



Appeal Decisions

Site visit made on 17 December 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 3 February 2020

Appeal A: APP/X0360/C/18/3219057

Green Acres, Lower Sandhurst Road, Finchampstead RG40 3TH

- 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 Stephen Osborne against an enforcement notice issued by Wokingham Borough Council.
 - The enforcement notice was issued on 21 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land for the storage of building materials.
 - The requirements of the notice are:
 - (i) Cease the use of the Land for storage purposes.
 - (ii) Remove all building materials from the Land.
 - The period for compliance with the requirements is Three months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in sections 174(2) (b) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/X0360/C/19/3220318

Land rear of Green Acres, Lower Sandhurst Road, Finchampstead RG40 3TH

- 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 Stephen Osborne against an enforcement notice issued by Wokingham Borough Council.
 - The enforcement notice was issued on 13 December 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land for the storage of building materials.
 - The requirements of the notice are:
 - (i) Cease the use of the Land for storage purposes.
 - (ii) Remove all building materials from the Land.
 - The period for compliance with the requirements is Three months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in sections 174(2) (b) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal Decisions

Appeal A:

1. It is directed that the enforcement notice be corrected by deleting the wording of Requirement (i) and substituting it with the wording "Cease the use of the land for the storage of building materials". Subject to this correction the appeal does not succeed and the enforcement notice is upheld.

Appeal B:

2. It is directed that the enforcement notice be corrected by deleting the wording of Requirement (i) and substituting it with the wording "Cease the use of the land for the storage of building materials". Subject to this correction the appeal does not succeed and the enforcement notice is upheld.

The Notices

3. The Council has identified three separate planning units at the wider Green Acres site. One relates to the dwelling itself and surrounding residential curtilage, one comprises the field to the side, which is the piece of land the subject of Appeal A, and the third is the field to the rear, the subject of Appeal B. At my site visit I noted that both these fields are demarcated from the residential curtilage by hedgerow and fencing, and are also physically separated from one another by a square post and rail fence, with an access gate between.
4. The appellant says that both fields are used for the grazing of horses and the Council does not dispute this assertion. At my site visit I saw no stable buildings on the land and, in the absence of anything to suggest that horses are being kept there, I am satisfied as to the likelihood of this being agricultural land. In the circumstances I consider that Green Acres and the adjoining land, in common ownership, comprise three distinct areas of land.
5. The appellant takes issue with the notices' allegations in that he considers they wrongly suggest that the whole of the land is being used for the storage of building materials. In turn, the Council, in defence of its approach, cites a previous appeal decision from 2019 (*APP/F4410/C/19/3222999*) relating to another site. This case also involved an enforcement notice being served on an entire plot of land when the use identified as the alleged breach had only occurred on two smaller parts within the site. However, the Inspector considered that the notice's wider red line appropriately described the planning unit involved.
6. The above situation is a clear parallel with the current appeal. Further, in response to the appellant's claim that the enforcement notice was a nullity, the Inspector indicated that, although the notice could have included an agricultural use in the allegation, as it did not attack that lawful use, its omission from the allegation was not fatal to the notice. Again, I note the similarities.
7. The appellant also considers that the alleged breach is so inaccurate as to it not being possible to suitably amend its wording without causing injustice. He indicates that the parties would not have the opportunity to respond to the amendments, and he would be denied the opportunity to consider the grounds of appeal. However, I find that, irrespective of the notice's first requirement which mentions only that the use of the land for storage purposes should cease, the allegation in referring to the material change of use of the land for the storage of building materials, would leave the appellant in little doubt as to the matters involved, the purpose of the notice, and what must be done to remedy it.
8. The above is reinforced by the second requirement which stipulates the removal of all building materials from the land. It does not, though, preclude

any future storage on the land which might reasonably relate to its agricultural use.

9. The appellant indicates that correcting the notices would deny him the opportunity of considering other grounds of appeal. As it stands, the appellant is relying on his belief that the notices, as issued, are defective and also, by way of the ground (b) appeals, that the alleged breaches have not occurred as a matter of fact. However, if the notices were corrected to match the allegations of the breaches and the corresponding requirements, it is unclear how the appellant, as he claims, would be prejudiced. He has been able to appeal on specific grounds of his choosing, and without any prejudice to his case that the notices are invalid.
10. In summary, the two enforcement notices cover two distinct planning units, and the notices are not prejudicial to the Green Acres dwelling itself, nor has its owner (the appellant) been compromised. Further, although the allegation relates only to the open storage within a small part of each field, I find that its wording has been couched correctly and reflects the planning position. In the circumstances I am satisfied that both notices are valid and are capable of minor correction without injustice being caused to either main party. Accordingly, I shall correct Requirement (i) on both notices to match the allegation.

The appeals on ground (b)

11. Appeals on this ground are that the matters alleged in the notice have not occurred.
12. Section 55(1) of the Act includes in the meaning of the word '*development*' the following: the *making of any material change in the use of any buildings or other land*. Section 157(1) states that, subject to the provisions of the section, planning permission is required for the carrying out of any development of land and section 171A(1)(a) states that the carrying out of development without the required planning permission constitutes a breach of planning control.
13. The concept of a material change of use (MCOU) is not defined in any statute or statutory instrument. However, it is linked to the significance of a change and the resulting impact on the use of land. For there to be a MCOU there needs to be some significant difference in the character of the activities from what has gone on previously. It is a question of fact and degree in each individual case.
14. In this particular case the appellant takes issue with the Council's approach, saying that the breach of planning control has not occurred at 'Green Acres' as a matter of fact. Further, as mentioned the appellant makes the point that building materials are only stored on a small part of both fields and are materials left over from the construction of the replacement dwelling at Green Acres. He indicates that they are being stored with the possibility of erecting a stable building or a mobile field shelter at some future point. This might be the intention but I am also mindful of the aerial photographs provided by the Council whereby open storage on the side field is evident in varying degrees in 2013, 2014, 2017 and 2018. The relevant date in this respect is the date the notice was issued which, in the case of the side field, was during November 2018. At the time of my site visit I noted that the storage had been reduced to

two small pockets, but these are readily visible and I consider that this has adversely altered the character of this open grassland.

15. The aerial photographs do not extend to the area of the rear field where, at my site visit, I noted a significant amount of builders materials stored in the open, on the edge of a woodland copse. This has similarly had a materially different effect on the land's character and the appellant has not advanced evidence to demonstrate that, at the date in December 2018 when the relevant notice was issued, the storage use was not occurring.
16. On this basis I find that the storage of builders materials on both sites had occurred as a matter of fact at the time the respective notices were issued. Further, this amounted to a MCOU of the site for which express planning permission is required and which was not sought. The matters alleged in the corrected notice constitute a breach of planning control. Accordingly, the appeals on ground (b) both fail.

The appeals on ground (g)

17. The appeals on ground (g) are that the period for compliance with the notices fall short of what is reasonable. The appellant considers that a three month period is insufficient time to carry out the steps required and believes that a more reasonable period for compliance would be a period of twelve months.
18. The appellant refers to personal circumstances which might affect his ability to remove the materials within the specified time. However, the totality of the open storage is not so substantial as to be unduly onerous were the appellant to commission its removal. In this event I consider that a suitable arrangement could be reasonably arrived at so as to achieve compliance within three months. The appeals on ground (g) therefore both fail.

Conclusion

19. For the reasons given above I conclude that the enforcement notices should be corrected as set out in the Formal Decision and, subject to these corrections, both appeals are dismissed and the enforcement notices are upheld.

Timothy C King

INSPECTOR