, either in terms of a separate B8 use or as part of a mixed use comprising residential and storage and distribution. This has implications for the appellant's appeal on ground (c), to which I return below.

14. It is apparent from the evidence provided that the appellant's business in relation to the storage and distribution of golf equipment involved some significant quantities of stock, ranging from large individual items such as golf trolleys to large quantities of smaller items such as golf balls, golf clubs, gloves and tees. The appellant indicates that some 40% of the wholesale business took place entirely off-premises, direct from supplier to buyer. The evidence provided includes several bills of lading which, typically, show the port of loading as being Hong Kong with the place of delivery as diverse as Zurich, Dublin and Southampton. However, none of these bills of lading states

Woodlands as the delivery address. This is consistent with the business being administered from Woodlands but does not demonstrate that the goods were stored at or distributed from the appeal site.

15. Indeed, of the various invoices that have been provided, only one categorically states that the goods were shipped to Woodlands. The majority of invoices cite Woodlands as the billing address but either specifically indicate delivery direct from supplier to customer or do not state a precise delivery address. There is no documentary evidence in this sample provided by the appellant that the items were ever stored at Woodlands, even in transit from the supplier to the eventual customer. There is, in addition, written evidence from a Mr Cahill to the effect that some 6 to 8 containers of golf equipment were shipped per year to Swilken of St Andrew. However, Mr Cahill did not appear in person at the Inquiry and this evidence was not tested.

16. I acknowledge that I have been provided with only a sample of the evidence that was presented to the Council as part of the application for a lawful development certificate. Nevertheless, on the basis of that sample and even taking into account the representation of Mr Cahill, the evidence does not support the appellant's contention that only 40% of the wholesale business took place entirely off-premises. Rather, this evidence indicates that a significant percentage of the business took place entirely off-site and that relatively few goods were shipped to Woodlands as part of the appellant's golf business.

17. Having regard to the above, I am satisfied that the appellant's business in relation to the storage and distribution of golf equipment at no point reached a scale whereby it became a primary use of the planning unit. I therefore conclude that, as a matter of fact and degree, the appellant's business in relation to the storage and distribution of golf equipment was ancillary to the primary use of the planning unit as residential. Indeed, by accepting the Council's amendment to the enforcement notice, which explicitly alleges a material change of use of the land from residential to a mixed use of residential and commercial scaffolding business, the appellant concedes that the primary use of the planning unit is residential and that the storage and distribution of golf equipment would have been ancillary to that primary use, insofar that it was operated from the residential planning unit and was functionally related to it.

18. For the reasons set out above, I consider the description of the alleged breach to be correct and that no correction to omit the reference to the previous use being residential is required. I shall determine the appeal on this basis.

The appeals on grounds (b) and (c)

19. The appellant does not dispute that the operation of the commercial scaffolding business has occurred and is part of a mixed use. Accordingly, the appeal on grounds (b) fails.

20. The essence of the appellant's case in relation to ground (c) is that the addition of the scaffolding business to an already lawful mixed residential and storage/distribution use does not amount to a material change of use.

21. I have had regard to the judgments referred to by the appellant in considering this ground of appeal but it is important to clarify at the outset that in this

case, for the reasons set out above, the assessment to be made relates to the change, if any, in the definable character of the use of the land between the primary residential use and the commercial scaffolding business. That is a different premise to the one put forward by the appellant, which relies on me agreeing to the proposition that the golf business was not ancillary to the residential use but a primary use. I have nevertheless assessed whether there is a change in the definable character.

22. In making this assessment, I am of course mindful that the primary residential use included the ancillary use for the storage and distribution of golf equipment. A significant element of this assessment relates to the storage of stock in relation to those respective uses, and I start by considering that.

23. The appellant's evidence in relation to the storage of stock on the site is somewhat contradictory. Mr Martin initially stated in written evidence that excess or demonstration stock was kept within one of the outbuildings but he later indicated in writing and in person at the Inquiry that surplus material was stored outside in the yard. In relation to the latter, the appellant associated the external storage of stock with the purchase of canopies beneath which the surplus stock was stored on pallets. I accept that this clear recollection and association with other events adds weight to this evidence. The appellants' position is also to some extent supported by the evidence of Mr Welch, who recalls the storage of stock under a canvas covering outside the building used as an office and on one occasion a shipping container full of golf equipment being delivered to the site.

24. I note, however, that Mr Welch also remembers large quantities of golfing stock being stored in the outbuildings. In her written statement, Mrs Martin repeats the position initially adopted by Mr Martin in his written evidence and indicates that excess or demonstration stock was kept within one of the outbuildings, but makes no mention of surplus stock being stored in the yard. In answer to a question put to him in writing by Mr Crook, Mr Ermini states that everything was stored in the outbuildings on the East side of the house but also makes no mention of outside storage. A representation from Mr & Mrs White, submitted in relation to the application for the application to the lawful development certificate but appended to the Council's evidence, refers to one of the outbuildings being converted to a warehouse full of stock, but again makes no reference to outside storage. One of the aerial photographs provided by the Council does appear to show a canopy in the yard, albeit not in the position described by Mr Welch, but there is no evidence of a canvas canopy or shipping containers in the other photographs taken during the relevant period.

25. On the evidence available to me, I am not persuaded that, on the balance of probability, outside storage was a regular feature of the appellant's business for the storage and distribution of golf equipment. On the contrary, the evidence suggests that for most of the time any surplus or demonstration stock was stored in one of the outbuildings. Moreover, even on those occasions when golf equipment was stored in the yard, there is no evidence to suggest that it was visible from outside of the site.

26. The evidence in relation to vehicle movements associated with the appellant's business for the storage and distribution of golf equipment is scant. In his answer to another question put to him in writing by Mr Crook, Mr Ermini states that all golf equipment arrived and was despatched in vans and lorries. The

representation from Mr & Mrs White in relation to the application for the application to the lawful development certificate refers to large lorries being a frequent occurrence at Woodlands when the business was operating. There is, however, no documentary evidence to indicate the frequency of movements generated by the golf business or the proportion of these movements that were made by larger vehicles.

27. In summary, the evidence indicates that, on the balance of probability, a significant percentage of the appellant's business for the storage and distribution of golf equipment took place entirely off-site and that the stock which was delivered to Woodlands was largely stored within the outbuildings. In this context, I note the evidence in Appendix 3 of Mr Stanley's Proof of Evidence in which an agent acting for the appellant in May 2006, referring to the existing outbuilding, indicated that the "level of business use of this building is minimal" and that "the office floorspace and minimal business storage of samples occupy approximately 20% of the buildings floorspace". I recognise that these statements were made in the context of an application for a lawful development certificate for outbuildings and a swimming pool at Woodlands, but they were nevertheless made by agent acting on behalf of the current appellant. I therefore consider that these comments may be afforded due weight as an accurate indication of the position at that time.

28. Having regard to the above, the character of the use of the appeal site prior to the breach of planning control was residential, albeit with an ancillary business use for the storage and distribution of golf equipment. Again, by agreeing to the amendment to the alleged breach of planning control proposed by the Council, which specifically describes the use as residential, the appellant effectively concedes that this was the case.

29. The commercial scaffolding business comprises the selling and supplying of quickform aluminium scaffold towers as an agent for the Youngman Group. The appellant indicates that the purchased products are distributed directly from the Youngmans Group, but that a percentage of the smaller range of goods are delivered to Woodlands and collected by customers. The appellant also indicates that some of the second-hand stock is cleaned and refurbished on site.

30. The scaffolding stock is primarily stored outside in the yard, although smaller items are stored inside. The appellant contends that the scaffolding is usually laid flat on the ground and does not exceed 2 metre sin height. However, photographs taken by the Council clearly show sections of scaffolding stored upright and projecting above the fence, such that they are visible from outside the site. The appellant conceded in cross-examination that this situation was a fair reflection of storage in the yard.

31. Moreover, a photograph taken by the occupier of the neighbouring property show a considerable quantity of scaffolding stored vertically and clearly visible from outside the site. A second photograph shows a considerable quantity of scaffolding stored horizontally but still projecting significantly above the boundary fence. A third photograph shows scaffolding stored outside the yard.

32. Scaffolding is delivered to Woodlands at least three times each week and sometimes on a daily basis. The occupier of the neighbouring property indicated that the latter was usually the case. A photograph taken by the Council shows one of the lorries used for these deliveries, which is a large high-

sided vehicle. The appellant confirmed in cross-examination that this vehicle was typical of those used to transport scaffolding to and from the site.

33. The occupier of the neighbouring property complains that the handling of the scaffolding throughout the day is noisy. I have no technical evidence to quantify the resultant noise levels but, given that the scaffolding is a metallic product and that individual pieces of scaffolding can be relatively large, I consider that the loading, unloading and general handling of the scaffolding is likely to generate some noise.

34. In summary, the scaffolding business results in a significant amount of outside storage in the yard, a visible presence from outside of the site, frequent deliveries by large vehicles and the generation of noise through the handling of metallic products. In my view, as a matter of fact and degree, the character of the use of the appeal site for a mixed use of residential and commercial scaffolding business is materially different from the use of site for residential with an ancillary business use for the storage and distribution of golf equipment. The latter took place predominantly within the outbuildings, appears to have been serviced by a mixture of small and large vehicles, does not appear to have resulted in a significant noise and appears to have had little, if any, presence outside of the site.

35. It follows that the introduction of the scaffolding business has resulted in a material change in the definable character of the residential use of the land. Moreover, the particular characteristics of that use, including the outside storage of scaffolding and the frequent deliveries of scaffolding by large vehicles, lead me to the conclusion that the use is not ancillary to the residential use of the planning unit. I therefore conclude that a material change of use has occurred.

36. For all the reasons set out above, the appeals on ground (c) must also fail.

The appeal on ground (d)

37. The ground of appeal is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

38. It is again important to confirm at the outset that the appeal on ground (d) can only relate to the alleged breach of planning control which, in this case, is a change of use of the site from residential to a mixed use of residential and commercial scaffolding business. Much of the appellant's evidence in relation this ground of appeal related to the appellant's business for the storage and distribution of golf equipment. However, that is not the breach of planning control alleged in the notice and I need make no further comment on that.

39. In order to succeed on ground (d), the appellant must demonstrate that the use of the appeal site for a mixed use of residential and commercial scaffolding business has taken place without interruption for a period of least 10 years beginning on the date that the breach of planning control first commenced. However, the appellant is candid in acknowledging that the scaffolding business commenced in 2010 and therefore considerably less than 10 years ago. The use of the appeal site for a mixed use of residential and commercial scaffolding business was therefore not immune from enforcement action at the time that

the enforcement notice was issued. It follows that it is not necessary for me to determine the exact date on which the breach of planning control commenced.

40. Accordingly, the appeal on ground (d) fails.

The appeal on ground (f)

41. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notices include to cease operating the scaffolding business from the land, cease the storage of scaffolding and to remove all scaffolding from the site. The purpose of the notices must therefore be to remedy the breach of planning control.

42. Now that the requirements of the notice have been amended to include the entire site, the appellant's remaining case on ground (f) is focused on the office within the outbuilding. The appellant considers that it would excessive to require this office to be removed given that the Council has previously accepted that it can be used for purposes ancillary to the residential use of the property. I concur with the appellant in this respect but, as the Council made clear at the Inquiry, the notice does not seek to attack the use of that office for purposes ancillary to the dwellinghouse. The notice effectively requires the return of the appeal site to residential use and this would include an office ancillary to that use. I therefore consider that it is not necessary for me to vary the notice to permit the use of this office for purposes ancillary to the dwellinghouse as the appellant requests.

43. I consider that lesser steps would not achieve the purpose of the notice and that the requirements of the notice are not excessive. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

44. The ground of appeal is that the period specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is two months.

45. The appellant explains that, following the mothballing of the golf business and notwithstanding the recent acquisition of a golf driving range, the scaffolding business contributes to his livelihood. It would therefore be necessary for the appellant to find another location from which the scaffolding business could operate, and then to secure the lease or purchase of that site. Only once those negotiations were complete could the scaffolding business be physically relocated to the new location. The appellant considers that a period of six months would be necessary to accomplish these activities.

46. I concur with the Council that there are no physical barriers to the cessation of the scaffolding use and that this could be accomplished within two months. However, the appeal site is located within a predominantly rural area with few large towns. I accept that it would take time to locate a site within this area from which to operate a scaffolding business and which was available for lease or purchase. I also accept that, having located such a site, it would take time to complete the process of negotiating the purchase price or terms of the lease, and then completing the legal purchase or leasing of it. I recognise that the six months sought by the appellant would be preferable as a period of time in which to achieve this, although I am not persuaded that the full six months is actually necessary.

47. I acknowledge that, as the Council points out, the scaffolding business has been operating for some time now and the appellant has already had over eight months to locate alternative premises since the notice was issued in December 2015. However, the appeal against that notice was made on several grounds and the appellant was entitled to anticipate success on one of those grounds. The period of eight months after the notice was issued therefore does not qualify as time towards compliance with the notice.

48. Nevertheless, I must balance the time requested by the appellant to secure compliance with the notice against the harm caused to the living conditions of the occupiers of the neighbouring residential property, known as Littlehill. It is very evident to me, both from the written representation and the evidence given by Ms Ferguson in person at the Inquiry, that the scaffolding business detracts from the living conditions enjoyed by the occupiers of Littlehill in terms of noise disturbance and outlook. It is equally clear that the occupiers of Littlehill have been enduring these harmful impacts since shortly after moving into the property in 2012. I am therefore mindful that, with the appeal failing on other grounds, the occupiers of Littlehill are entitled to expect that those harmful impacts should now cease. In weighing the harm in these respects against the time reasonably required for the appellant to locate alternative premises for the scaffolding business, I consider that a period of four months would be proportionate.

49. Accordingly, the appeal on ground (g) succeeds to that extent.

Conclusion

50. For the reasons given above I conclude that this appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

51. It is directed that the notice be corrected by:

- deleting the words "the operating of a commercial scaffolding business…………..land hatched green on the attached plan" in paragraph 3 and by replacing those words with the words "a material change of use of the land edged red on the attached plan from residential to a mixed use of residential and commercial scaffolding business".
- deleting the words "hatched green" in paragraph 5.1.
- deleting the plan attached to the notice and substituting the plan attached to this Decision.

The appeal is allowed on ground (g) to the extent that it is hereby directed that the enforcement notice be varied by the deletion of the words "two months" in paragraph 6 and the substitution with the words "four months". Subject to this correction and variation, the enforcement notice is upheld.

Paul Freer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Daniel Stedman Jones, of Counsel	Instructed by Mr Martin Crook of MSC Planning Consultants Ltd

He called

Mr Neil Martin	Appellant
Mr Martin Crook	MSC Planning Consultants Ltd
Mr Peter Welch	

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Parker, of Counsel	Instructed by Mr Christopher Gaunt, Solicitor, Dacorum Borough Council

He called

Ms Philip Stanley MRTPI	Team Leader – Planning Enforcement

INTERSTED PERSONS

Ms Nicole Ferguson	Occupier, Littlehilll, Noake Mill Lane, Water End

DOCUMENTS SUBMITTED AT THE INQUIRY

1/ Opening Statement on behalf of the Appellant.

2/ Transcript of judgement in respect of *East Barnet UDC v British Transport Commission* [1962] 2 QB 484 .

3/ Opening Statement on behalf of the Council.

4/ Transcript of judgement in respect of *Fidler v First Secretary of State* [2005] 1 P. & C.R. 12.

5/ Copies of brochures for Swilkens of St Andrews.

6/ Closing Submissions on behalf of the Council.

7/ Correspondence between Mr Stanley and Mr Crook relating to the proposed amendment to the enforcement notice.

8/ Closing Submissions on behalf of the Appellant.

9/ Claim for costs on behalf of the Appellant.

Plan

This is the plan referred to in my decision dated:

by Paul Freer BA (Hons) LLM MRTPI

Land at: Woodlands, Noake Mill Lane, Water End, Hemel Hempstead HP1 3BB

Reference: APP/A1910/C/16/3142602

Scale: Not to Scale