
Appeal Decisions

Inquiry opened on 11 April 2017

Site visit made on 11 April 2017

by C Sherratt DipURP MRTPI

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

Decision date: 18 May 2017

Land adjoining The Rhinns, Cherry Gardens Hill, Groombridge, Withyham, East Sussex

- 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 Dean Sudds against 5 enforcement notices issued by Wealden District Council.
- The enforcement notices were issued on 22 April 2016.
- The period for compliance with the requirements of the notices is three months.

Appeal A (Notice A) - Ref: APP/C1435/C/16/3151115

- The breach of planning control as alleged in Notice A is without planning permission, change of use of the Land from agriculture to a mixed use for agriculture and for the stationing of a caravan for residential purposes.
 - The requirements of the notice are to:
 - (i) Stop using the Land for the stationing of a caravan for residential purposes;
 - (ii) Remove the caravan from the Land;
 - (iii) Remove from the Land all residential, domestic and personal effects, items, goods and chattels associated with the said unauthorised use;
 - (iv) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B (Notice B) - Ref: APP/C1435/C/16/3151116

- The breach of planning control as alleged Notice B is without planning permission, change of use of the Land from agriculture to a mixed use for agriculture and for the storage of a caravan.
 - The requirements of the notice are to:
 - (i) Stop using the Land for the storage of a caravan;
 - (ii) Remove the caravan from the Land;
 - (iii) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C (Notice C) - Ref: APP/C1435/C/16/3151118

- The breach of planning control as alleged in Notice C is without planning permission, change of use of the Land from agriculture to a mixed use for agriculture and for the

- storage of motor vehicles including a motorhome and a fish and chip van.
 - The requirements of the notice are to:
 - (i) Stop using the Land for the storage of motor vehicles including a motorhome and a fish and chip van;
 - (ii) Remove all motor vehicles including a motorhome and a fish and chip van from the Land;
 - (iii) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal D (Notice D) - Ref: APP/C1435/C/16/3151120

- The breach of planning control as alleged in Notice D is without planning permission, change of use of the Land from agriculture to a mixed use for agriculture and for residential purposes.
 - The requirements of the notice are to:
 - (i) Stop using the Land for residential purposes;
 - (ii) Remove from the Land all residential, domestic and personal effects, items, goods and chattels associated with the said unauthorised use including, but not limited to, children's toys and play equipment, garden furniture, boat and a hot tub;
 - (iii) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal F (Notice F) - Ref: APP/C1435/C/16/3151122

- The breach of planning control as alleged in Notice F is without planning permission, change of use of the Land from agriculture to a mixed use for agriculture and for the storage of builder's materials, plant, machinery, tools, equipment and scrap and waste materials.
 - The requirements of the notice are to:
 - (i) Stop using the Land for the storage of builders materials, plant, machinery, tools, equipment and scrap and waste materials;
 - (ii) Remove all builders materials, plant, machinery, tools and equipment from the Land;
 - (iii) Remove all scrap and waste materials from the Land;
 - (iv) Remove from the Land all materials, rubble, rubbish, debris and equipment arising from compliance with the above requirements.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Procedural Matters

1. For the reasons set out below, Notices B, C, D and F were withdrawn. A further notice (Notice E) was also issued by the Council that relates solely to operational development on the same site. An appeal against this notice (Reference APP/C1435/C/16/3151121) is now proceeding separately by way of the written representations procedure and will be the subject of a separate decision.

2. Although there are multiple change of use notices they all relate to the same area. The notices allege the material change of use of the land to various mixed uses of either agriculture and the stationing of a caravan for residential purposes (Notice A), agriculture and residential (Notice D), agriculture and various storage uses – the storage of a caravan (Notice B), storage of motor vehicles (Notice C) and builders materials (Notice F). The reasons for issuing each notice are identical despite the different nature of the uses alleged. The Council conceded that not all were relevant to some of the uses.
3. The concepts of the planning unit and primary and ancillary uses is fundamental to the question of whether a material change of use has occurred; it being necessary to ascertain the correct planning unit and the present and previous primary (as opposed to ancillary) uses of that unit. Case law establishes that the unit of occupation turns on the concept of physical and functional separation. The concept of a mixed use is one where two or more primary uses exist within the same planning unit or unit of occupation. One is not ancillary to the other although there may be ancillary uses associated with each primary use.
4. It follows that five different mixed uses cannot occur simultaneously within one single planning unit. I sought to establish whether there were separate planning units within the area identified on the plans attached to the notices or whether the site corresponds to a single planning unit. The Council confirmed that the site is a single planning unit. Having visited the site, I agree. There is no physical or functional separation within the site or between the various primary uses alleged.
5. Where a number of primary uses are taking place on a single planning unit, this would constitute a single mixed use comprising all the primary uses. In mixed use cases the allegation should refer to all the components of the mixed use, even if it is considered expedient that only one should cease. There is authority that where there is a single mixed use it is not open to the local planning authority to de-couple elements of it. The use is the single mixed use with all its component activities.
6. The Council conceded that no agricultural activities appeared to be taking place on the site. It nevertheless remains of the view that the other uses alleged in each notice are indeed primary uses. Not more than one notice alleging a change of use on a single planning unit can be correct. In this case, none of the Notices include all of the primary uses alleged to have been taking place when the notice was issued and so none are correct. Indeed, on this basis, no action has been taken against the actual mixed use that the Council consider is occurring. The Council withdrew Notices B, C, D and F at the Inquiry.
7. I heard submissions from both parties about whether I could correct Notice A in a number of ways; firstly, to omit any reference to the previous use being agriculture; secondly to omit any reference to agriculture as a primary use occurring at the time the notice was issued; thirdly, to include all the other primary uses referred to in withdrawn Notices B, C, D and F in the allegation; and finally, to require each primary use to cease and the requisite removal of any materials etc. associated with those uses in the requirements of Notice A.
8. Under the provisions of section 176(1) of the Act it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if

I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice to provide an accurate description and to put the notice on a proper footing.

9. A notice alleging a material change of use need not recite the previous use although it is better if it does so, because then the reasons why the local planning authority consider there has been a change will be that much more obvious. Where it does recite the previous use it should be correct. The appellant suggests there has not been any agricultural use; rather the land once formed part of the curtilage of The Rhinns before it was sub-divided. Given the uncertainty that arises in this case, I consider the notice can be corrected to omit any reference to agriculture as the previous use without causing injustice.
10. It was agreed that no agricultural use was occurring. The correction of the notice to omit any reference to agriculture in the description of the alleged change of use would reduce the terms of the notice and since agriculture is not development in any event would have no substantial impact on the cases advanced by the parties. I find no injustice would arise if I correct the notice in this way.
11. Whilst, with the exception of agriculture, the primary uses that would be referred to in a corrected notice would correspond to those referred to separately in the five notices, the corrected notice would nevertheless be directed at a 'new' mixed use and those changes in my view, would not only be significant but fundamentally change the nature of the mixed use from any of those cited separately in the notices issued. The planning merits of the ground (a) appeal and deemed application would need to be judged on the basis of the single mixed use with all the composite uses rather than against any one of the uses alleged in the notices as issued. Similarly, the appellant would need to demonstrate, under the ground (d) appeal, that all the primary uses comprising the mixed use had occurred continuously for a period of 10 years or more. The basis of the appeal would be materially different. Similarly, interested parties have not had an opportunity to respond on the basis of the wider mixed use.
12. I cannot be certain that no injustice would be caused if I were to make the significant corrections necessary to Notice A. Accordingly, I find that Notice A is incapable of correction.
13. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. Enforcement notice A is invalid and will be quashed. In these circumstances the appeal under the various grounds as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Application for costs

14. At the Inquiry an application for costs was made by Mr Dean Sudds against Wealden District Council. This application is the subject of a separate Decision.

Decision

Appeal A (Notice A) - Ref: APP/C1435/C/16/3151115

15. Enforcement Notice A is quashed.

C. Sherratt

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Charlie Banner, Counsel	Instructed by
No witnesses were	
called	

FOR THE LOCAL PLANNING AUTHORITY:

Mr Wayne Beglan, Counsel	Instructed by
No witnesses were	
called	