
Appeal Decisions

Site visit made on 22 October 2019

by Simon Hand MA

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

Decision date: 28 October 2019

Appeal A: APP/J0405/C/18/3210569

The Spinney, Oakley Road, Worminghall, Buckinghamshire, HP18 9UN

- 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 George Judd against an enforcement notice issued by Aylesbury Vale District Council.
 - The enforcement notice, numbered EN4/2017, was issued on 3 August 2018.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a two storey office building.
 - The requirements of the notice are remove from the land the top, second storey office unit and associated stairway.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.
-

Appeal B: APP/J0405/C/18/3210710

The Spinney, Oakley Road, Worminghall, Buckinghamshire, HP18 9UN

- 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 George Judd against an enforcement notice issued by Aylesbury Vale District Council.
 - The enforcement notice, numbered EN5/2017, was issued on 3 August 2018.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of the land to the parking of vehicles and the storage of skips in connection with the adjoining recycling yard.
 - The requirements of the notice are 1. Cease the use of the land for the parking of vehicles and the storage of skips in connection with the use of the adjoining recycling yard; 2. To remove all vehicles, skips and associated items from the land; 3. To remove all hardstandings and to remove from the land any resulting materials; 4. To reinstate the land to its previous condition as grassland; 5. To reinstate the 1m high post rail fence along the road frontage with the exception of the line of the public bridleway and its junction with the vehicular highway.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decisions

Appeal A - 3210569

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

Appeal B - 3210710

2. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land at The Spinney, Oakley Road, Worminghall, Buckinghamshire, HP18 9UN, as shown on the plan attached to the notice, for the parking of vehicles and the storage of skips in connection with the adjoining recycling yard subject to the following condition:
 - 1) The use of the site shall be for the parking of vehicles and the storage of skips in connection with the adjacent recycling yard only and for no other purpose.

3210569 – The Appeal on ground (d)

3. I agree with the Council that the key issue is whether there is evidence that on the balance of probabilities the development alleged was substantially complete on the 3 August 2014. The development alleged is the creation of a second storey office with stairway. So was that substantially complete on the required date?
4. The office is constructed from a shipping container placed on top of another container. The lower container has presumably been in place for a number of years and appellant maintains that a second container was purchased, delivered and craned into place before 3 August 2014. However, the evidence shows only that a container was delivered on 8 July and a crane was hired on 27 July. I do not doubt that as the yard would seem to have no use for a shipping container other than as an office, then this is likely to have been the same container, and that it was craned into place on 27 July. However, that is only 7 days before the cut off date of 3 August. Placing one container on another is not the same as the creation of an office. It was obviously the intention to do so, but that does make the development alleged substantially complete, in fact it has only just begun. After 27 July the container had to be cut open to create openings for windows and doors, which then had to be installed and the staircase constructed, only then would the development of the office be substantially complete.
5. No evidence has been provided to suggest when these actions took place, but as the Council say, it is highly unlikely they could have been carried out in the few days between the positioning of the container and the beginning of the 4 year period on 3 August 2014. Consequently, on the balance of probabilities I do not consider that the appellant has made out his case and the appeal on ground (d) fails.

3210710 – The Appeal on ground (a)

6. The site lies in the open countryside to the north of the village of Worminghall. A minor road runs through the site and there is a yard on either side of the road. The main yard lies to the west side, where the 2 storey office has been created. This has a long frontage to the road, but is set back, with a wide concrete apron between the fence surrounding the yard and the edge of the highway, wide enough for a lorry to park. Immediately to the north is a strip of land that has been covered in hardstanding and is used for the parking of cars and skips. This is the appeal site. Diagonally opposite is the yard on the east side of the road. This too is set back from the edge of the road but only

by a narrow verge. This has a large open fronted barn-like structure with a machine for separating soil from rubble, allowing both to be recycled. Both yards are surrounded by tall fences, which are for the most part solid, and painted green.

7. The whole set-up is clearly out of place and highly visible in what is generally open countryside. But the use of the overall site and the existence of the business in the two yards is not before me, and as it benefits from various LDCs, I shall assume it will carry on whatever the outcome of this appeal.
8. The Council's emerging local plan has been delayed with modifications required and unresolved objections and the Council accept that it attracts little weight. Saved policy RA29 opposes the extension of existing rural business sites into the countryside. The only exception is for buildings in certain circumstances but this is not a building but a use. The development is contrary to a strict reading of the policy. Policy GP35 requires that development in general should respect and complement the characteristics of its surroundings, which clearly the extension of the use into the countryside does not.
9. The NPPF at paragraphs 83-84 supports the sustainable growth of rural businesses, although paragraph 83 talks specifically about new buildings not larger sites. Paragraph 84 notes that sites in the countryside may well not be located in areas supported by public transport but goes on to advise that development in these areas (which includes the appeal site) should be sensitive to its surroundings and not have an unacceptable impact on local roads.
10. The strip of land next to the western yard has been covered in hardstanding and separated from the adjacent field by a low solid boundary of railway sleepers. However, a pond and a small clump of trees also lie between it and the field and this screens about half the length of the site. The appellant argues that such screening can be improved by a landscaping condition, but none has been put before me, and it would be difficult to see how the site could be landscaped without taking up some of the hardstanding and moving the boundary, making the site narrower and less useful to the business. I shall thus give this offer little weight. Nevertheless, the site is relatively narrow and is seen in the context of the much larger and more intrusive yard behind (even discounting the second container which will have to be removed). It is, as the appellant argues, visually separated from the adjacent countryside by the pond and clump of trees. The use for parking and storage of skips, especially compared to the intensive recycling activities behind is relatively low key and in this specific context, not particularly visually intrusive.
11. The Council are also concerned about the impact on highway safety, as skip lorries have been seen backing out of the site onto the road and visibility distances to the north cannot be achieved. I do not know how far short of the required 151m the access to the site falls, but I could see the bend in the road although some way off, did prevent long views in that direction. I also noted the road, although minor, was reasonably well trafficked and at some speed during my site visit. The backing of lorries onto the road might well cause a hazard, although no specific incidents have been brought to my attention.
12. However, I noted the main entrance to the western yard was only a few metres further along the road so visibility was little better from there. If the site is returned to grass land, the lorries will have to deposit their skips into the main yard, with little gain in highway safety. The eastern yard is further along the

road and the access to that lies at its southern edge, here, visibility to the north is poorer still, due to the curve in the road so if this area was to be used for skip storage or parking, the access would be considerably more dangerous.

13. I can understand why the Council consider the whole operation to be a nuisance, but it is here and it is lawful. The extension into the countryside has taken a very small piece of land, which has had little effect on the quality of the surroundings but does create a clearly defensible and partially screened boundary with the agricultural land to the north. The effect of this is to enable the business to operate more efficiently, provide parking for cars and storage of skips off the road. The alternative, if the notice were upheld, would be to return a small strip of land to grass, which would have virtually no impact on the surrounding countryside, but would be likely to lead to a worsening of highway safety if different parts of the lawful site were used for those activities instead. On balance therefore, while the development might be contrary to a strict interpretation of Council policy it does not offend the underlying principle that such uses should be controlled and, if possible, their impact improved. Similarly I do not consider it to be contrary to paragraphs 83-84 of the NPPF.

Other matters

14. The appellant argues that the use of the site is highly sustainable as it is occupied by a recycling company. While this may be true, this is not the only possible site for this company and its location in the open countryside is not locationally sustainable which is the point made by the Council. Nevertheless, the use is in the place it is and the outcome of this appeal will not affect its locational sustainability one way or another.
15. A bridleway runs through the appeal site but the use for parking and storage would not necessarily affect its use. I saw the exit point was thickly overgrown by brambles and there seemed to be no access across the road through the hedge for the bridleway on the other side. This may be explained by the fact that it no longer links into the wider bridleway network but ends at a dead end just beyond the site. In any event, this is a matter that can be dealt with separately.
16. Planning permission was granted in the past for a large shed unit to cover part of the recycling yard and which necessitated rerouting the bridleway to its current location. This planning permission does not seem to have been implemented, but as it was not on the appeal site it is of little relevance.

Conditions

17. Two conditions have been suggested, I do not think a landscaping scheme is necessary or practicable, but a condition limiting the use to parking and storage is necessary. If the scrap recycling use were to extend onto the site that would have a much greater impact on the character and appearance of the countryside and possibly displace the parking which would have a knock-on effect on highway safety.

Conclusions

18. I shall dismiss Appeal A and uphold the notice affecting the two storey office. I shall allow the appeal on ground (a) in Appeal B and dismiss that notice, granting planning permission for the use of the appeal site for parking of cars

and storage of skips. There is no need to consider the appeals on grounds (f) and (g).

Simon Hand

Inspector