



Appeal Decision

Site visit made on 8 October 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2019

Appeal Ref: APP/X0360/C/18/3217438

**Land to the north of the M4, Mill Lane, Earley, Wokingham, Berkshire
RG41 5DD**

- 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 Ms Asia Khan against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 29 October 2018.
- The breach of planning control as alleged in the notice is: 1. Without planning permission, the material change of use of the land to a use for the storage of a caravan and associated outside furniture, an articulated storage trailer and the storage of plant and machinery. 2. Without planning permission, the importation of and storage of hard core and building materials on the land.
- The requirements of the notice are: 1. Cease the use of the land for storage purposes. 2. Remove from the land all stored items including (but not exclusively) caravans, associated outside furniture, any storage trailers, plant and machinery, building materials including hard core.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with variation.

Application for costs

1. An application for costs was made by Wokingham Borough Council against Ms Asia Khan. This application will be the subject of a separate Decision.

Background

2. The appeal site is a large, open field between the M4 and the River Loddon. A static caravan and an articulated trailer are stationed on the site. A mechanical digger, some piles of hard core and a small quantity of other items, including some water containers and furniture, are also present.
3. As there is no deemed planning application, the planning merits of the matters alleged in the enforcement notice are not relevant to the appeal. Therefore, the appellant's submissions dealing with planning considerations including flood risk, the effect on the character and appearance of the area and sustainability cannot be considered in my decision. The Council's conclusion on the expediency of enforcement action can only be challenged by way of judicial

review. Also, the Council's approach to investigating alleged breaches of planning control is not relevant to the appeal.

Ground (b) appeal

4. The ground of appeal is that the matters alleged in the notice have not, in fact, occurred. In order to succeed on this ground, the appellant would have to show that on the date the notice was issued the alleged breach was not occurring, the relevant test of the evidence being on the balance of probability.
5. The appellant argued that the caravan, trailer, digger and other items were all associated with agricultural use, the caravan being used as a farm office, the trailer used as a secure store for farm tools, equipment and fencing materials and that the hard core was required to repair the access track.
6. I am given to understand that prior to the appellant acquiring the site in July 2017, it was used for grazing livestock. Also, according to the appellant activities including growing vegetables and grazing livestock have been undertaken at the site since they acquired it. Such activities are within the definition of agriculture at s336 (1) of the Act. Relevant case law¹ confirms that where a caravan is stationed on agricultural land for a use ancillary to agriculture, no development is involved.
7. Be that as it may, little firm evidence was provided to show that the caravan was used as a farm office as part of an agricultural activity at the site on the date the notice was issued. Also, little firm evidence was provided to show that on the notice date, the trailer and digger were used for agricultural purposes, that the other items present on the site had an agricultural utility, or that the hard core was being used for repairs to the access track.
8. Indeed, the Council's evidence suggests that no agricultural activity was taking place at the site when the notice was issued. Photographs supplied, taken both shortly before and after the issue of the notice, do not show ongoing or recent agricultural activity of any note at the site. Also, the photographs do not clearly show the hard core being used to repair the access track around that time. Therefore, as a matter of fact and degree, the Council's evidence is consistent with the caravan, trailer, digger, other items and hard core all being stored at the site on the date the notice was issued.
9. Accordingly, on the balance of probability it has not been shown that the matters alleged in the notice have not occurred and the ground (b) appeal fails.

Ground (c) appeal

10. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. Again, the burden of proof rests with the appellant, the relevant test of the evidence being on the balance of probability.
11. According to s171A (1) of the Act, a breach of planning control comprises the carrying out of development without the required planning permission. The making of a material change in the use of land constitutes development in s55 (1) of the Act.
12. The appellant argued that the use alleged in the notice was permitted by Schedule 2, Part 4, Class A of the Town and Country Planning (General

¹ *Wealden DC v SSE & Day* [1988] JPL 268.

Permitted Development) (England) Order 2015 (GPDO). This permits the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on or adjoining the land in question.

13. However, the appellant supplied little evidence to show that the caravan, trailer, digger, other items and hard core were being used for purposes where Schedule 2, Part 4, Class A applied. Development is not permitted by Class A where the operations being undertaken require planning permission but that permission has not been granted. No express planning permission has been granted for any development at the site.
14. The stock proof fencing the appellant intends to erect on the boundary with adjacent land would potentially be permitted by the GPDO Schedule 2, Part 2, Class A. Even so, only a few rolls of fencing were present in the trailer when I visited the site. Other items including tools, a generator, wheelbarrow, timber, racking and some domestic items made up most of the trailer contents.
15. Although the GPDO Part 9 Class A permits repairs to a private way, the amount of hard core on site appears excessive for the purpose of simply repairing the access track. In any event, whilst rutted in places the access track did not appear to be in a condition which made it very difficult for tractors and other farm vehicles to use. There is no evidence of any other track at the site.
16. Consequently, as a matter of fact and degree, the available evidence does not show that the caravan, trailer, digger, other items or hard core were permitted by the GPDO Schedule 2, Part 4, Class A. Whilst certain agricultural operations are permitted by the GPDO Schedule 2 Part 6, no permission is granted for a material change of use of land to storage.
17. For the above reasons, on the balance of probability the appellant has not shown that the matters alleged in the notice do not constitute a breach of planning control and the ground (c) appeal also fails.

Ground (d) appeal

18. The ground of appeal is that it was too late to take enforcement action against the matters alleged in the notice.
19. The available evidence is that the storage use has only occurred since the appellant acquired the site in July 2017. The appellant confirmed that the caravan, trailer, digger, other items and hard core were acquired subsequently. The access track is not attacked by the notice.
20. Therefore, on the balance of probability the appellant has not shown that the storage use has been continuous for a period of more than ten years and the ground (d) appeal fails.

Ground (f) appeal

21. The ground of appeal is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.
22. At s173, the Act sets out the two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control that has occurred, including by restoring the

land to its condition before the breach took place. The second (s173(4)(b)) is to remedy any injury to amenity caused by the breach.

23. Although the Council did not specify which of the above purposes that it sought to achieve, the requirements of the notice are to cease the storage use and remove any caravans, trailers, plant, furniture and building materials including hard core from the site. Therefore, the purpose of the notice must be to remedy the breach of planning control by restoring the site to its condition before the breach took place.
24. The appellant did not suggest lesser steps that stopped short of removing the caravan, trailer, digger, other items and hard core from the site. In any event, by not removing those items the breach would not be remedied.
25. It follows that the notice requirements are not excessive for the purpose of remedying the breach and the ground (f) appeal also fails.

Ground (g) appeal

26. The ground of appeal is that the time for compliance is unreasonably short.
27. The notice specified a two month compliance period. In my view, this would normally afford the appellant ample opportunity to arrange for the caravan, trailer, digger, other items and hard core to be removed. There is no requirement to remove the access track. For a large part of the year, removing the stored items from the site should be a relatively straightforward task for an experienced contractor. The recent moving of the caravan, trailer and digger to the west end of the site confirms the relative ease of their mobility.
28. Although the appellant requested a twelve month compliance period, from the evidence supplied and given what I observed during my site visit, no crops are under cultivation and there are no livestock at the site. Therefore, it is not necessary to allow time for agricultural activities to be wound down in an orderly fashion. It follows that extending the period for compliance to twelve months would unreasonably perpetuate the planning harm identified in the notice.
29. Nevertheless, I am mindful that lower lying parts of the site are liable to flood at times during the winter months. Therefore, it is possible that there will be practical difficulties in accessing the site to remove the caravan, trailer, digger and so on in the two months following this decision. Taking this matter into account, I intend to extend the period for compliance to six months. By doing so, the appellant would then be afforded a reasonable opportunity to have the remedial works carried out at a time when ground conditions at the site are more favourable, whilst still remedying the planning harm identified in a reasonably timely fashion.
30. For the reasons given above I shall vary the notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Formal Decision

31. It is directed that the enforcement notice is varied by extending the period for compliance with the requirements at paragraph 6 to six months from the date the notice takes effect. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR