



Appeal Decision

Site visit made on 27 August 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Date of decisions: 10 September 2019

Appeal Ref: APP/R3650/C/18/3202494

Land at Minstrels Meadow, Tilford Road, Rushmoor, Farnham GU10 2ED

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Richard Turner against an enforcement notice issued by Waverley Borough Council.
 - The enforcement notice was issued on 11 April 2018 under ref. EN/2018/02.
 - The breach of planning control as alleged in the notice is:
Without planning permission,
 - i) the material change of use of the Land from use for agriculture to a mixed use for agriculture and storage for non-agriculture (sic) purposes of materials (including but not limited to wooden pallets and patio slabs), vehicles and a caravan and which are marked X, Y and Z respectively on the attached plan; and*
 - ii) the unauthorised operational development comprising the erection of buildings, namely a wooden structure with extensions, a shed with metal mesh and a three-sided structure which are marked A, B and C respectively on the attached plan.*
 - The requirements of the notice are to:
 - (i) Cease using any part of the Land for non-agricultural purposes;*
 - (ii) Remove all materials being stored on the Land for non-agricultural purposes;*
 - (iii) Remove all vehicles being stored on the Land for non-agricultural purposes;*
 - (iv) Remove the caravan from the Land;*
 - (v) Remove the wooden structure with extensions from the Land;*
 - (vi) Remove the shed with metal mesh from the Land;*
 - (vii) Remove the three sided (sic) structure from the Land; and*
 - (viii) Remove all materials from the Land resulting from compliance with the above steps.*
 - The period for compliance with these requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Background and matters of clarification

2. The appeal concerns a rectangular-shaped parcel of open grazing land about 1 ha in extent. It is situated within the Green Belt, the Surrey Hills Area of Outstanding Natural Beauty (AONB) and an Area of Great Landscape Value (AGLV). The appellant purchased the field in May 2012.
3. Without any appeal on ground (a), the planning merits of the case and the matter of whether planning permission should be granted for what is alleged in the enforcement notice will not be considered in this decision.

4. The appellant has erected a fence made up of a line of doors alongside a public bridleway next to part of the field's northern boundary. These doors are not the subject of this enforcement notice. The Council indicates that they are being addressed through a notice issued under section 215 of the 1990 Act as amended. I make no further comment on this matter, except to note that the doors are clearly of some concern to a number of third parties.

The appeal on ground (b)

5. This ground of appeal is that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact. The onus is on the appellant to make out the case on the balance of probabilities.
6. The appellant is not represented and I am unable to identify anything in the appellant's submissions that expressly supports the appeal on this ground. Virtually all of the points made are cross-referenced to ground (c).
7. The appellant does however maintain that he has not changed the use of the land from agriculture. Insofar as the use of the land is concerned the first part of the alleged breach of planning control in the notice actually points to a mixed use for agriculture and the storage of materials, vehicles and a caravan for non-agricultural purposes.
8. The appellant indicated that he did keep poultry (chickens, geese and ducks) in limited numbers and described the various unfortunate circumstances that may have led to the field being devoid of any poultry or other livestock at the time the enforcement notice was issued. This continued to be the situation on the day of my visit.
9. The wooden pallets, patio slabs, window frames, vehicles (two vans) and caravan I saw have now been on the site for some time and I could see no sign of them being put to use for the purposes of any agricultural activity on the land. This amounts to a non-agricultural storage use.
10. I have noted that planning permission was granted on appeal in September 2015 for the erection of stables and hay store following the demolition of the existing stable building. This planning permission would have expired in September 2018 if a material start had not been made by then or if any important pre-commencement conditions had not been discharged. The appellant has produced no evidence to demonstrate that this planning permission is still valid. This severely limits the weight that can be attached to the appellant's claim that the patio slabs and wooden pallets are for use in the footings and cladding respectively of the new stables and hay store.
11. There are also various window frames stored on the land, notably those leaning against one of the vans and in the building closest to the roadside. This is a non-agricultural storage activity.
12. The first part of the alleged breach of planning control in the notice is therefore an accurate reflection of the use of the site in that materials, vehicles and a caravan are being stored on the site for non-agricultural purposes. The alleged material change of use has therefore occurred. The three buildings identified in the second part of the alleged breach of planning

control in the notice plainly exist as a matter of fact. On the balance of probabilities, I conclude that the appeal on ground (b) should not succeed.

The appeal on ground (c)

13. In an appeal on ground (c) the onus is on the appellant to show, on the balance of probabilities, that the matters stated in the notice do not constitute a breach of planning control.
14. The nature, number and extent of items (identified as X, Y and Z in the notice) not associated with any agricultural use and which are currently being stored on the land are, as a matter of fact and degree, such as to amount to a material change of use of the land. The mixed use alleged is materially different from agriculture in isolation. It amounts to a material change of use requiring planning permission. This has not been obtained so a breach of planning control has taken place. On the balance of probabilities, I conclude that the appeal on ground (c) should fail insofar as it relates to the alleged material change of use of the land.
15. There are three distinct structures identified in the notice as A, B and C. Operational development comprises activities which result in some physical alteration to the land with a degree of permanence. The word "*building*" in section 336(1) of the 1990 Act as amended has a wide definition as it includes any structure or erection, and any part of a building, as so defined. The courts have established three primary factors, or tests, as being relevant as to what constitutes a building. These are size, permanence and physical attachment. No single factor is decisive and any judgement will be a matter of fact and degree based on the specific circumstances of the case.
16. The appellant reports that all the wooden structures are moveable and do not have footings or bases. The structure (A) closest to the roadside is said to be a "mobile skid" although its potential mobility has not been demonstrated. In any event, case law has shown that polytunnels and mobile poultry units, for instance, are capable of amounting to the erection of a building.
17. All three wooden structures appear to be of a size that they were constructed on site. There is no evidence that they have been brought onto the site complete, having been made in a factory or joinery workshop elsewhere.
18. Whilst their degree of physical attachment to the ground may be minimal, it would take a great deal of manpower to prise them off or out of the ground completely and move them and their support frameworks, without causing damage to their structural integrity. As the Council points out, the structures do not seem to have been specifically designed to be moved.
19. Permanence does not mean forever and has to be construed in terms of significance in the planning context. There is no evidence of any of the three structures having been moved since they were completed. That is quite long enough in the planning context for the impacts on the Green Belt, the AONB and the AGLV to be registered and understood. Even if the structures could be moved around the site without being damaged, those identified impacts would not be affected to any material extent by such changes in position. The appellant has not outlined any proposals to move them.

20. I consider that the three buildings described in the second part of the breach of planning control alleged in the notice, as a matter of fact and degree, do constitute operational development. There is no evidence that they benefit from an express grant of planning permission or were permitted development. The matter so alleged therefore constitutes a breach of planning control. On the balance of probabilities, I conclude that the appeal on ground (c) should fail insofar as it relates to the operational development comprising the erection of buildings.

The appeal on ground (f)

21. This ground of appeal allows arguments to be put that the steps required by the enforcement notice to be taken exceed what is necessary to remedy the breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by the breach.
22. The manner in which the Council has prepared the enforcement notice, including the formulation of its requirements, indicates that its purpose is to remedy the breach of planning control in accordance with section 173(4) (a) of the Act. It is reasonable and not excessive to require that the unauthorised use be discontinued and that the unauthorised operational developments be removed. This would remedy the breach and nothing more.
23. There is no lawful development certificate or express planning permission in place and extant for any similar development at the appeal site. There are no fully worked out alternative, lesser steps submitted for consideration. The appeal on ground (f) fails.

Andrew Dale

INSPECTOR