
Appeal Decision

Site visit made on 14 January 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 31 January 2017

Appeal Ref: APP/Q1153/C/16/3152288

Land at Higher Wilminstone Farm, Wilminstone, Devon, PL19 0JT

- 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 Marc Bassett against an enforcement notice issued by West Devon Borough Council.
 - The enforcement notice, numbered WDE/00064/2015(011349), was issued on 19 May 2016.
 - The breach of planning control as alleged in the notice is a material change of use of the land without planning permission from agricultural (sui generis) to motor vehicle storage and/or distribution place (sui generis) (the development). It appears to the Council that the above breach of planning control has occurred within the last ten years.
 - The requirements of the notice are:
 - 1. Cease use of the agricultural field (the site (see Fig.1 attached to the notice - land edged red)) as an area for storage and/or distribution of motor vehicles and remove all motor vehicles (NGR position E: 249181 N: 075831);
 - 2. Remove all motor vehicles from site and thereafter refrain from parking and/or using the land for the parking and/or storage and/or distribution of such motor vehicles.
 - The period for compliance with the requirements is 4 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of Decision: Appeal dismissed and notice upheld.**
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Procedural matters

1. The appellant considers that the notice wrongly describes the alleged breach as involving a sui generis use.
 2. Class B8 of the Town and Country Planning Use Class Order 1987, as amended, is use for storage and distribution which is a use that can be conducted entirely on open land as well as from within warehouses or other buildings. As the allegation refers to storage and distribution, it is incorrect to refer to the use as sui generis. I therefore intend to correct the notice to delete the words 'sui generis' from the allegation which I can do without prejudice to the parties.
 3. The appellant also considers the notice is deficient in not referring to the Council's decision to refuse an application for a Certificate of Lawful Use (2875/15/CLE).
 4. However, there is no requirement for an enforcement notice to recite planning history.
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The site

5. An application for a Certificate of Lawful Use (2875/15/CLE) was refused in February 2016 for the existing use of the land for the storage and distribution of vehicles. No appeal was made against this decision.
6. The notice identifies a relatively large site which appears to extend to about half the size of the former field which has now divided into two parcels by a fence. Vehicular access to the field is from Higher Wilminstone Farm along what appears to be a recently constructed fenced track to the west of the fields.
7. At the time of my site inspection there were about 24 vehicles (23 cars and one camper type van) stored on the lower part of the field which was rough grassland.

The appeal on ground (d)

8. An appeal on this ground is that at the time the notice was issued it was too late to take enforcement action.
9. The burden of proof rests with the appellant and the test is the balance of probability. The appellant needs to show that the unauthorised use has continued for a ten year period.
10. I note that the appellant was confident that the use had become lawful through the passage of time such that an LDC application was made and that enforcement action was only taken after that application. He has made a statutory declaration stating that he has had an interest in the land since October 2004 and that it has been used for the storage and parking of motor vehicles since that time. This is supported by photographs of vehicles on the site that the appellant states were taken by the Council in 2004-05, and I have no reason to doubt that this was the case, and that the Council has visited the property on a number of occasions since 2004 and never raised objection.
11. Whilst some minor interruption of the use will not normally be fatal, provided it is not significant, it is a matter of fact and degree whether an interruption in activity on the ground has resulted in the cessation of the use such that no enforcement action could be taken against it during that period. The resumption of use constitutes a fresh breach and the 10 year clock restarts from zero.
12. In this case the Council has submitted an aerial photograph taken on 17 June 2006. This clearly shows no cars or other vehicles in the field or any evidence of cars having been stored in the field through visual evidence of car tracks or irregular grass growth. The appeal site and the field to the north form a single field with a tree centrally located. It appears to have cultivation lines running generally north – south and there is no evidence that the current access track existed at that time. In contrast to this is another aerial photograph dated 1/1/10 attached as appendix 6 to the appellant's evidence. This shows three cars and areas of discoloured grass where about another 12 vehicles had been stationed.
13. Whilst the appellant states that there was never a time when the site was ever clear of motor vehicles for any significant period of time, he has been unable to prove this on the balance of probability. No evidence has been submitted by

the appellant to indicate the period of time that storage and distribution of vehicles was not taking place as illustrated in the June 2006 aerial photograph. In having regard to *Thurrock BC v SSETR and Holding (CA) [2002] JPL1275*, it is therefore not possible for me to reach a view on whether its lack of use at the time the aerial photograph was taken was not significant. I therefore conclude that had the Council inspected the field on that day, they would not have been able to identify that a breach had taken place, nor would they have been able to take enforcement action as the field would have appeared in use for agricultural purposes.

14. The appellant raises issues regarding the enforcement service of the Council and the visibility of the site. However, whether the Council chose not to take enforcement action earlier, either because the site is not publicly visible, or that the enforcement service has been under significant pressure, is not material to this appeal.
15. I note that local residents support the enforcement notice and make reference to the Council's previous attempts to have the vehicles removed which it is claimed did occur at one time but that vehicles were returned by stealth.
16. The appeal on this ground fails.

The appeal on ground (g)

17. The appellant considers that it would take at least 4 months to find alternative storage for about 20 cars.
18. However the Council consider that the time for compliance of 4 weeks is reasonable. The site has ample access for the removal of vehicles and the appellant has a motor vehicle sales business in Tavistock.
19. The use of the site for motor vehicle storage is unauthorised and local residents have referred to the environmental damage and effect on visual amenity that this use causes.
20. In my view the harm that the use causes should not continue for any longer than is necessary and therefor I consider that the time for compliance is reasonable to carry out the requirements of the notice.
21. The appeal on this ground fails.

Conclusion

22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction.

Formal Decision

23. The enforcement notice is corrected by the deletion of the words "sui generis" after "motor vehicle storage and/or distribution place" in the allegation. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

P N Jarratt

Inspector