



Appeal Decisions

Hearing Held on 6 June 2017

Site visit made on the same day

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 28 July 2017

Appeal A: APP/L3815/C/16/3158286

Land at Cocklebury Farm, Main Road, Bosham PO18 8PN

- 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 Tony Brown against an enforcement notice issued by Chichester District Council.
- The enforcement notice was issued on 4 August 2016.
- The breach of planning control as alleged in the notice is 'Without planning permission, change of use of the land to a mixed use comprising commercial uses, equine and the stationing of 4 no. mobile homes for the purposes of human habitation.
- The requirements of the notice are:
 - (i) Discontinue the use of the land for the stationing of mobile homes for the purposes of human habitation,
 - (ii) Remove the four mobile homes from the land, and
 - (iii) Remove from the land the LPG gas bottles, clothes lines and tables and chairs.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with variations.

Appeal B: APP/L3815/W/16/3158313

Cocklebury Farm, Main Road, Bosham PO18 8PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3, Schedule 2, Part 3 Paragraph P.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
- The appeal is made by Mr Tony Brown against the decision of Chichester District Council.
- The application Ref: CH/15/02290/PA3P, dated 6 June 2016, was refused by notice dated 14 September 2015.
- The development proposed is 'Proposed change of use from B8 storage/warehouse use to residential dwellings.' Part 3 Class P application for prior approval – proposed change of use of 3 no. B8 storage buildings to 3 no. dwellings.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. A plan was produced and agreed by both parties, labelling five buildings A, B, D, E and H. This is Document 3 of the documents submitted at the Hearing, and I will use the identifications for the buildings on that plan in these decisions.
2. Appeal A was lodged on ground (f) only i.e. that the steps required to comply with the requirements of the notice were excessive and lesser steps would overcome the objections. No lesser steps were referred to by the appellant. Following discussions at the Hearing, the appellant confirmed that he was seeking an extension of time for compliance with the notice to allow time to either look for alternative accommodation or to convert the buildings on the appeal site to residential dwellings pursuant to Appeal B, if that was successful. The Council had granted a period of six months and the appellant is seeking a period of ten months for compliance. This is an argument properly advanced under ground (g) 'that the period for compliance is too short'. I will deal with Appeal A on that basis.
3. In relation to Appeal B the description of development does not identify the number of buildings or residential dwellings. In answer to question 4 of the application form requesting a description of development the appellant referred to his planning statement and the description given in the header of this decision. The document entitled Supporting Statement makes clear that the application relates to three buildings identified as Buildings 1, 2 and 3 in the statement (Buildings A, B and E on the Document 3 plan) and it is proposed to create three residential dwellings. I note that the Council's description of development stated on the decision notice is *Part 3 Class P application for prior approval – proposed change of use of 3 no. B8 storage buildings to 3 no. dwellings*. I will therefore deal with Appeal B on the basis that it seeks prior approval for the material change of use of Buildings A, B and E to three dwelling houses.

The Notice

4. The allegation refers to a mixed use of commercial, equine and the stationing of four mobile homes for the purposes of human habitation. The site outlined in red on the plan attached to the Notice is roughly 'L' shaped. The site is accessed along a vehicle access from Main Road, past a number of dwellings.
5. The appellant considers that there are multiple planning units on the land outlined in red on the plan attached to the Notice. The Council consider that the area outlined in red on the plan is a single planning unit and the use of that planning unit is a mixed use. It is therefore necessary for me to consider whether or not the land identified on the plan attached to the Notice is a single planning unit or multiple planning units and in the light of my findings on that point whether the allegation is precise.

Whether there is a single planning unit or multiple planning units

6. The planning unit is a concept that has evolved as a means of determining the most appropriate physical area against which to assess the materiality of a change, to ensure consistency in applying formula of material change of use. Often this is the whole area in the same ownership or the same occupation. It will be a question of fact and degree, according to the *Burdle*¹ principle, as to

¹ *Burdle and Williams V SSE and New Forest DC* [1972] 1 WLR 1207

whether the appeal site constitutes one planning unit in a mixed use or separate planning units each with an individual primary use.

7. In 2016 there was an enforcement notice appeal (reference APP/L3815/C/15/3134748). The notice alleged the erection of a dwellinghouse on the site. In that appeal, the Inspector found that there had been a number of planning permissions granted in the past for developments at the site, and some had been refused. The overlapping nature of the various activities at the site, with shared access and circulation areas suggested to that Inspector that the whole of the property should be regarded as one planning unit in mixed use. The Inspector in that case listed a number of uses including car repairs or race preparation, the storage of boats and other items, horse keeping or livery and the siting of caravans which he accepted as potential components of the mixed use but that this was not necessarily a complete list of uses.
8. The relevant planning permissions for each building, and their current uses, are as follows:
 - Buildings A, B and E (description also includes other buildings no longer on site): were granted planning permission under reference CH/93/01741/COU with a description of development stated as *continuation of use of building C&D for repair storage and export of various vehicle parts. B & E for light industrial (similar to existing storage and maintenance of vehicles) A & H for storage. G & F retained as stables*. Building A was in use at the time of my site visit for the storage of items that the appellant obtained/collected from waste disposal sites to sell at car boot sales. Building B was in use for the storage of classic cars (3 at the time of my site visit). Building E was also being used for the storage cars (11 at the time of my site visit). CS racing have been using Building E since 6/7 months after the Notice was served for the storage of cars.
 - Building H was granted planning permission under reference CH/08/00096/FUL with a description of development stated as *retention of commercial building as a replacement for commercial use within Building D (unit 4)*. It is occupied by CS Racing and is considered by the appellant to have a B1/B2 use since 2008. The use is a motor repair workshop specialising in preparing racing cars.
9. The land between and around the buildings up to Building D is used for parking of vehicles by occupiers of, and visitors to, the site, the unauthorised mobile homes and other ad hoc storage. There is a riding area to the rear of building D and further ad hoc storage of bicycles and such like. Beyond the riding area are paddocks extending to the east.
10. The appellant has submitted a Statutory Declaration from Mr Chris Snowdon which states he is the occupier of unit 5 (also referred to as Unit H) since 1989 for race car preparation. He states that Buildings A, B and E have been occupied by individual tenants and used only for general storage and distribution use. He also states that Buildings A, B and E have not been used for the storage and maintenance of carpets for well in excess of ten years. Mr Snowdon did not attend the Hearing.
11. The appellant has owned the appeal site since spring 2013. Prior to that it is understood that he rented one of the buildings for his own storage purposes (Building A). It appears that the occupation by Mr Snowdon has generally been of the single building (Building H) which was granted retrospective planning

permission in 2008, although he now also stores cars in Building E. The previous appeal decision refers to the chalet, the subject of that appeal, being used by the car repair business as an office/staff room in 2012. It therefore appears that there is some fluidity in the use of buildings for various purposes within the site. That said, the equestrian use occupies Building D and utilises the riding area behind that and the paddocks, with ad hoc storage around that building and to the rear including storage of bicycles. Building D also had 'commercial' use at some stage as that is documented in the planning permissions before me.

12. There is also common access and ad hoc parking and storage of vehicles/bicycles etc around the buildings and the site extending behind, the equestrian building at the rear of the site. There appears to be no restrictions on who uses these communal areas, although evidence is limited in relation to how the site is structured or tenanted. As a matter of fact and degree, I consider that the site is in a mixed use, that while buildings have been the subject of planning permissions those have simply documented the fluid nature of the uses, with uses swapping buildings or new buildings being erected which reinforce the mixed use of the site. There is no discernible demarcation on the ground as to where one use ceases and another begins. This even applies to the equine element as storage takes place around the building and behind it.
13. On the basis of the evidence available, it is more likely than not that the planning unit is the whole site and that the uses within that site amount to a mixed use.

The allegation

14. Planning permission has been granted for the erection of particular buildings in the past and the use of those and existing buildings. The allegation is vague in its reference to 'commercial uses'. At the Hearing it was clear that the Council were referencing the uses granted under planning permissions CH/93/01741/COU, the car repair uses granted under CH/08/00096/FUL. However, it is also clear that the conditions imposed under those planning permissions are not all being adhered to. Whether the breaches of condition are immune from enforcement action through the passage of time is not clear on the evidence before me and, in any event, such a determination would be beyond the remit of this appeal.
15. The lawful mixed use comprises the use of the site for storage and export of motor vehicles and parts, car repair workshop, storage and commercial livery stables. The Notice seeks to attack the unauthorised stationing of 4 no. mobile homes for the purposes of human habitation. I will therefore vary the allegation to be 'Without planning permission, the material change of use of the land to a mixed use comprising the storage and export of motor vehicles and parts, car repair workshop, storage and commercial livery stables and the unauthorised stationing of 4 no. mobile homes for the purposes of human habitation'. This variation would not cause injustice or prejudice to either party.

Appeal A on ground (g)

16. This ground of appeal is that the time given to comply with the notice is too short. The Council has given a six month period to comply. The appellant has requested a period of 10 months.

17. At the time of my site visit there were two mobile homes towards the entrance to the site and one towards the rear of the site, near Building D. The fourth mobile home appears to have been removed.
18. The notice in Appeal A results in the engagement of Article 8 rights and Article 1 rights (1st Protocol) in that there will be interference with the occupiers' home and family life and with use of private property. Those rights are, however, qualified and it is for the decision maker to ensure interference is proportionate. In particular, this relates to the occupiers of the outbuilding and extension on the appeal site, who I understand to be adults.
19. In my view, six months would be an adequate period of time for the occupiers of the mobile homes that were occupied at the time of my site visit to look for alternative accommodation. I appreciate that if permission were obtained for the change of use of any building on the site to a dwelling house that the appellant would seek to stay in the mobile home or homes until such a change of use was achieved. However, at this time there is no justification for extending the compliance period to ten months.
20. In my view, the six month compliance period strikes the appropriate balance between the rights of the individuals and the protection of matters of acknowledged public interest.
21. For the reasons given I conclude that the period for compliance is reasonable. The appeal under ground (g) therefore fails.

Appeal B

Main Issue

22. The main issue in this case is whether the change of use would be permitted development under Schedule 2, Part 3, Class P of the GPDO.

Reasons

23. Class P of Part 3 of Schedule 2 of the GPDO permits changes of use of a building from a storage or distribution centre to dwelling houses. However, this is subject to limitations (a) to (j) at paragraph P.1. There is no dispute that all limitations are met with the exception of limitations (a) and (b). Article 3 paragraph 5 (b) states that permission granted by Schedule 2 does not apply if an existing use is unlawful.
24. Limitation P.1.(a) states that development is not permitted by Class P if the building was not used solely for a storage or distribution centre use on 19th March 2014, or in the case of a building which was in use before that date, but was not in use on that date, when it was last in use.
25. Limitation P.1.(b) states that development is not permitted by Class P if the building was not used solely for a storage or distribution centre use for a period of at least 4 years before the date development under Class P begins.
26. I also note that Condition (a) of P.2. states that development is permitted by Class P subject to a requirement that before beginning the development the developer must submit a statement setting out the evidence the developer relies upon to demonstrate that the building was used solely for a storage or distribution centre use on 19th March 2014.

27. The buildings the subject of Appeal B are A, B and E on the Document 3 plan submitted at the Hearing². These buildings, and others, were granted planning permission under reference CH/93/01741/COU. The description of development is stated to be *the continuation of use of building C & D for repair storage and export of various vehicle parts. B and E for light industrial (similar to existing storage and maintenance of vehicles) A and H for storage. G and F retained as stables*. Condition 9 of that planning permission restricted the use of Building A to the storage of carpets and for no other purpose in Class B8 of the Town and Country Planning (Use Classes) Order 1987 (UCO). Condition 10 restricted Buildings B and E to be used for the storage and maintenance of vehicles used in connection with a concrete pumping business and for no other purpose including any other purpose in class(es) B1, B2 and B8 of the UCO. The existing use of Building A is in breach of Condition 9 of that planning permission. The permitted use of Buildings B and E is a mixed use of storage and maintenance and thus is not a single primary use for storage. Therefore to qualify for Part P rights the appellant has to demonstrate that the storage use taking place in Buildings A, B and E was lawful on the 19th March 2014.
28. I have found that the buildings the subject of Appeal B are within a wider planning unit and thus are part of a mixed use. A use within a mixed use planning unit cannot be considered as falling within a use class as a mixed use is a sui generis use outwith the UCO.
29. Part P only requires the building seeking to claim Part P rights to be in a storage or distribution use and not within an unrestricted Class B8 use of the UCO.
30. The appellant submitted a Statutory Declaration in support of his application which he considers is adequate to demonstrate, on the balance of probabilities, that the storage use of the appeal buildings was lawful at the date of the application. However, it also has to demonstrate it was lawful on 19th March 2014 to qualify for permitted development rights under Class P or if not in use on that date the use it was in before that date.
31. The application for planning permission CH/93/01741/COU was dated 6 October 1993 with reference to plans dated 31 January 1994 in various conditions and the site plan dated 31 October 1994. The planning permission decision notice is not dated but it was a retrospective planning permission. Therefore it is more likely than not that carpets were stored in Building A and the use of Buildings B and E were in use for the storage and maintenance of vehicles used in connection with a concrete pumping business on the date that planning permission was granted under reference CH/93/01741/COU was approved and for some time after. Mr Snowden states that the use for general storage started in the late 1990's. This is imprecise and there is nothing to demonstrate who occupied the buildings and what was stored.
32. The statements in the Statutory Declaration by Mr Snowden are general statements. There is no detail about who occupied which building, for how long, the dates of that occupation, and what was stored in the building. It does record that carpets have not been stored in Building A for well in excess of 10 years and since the late 1990's Buildings A, B and E have been occupied by individual tenants and used for general storage and distribution uses. There is no information as to the frequency of deliveries and collections from each

² The plans submitted with the application do not identify the buildings by any letter and for ease of reference I have used the agreed plan which identifies buildings A, B, D, E and H although it does not form part of the determinative plans for Appeal B.

building, the products stored or how much was stored in each building. While it is stated the storage use was continuous in the buildings, it is not clear how this has been assessed or demonstrated. Mr Snowden does not state when or why or even if he ever went into the buildings. The evidence is general and imprecise.

33. I therefore conclude, that the evidence provided in the Statutory Declaration is less than precise and has failed to demonstrate on the balance of probabilities that the use of Buildings A, B and E has been carried out for a continuous period of 10 years in breach of the relevant conditions of planning permission CH/93/01741/COU by 19th March 2014 or even at the date of the application. As such, the appellant has failed to demonstrate on the balance of probabilities that the storage use of Buildings A, B and E were lawful on 19th March 2014, or if not in use on that date the last use before that date, and therefore fails to comply with limitation P1.1.(a).

Conclusion

34. The development for which prior approval was sought could not have been permitted by Schedule 2, Part 3 Class P of the GPDO since it does not comply with limitations P.1. (a). For the reasons given above the appeal is dismissed.

Formal Decisions

Appeal A

35. It is directed that the enforcement notice be varied by:

- The deletion in paragraph 3 of the words 'change of use of the land to a mixed use comprising commercial uses, equine' and the substitution thereto of the words 'the material change of use of the land to a mixed use comprising the storage and export of motor vehicles and parts, car repair workshop, storage and commercial livery stables'.

Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Appeal B

36. The appeal is dismissed.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr P Rowe BA (Hons) BTP	Agent for the appellant
Mr A Brown	Appellant
Mrs M Brown	Appellant's wife
Mr N Brown	Appellant's son
Mrs I Brown	Appellant's daughter in law

FOR THE LOCAL PLANNING AUTHORITY:

Miss M Tomlinson PG TP MRTPI	Planning Officer, Chichester District Council
Mrs C Boddy	Senior Planning Officer, Chichester District
BA (Hons) MPlan MRTPI	Council
Mr R Hawks	Asst Manager Enforcement, Chichester District
BA (Hons) MATP MRTPI	Council

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement of Common Ground submitted by the appellant.
- 2 Completed Unilateral Undertaking submitted by the appellant.
- 3 Identification plan for Buildings A, B, D, E and H agreed between the parties and submitted by the Council.
- 4 Chapter 8 extract from A Practical Guide to Permitted Changes of Use (second edition) by Martin H Goodall submitted by the appellant.