The Planning Inspectorate

Appeal Decision

Site visit made on 29 November 2016

by Martin Joyce DipTP MRTPI

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

Decision date: 14 December 2016

Appeal Ref: APP/Z4718/C/16/3146587
Land on the north west side of Coal Pit Lane, Carlinghow, Batley, West Yorkshire

- 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 J H Priestley against an enforcement notice issued by the Kirklees Council.
- The enforcement notice, Ref: COMP/15/0093, was issued on 20 January 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of land from agriculture to mixed use of agriculture and waste processing/storage and the erection of two buildings.
- The requirements of the notice are to cease the use of the site for the storage and processing of waste including the burning and dismantling of any article or any other method of processing waste; remove from the site all equipment and vehicles used in waste processing such as an incinerator and any vehicles/caravans, parts of vehicles/caravans or articles that are awaiting processing; and, wholly demolish the two buildings outlined in blue on the plan attached to the notice and remove all resultant debris from the site.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in Section 174(2)(c) and (e) of the Town and Country Planning Act 1990 as amended. As 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 is dismissed and the enforcement notice upheld.

The Appeal Site

1. The appeal site comprises an irregularly-shaped area of rising land on the north-western side of Coal Pit Lane, a public bridleway that runs south-west from Chaster Street. The curtilages of dwellings in Chaster Street to the east, and Spring Mills Grove and Greenfield View, part of a modern housing estate to the north, form boundaries, in places, with the site.

2. The site is divided into three main enclosures by post and wire fencing, and much of it is grassed and used for agricultural or horse grazing purposes. At the time of my visit there were six goats, four sheep and a donkey on the land, with two horses moved temporarily onto adjoining land that was not in the appellant's control. A gateway at the south-eastern corner of the site provides access to a yard area that contains a number of structures, including a large open-sided building, measuring about 15.4m in length, 3.6m in width and 2.4m in height, which is one of the two required to be removed by the notice. That

building, divided into bays, is partly used for stabling purposes, and partly for storage, including agricultural equipment and machinery. It is constructed mainly of timber and plywood.

3. A range of further buildings and structures, including a framework shrouded in tarpaulins, runs along the short easternmost boundary. Further storage takes place in these structures, and also the repair of vehicle components in a rudimentary workshop under the shrouded area. Within the remainder of the yard is a tightly-packed miscellany of sheds, trailers, vehicles, including tractors, other agricultural machinery, a Hymac tracked excavator, a touring caravan, a horsebox, stacks of wood, stone, rubble and vehicle parts, as well as containers holding animal feed.

4. Another gate to the south-west provides a second access to the land from Coal Pit Lane. Close to this gate are two buildings, one of which is the other building at which the notice is, in part, aimed. It is a small animal shelter, open on one side, constructed mostly of plywood sheets, and measuring about 4.2m in length, 2.2m in width and 1.9m in height. It has been damaged by wind and was in a poor condition at the time of my inspection, but still used for shelter for the animals on the land. A more substantial stable building is sited close to the gate, but it is not shown on the plan attached to the notice and is not subject to the requirements of the notice.

5. The south-eastern boundary of the site, beyond the second gateway, is formed by a substantial hedgerow. Within this boundary is a strip of land that appears to be largely used for the storage and processing of waste material, although it does also contain some agricultural machinery, such as a muck spreader. I saw trailers and horse boxes containing a variety of material, including vehicle parts, tractor tyres, wood and metal waste, as well as a substantial pile of soil material, within which has been created an area used for burning waste. One trailer, fitted with high canvas or tarpaulin screening, was embellished with the words "Waste Management".

THE APPEAL ON GROUND (e)

6. The appeal on ground (e) is based upon the contention that others with an interest in the land were not served with a copy of the enforcement notice, specifically, the appellant's sister, brother-in-law and nephew. The Council accept that others help on the land but they are not registered as owners and no evidence has been provided to show that anybody, other than the appellant, has a legal interest in the land. This has been confirmed by a Land Registry search made in November 2015.

7. In considering these matters, I note that the Council chose, in part, to rely upon a response to a Planning Contravention Notice (PCN) served on the appellant in 2014 in connection with action under Section 215 of the Town and Country Planning Act 1990 (The Act). They state that it was obvious, from the answers given by the appellant to that PCN, that the appellant did not understand any of the questions thus, given his documented threatening behaviour and in the knowledge that he "struggles" to understand planning policy and legislation, it was decided to proceed to formal enforcement action without prior contact, as to do otherwise would be futile.

8. I find it surprising that, notwithstanding any communication difficulties, the Council did not seek further information, including through a PCN about the

specific matters alleged in the notice, as that issued in 2014 does not contain any allegation about unauthorised uses or the erection of buildings on the land. Indeed, Section 215 of The Act is concerned with the proper maintenance of land, rather than unauthorised development. Moreover, they acknowledge that others do have an interest in the land, albeit not an apparent legal interest.

9. In this context, the provisions of Section 172(2) of The Act are pertinent. They state that a copy of an enforcement notice shall be served by the Local Planning Authority on (a) the owner and occupier of the land to which it relates, and (b) any other person having an interest in the land, being an interest which, in the opinion of the Authority, is materially affected by the notice. Service of a notice is not, therefore, confined solely to those with a legal interest in the land, as stated by the Council, but extends to occupiers including those with a lease, licence or even oral permission to use the land. This would include the relatives of the appellant who the Council acknowledge help the appellant with his activities on the land. It follows, therefore, that the Council should have served others with a copy of the enforcement notice and their failure to do so is a breach of the requirements of Section 172 of The Act.

10. There is, however, another limb to this matter. Whilst an appeal under Section 174(e) may correctly be made in circumstances where the Council has failed to serve a notice in accordance with Section 172, the provisions of Section 176(5) allow such failure to be disregarded if neither the appellant nor any other person has been substantially prejudiced by this failure to correctly serve the notice. I consider that this situation applies in this case. Whilst the three relatives of the appellant have not been served with the notice there is no suggestion that they were not aware of it, and the appellant does not contend that they have suffered any prejudice through the failure of the Council to follow the correct procedure. Moreover, the other persons with an interest in the land, presumably as a consequence of an oral permission to use the land, are likely, in my view, to have contributed to the grounds of appeal put forward by the appellant, not least because of the presence of two of them at the site inspection, with the appellant's sister showing control of relevant paperwork associated with the notice and the appeal.

11. In all of these circumstances, I conclude on this ground of appeal that the Council has not served the notice in accordance with Section 172 of The Act, but their failure to do so should be disregarded, in pursuit of Section 176(5) of The Act, because, on the balance of probabilities, no prejudice to the appellant or others with an interest in the land has been shown. The appeal on ground (e) therefore fails.

THE APPEAL ON GROUND (c)

12. The appeal on ground (c) relates solely to the allegation that two buildings have been erected on the land without planning permission, and there is no challenge to the alleged material change of use of the land to a mixed use for agriculture and the storage and processing of waste, albeit that the appellant states that the fires on the land have been for the burning of agricultural waste. The appellant also questions why other farmers in the area are permitted to erect buildings, without the need for planning permission, and I take this to be a contention that the buildings at which this notice is aimed do not need planning permission because they are used for the purposes of agriculture.

13. The Council do not directly address the question of whether or not the buildings are exempt from the need for planning permission, rather they contend that they are operational development, having regard to the provisions of Section 55 of The Act, and they draw attention to the fact that the appellant accepts that one of them was completed in the last 14 months. However, neither matter is pertinent to the appeal that has been made, especially as there is no appeal on ground (d).

14. The appellant's contentions seem to relate to the fact that the site is in agricultural use, as accepted in the terms of the enforcement notice, and that the buildings in question are being used for agricultural purposes, as I saw at my site inspection. However, whilst the erection of buildings which are reasonably necessary for agricultural purposes is permitted under the terms of Class A of Part 6 of Schedule 2 to The Town and Country Planning (General Permitted Development (England) Order 2015 as amended, this only relates to agricultural land comprised in an agricultural unit of 5ha or more. I have no evidence before me that the appeal site forms part of an agricultural unit of over 5ha, and the site itself comprises only about 1.7ha of land. There are, therefore, no permitted development rights relating to the erection of agricultural buildings on this site, thus those that have been erected require a grant of planning permission which has not been obtained.

15. As for the storage and processing of waste, the only explanation given by the appellant concerns a claim that the burning of waste, witnessed by a number of local residents, is of farm waste, which he contends is permissible. However, I saw clear evidence of the storage of various types of waste on the land, as detailed above, including significant amounts of wood in the form of cut trees which must have been imported onto the land as there is no evidence of the clearance of woodland from within the site itself. Vehicle parts and other metal waste has also been imported and stored on the land. None of these activities are exempt from the need for planning permission and no such permission has been either sought or obtained.

16. In all of the above circumstances, I conclude that the matters alleged in the notice constitute a breach of planning control as the use of the land for the storage and processing of waste, and the erection of the two buildings in question, requires planning permission which has not been granted. The appeal on ground (c) therefore fails.

Other Matters

17. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of this appeal.

Conclusions

18. For the reasons given above I consider that the appeal should not succeed.

FORMAL DECISION

19. The appeal is dismissed and the enforcement notice is upheld.

Martin Joyce

INSPECTOR