
Appeal Decisions

Site visit made on 13 February 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 1 March 2017

**Notice No 1: Appeal Ref: APP/P0430/C/16/3155740 (Appeal A),
APP/P0430/C/16/3155741 (Appeal B) and APP/P0430/C/16/3155742
(Appeal C)**

Land at Lot C2, Wycombe Road, Stokenchurch, High Wycombe

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Max Roberts (Appeal A), Mr G Allison (Appeal B) and Equine Welfare Ltd (Appeal C) against an enforcement notice issued by Buckinghamshire County Council.
 - The enforcement notice was issued on 27 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of the land from agricultural to a mixed use including use for the importation, deposit and processing of waste (the "Unauthorised Use").
 - The requirements of the notice are:
 - i) Cease the use of the Land shown edged red on the plan attached to the notice for the importation and deposit of waste materials including (but not limited to) builders waste, bricks, soil, metal and plastic.
 - ii) Remove all waste material from the Land.
 - iii) Return the Land to its condition immediately prior to the deposition of waste material.
 - The periods for compliance with the requirements are: Step 1 – one (1) day; Steps 2 and 3 – three (3) months.
 - The appeals are proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.
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**Notice No 2: Appeal Ref: APP/P0430/C/16/3155746 (Appeal D) and
APP/P0430/C/16/3155747 (Appeal E)**

Land lying to the north of Wycombe Road, Stokenchurch, High Wycombe

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Max Roberts (Appeal D) and Bourne End Limited (Appeal E) against an enforcement notice issued by Buckinghamshire County Council.
 - The enforcement notice was issued on 27 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of the land from agricultural to a mixed use including use for the importation, deposit and processing of waste (the "Unauthorised Use").
 - The requirements of the notice are:
 - i) Cease the use of the Land shown edged red on the plan attached to the notice for the importation and deposit of waste materials including (but not limited to) builders waste, bricks, soil, metal and plastic.
 - ii) Remove all waste material from the Land.
 - iii) Return the Land to its condition immediately prior to the deposition of
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waste material.

- The periods for compliance with the requirements are: Step 1 – one (1) day; Steps 2 and 3 – three (3) months
 - The appeals were made on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Notice No 1: Appeal Ref: APP/P0430/C/16/3155740 (Appeal A), APP/P0430/C/16/3155741 (Appeal B) and APP/P0430/C/16/3155742 (Appeal C)

1. As this notice has been withdrawn, no decisions are required in respect of Appeals A, B and C.

Notice No 2: Appeal Ref: APP/P0430/C/16/3155746 (Appeal D) and APP/P0430/C/16/3155747 (Appeal E)

2. It is directed that the enforcement notice be corrected by the deletion of the word “including” and the substitution therefor of the word “comprising” in paragraph 3 of the notice, *the matters which appear to constitute the breach of planning control*. Subject to these corrections the appeals are dismissed and the enforcement notice is upheld.

Procedural matters

3. On 13 February 2015 the County Council issued a notice in respect of another site alleging a material change of use to a mixed use that was described as “including” various waste uses and other uses that were not ‘county matters’ as defined in statute. The breach alleged did not include all the uses persisting at the date of issue either. An appeal¹ against the notice was dealt with by way of a local Inquiry which I opened on 8 November 2016 and closed on 19 January 2017; the decision was issued on 7 February. For the reasons that are set out in the decision letter the use of the term “including” in a mixed use notice is potentially misleading and may render the notice invalid and incapable of correction without injustice to one of the parties.
4. Having reflected on the matters raised during the consideration of that appeal the County Council gave notice by emails dated 1 February and 10 February that Notice No 1 would be withdrawn. Formal notification to that effect was given on 20 February; that is after the date of the site visit. However, given the County Council’s clear intention, no inspection took place of the Notice No 1 land.
5. With respect to Notice No 2, in the same emails the County Council advised that the term “including” could be replaced by “comprising” without any injustice to the appellants. The County Council’s view was that all the uses taking place at the date when the notice was issued are, in fact, listed in the breach alleged. By email dated 10 February 2017 the appellants confirmed that this was in fact the case.
6. I shall therefore use the powers available in s176(1) of the principal Act to make the correction suggested by the County Council since it is agreed by all parties that no injustice would be caused by so doing.

¹ Ref: APP/P0430/C/15/3007183

7. In response to a letter sent at my request on 3 February by the Planning Inspectorate, the appellants also confirmed on 10 February that an appeal on ground (b) should also be considered in respect of Notice No 2. The appeals against that notice therefore proceed on that ground too.

Appeals D and E: the appeals against Notice No 2 on ground (b)

8. An appeal on this ground is that the matters alleged in the breach of planning control have not taken place as a matter of fact. The burden of proof, on the balance of probabilities, rests on an appellant.
9. At paragraph 2.4 of the appellants' grounds of appeal statement it is stated that 'the use of the land has not been changed from agricultural to a mixed use for the importation, deposit and processing of waste'. That appeared to me to amount to an appeal on ground (b), subsequently confirmed by the appellants as set out above. However, no evidence has been submitted in support of that contention. In fact, the rest of the Notice No 2 appeal statement and the evidence on the ground at the date of my site inspection all indicate that this ground of appeal cannot succeed.
10. The appeal site is a rectangular plot which is relatively narrow and not especially long. It is not delineated by any field boundaries or fences but its extent is clear on the ground because it is almost wholly covered by what has the distinctive appearance of imported construction, demolition and excavation waste material.
11. The soils included considerable quantities of bricks, concrete and other hardcore as described in the breach of planning control alleged. At the end of the site furthest away from the path this material was stockpiled, perhaps awaiting processing by the screen at the entrance to the site. This stockpiled material had the greatest amounts of bricks, concrete, hardcore, etc visible and intermingled with the soils. Over much of the rest of the land, the material had been fairly evenly spread and had the appearance of being deposited in its final resting place.
12. As a matter of fact and degree judgement, I therefore consider that the breach alleged is an accurate description of the development that has taken place. The appeals on ground (b) therefore fail.

Appeals D and E: the appeals against Notice No 2 on ground (g)

13. An appeal on this ground is that the period for compliance set out in the notice is not sufficient to carry out the requirements.
14. In evidence the County Council explains how it derived the three month period for compliance with steps 2 and 3. In summary, it estimated the volume of material imported and thus requiring removal and assessed an average rate of 4 lorry movements an hour over a 5 day working week to achieve this to be reasonable.
15. The appellants do not challenge the basis for this calculation. Rather, they explain how they wish to remove the material in the best interests of the landholding as a whole. In essence, after screening, they wish to use the material on the Notice No 1 land. Residual material would then be removed. A period of 9 months is suggested.

16. On 7 March 2016 appeals² were allowed in respect of what I understand to be the parcel of land that is the subject of Notice No 1. Together, permissions were granted for the erection of two poly-tunnels, berry posts, an agricultural building and farm track with various conditions being imposed. Included among these was a requirement for the surface material of the new access track to be submitted for the written approval of the district planning authority before the development approved commenced. On 14 June 2016 approval was given for the surface materials. The materials approved were crushed limestone of varying sizes.
17. I appreciate that some sub-base material may be required in association with the erection of the poly-tunnels and the agricultural building. However, I agree with the County Council that there is no evidence that crushed limestone could be recovered from the material now on site. Even if it could be, agreeing to the appellants' proposal would be tantamount to granting a temporary planning permission for the unauthorised development that is the subject of the notice. That is not the purpose of and cannot be the outcome of an appeal on ground (g).
18. The appeals on ground (g) therefore fail.

Conclusions

19. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction.

Brian Cook

Inspector

² Refs: APP/K0425/W/15/3139573 & 3139588