



Appeal Decision

Site visit made on 17 February 2020

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 24 February 2020

Appeal Ref: APP/X1545/C/19/3235613

Land adjacent Whispering Trees, Mayland Green, Mayland, Essex

- 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 Wayne Stone against an enforcement notice issued by Maldon District Council.
 - The enforcement notice was issued on 26 July 2019.
 - The breach of planning control as alleged in the notice is the unauthorised material change of use of the Land to an open storage use.
 - The requirements of the notice are: -
 - a. Cease the unauthorised storage use of the Land
 - b. Remove from the Land all materials, items, paraphernalia, debris or detritus associated with the unauthorised use, including any containers, caravans and vehicles.
 - The period for compliance with the requirements is 2 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b)&(d) of the Town and Country Planning Act 1990 as amended.
-

Decision

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

Procedural Matters

2. The only box ticked on the Appeal Form was for ground (b) although the submissions indicated an appeal was being argued on ground (d). The appellant subsequently confirmed that he wishes to plead both grounds (b) and (d). However, it may be inferred that a case is also being brought on ground (c) and the Council has responded as though that were the case. The appeal proceeds on the basis of grounds (b),(c) and (d).

The appeal on ground (b)

3. This ground is that those matters alleged in the notice have not occurred. In order to succeed on this ground, it would need to be demonstrated that the land shown on the enforcement notice plan was not in use for open storage, as alleged, when the notice was issued.
4. The enforcement notice is directed at a parcel of land adjacent to the dwelling known as 'Whispering Trees'. The appellant does not dispute that the land is "used for open and covered storage". Therefore, I find as a matter of fact that those matters as alleged have occurred and the ground (b) must fail

The appeal on ground (c)

5. The onus is on the appellant under this ground of appeal to make out the case that the matters alleged in the notice do not constitute a breach of planning control. All arguments that there has been no development, or that planning permission is not required for whatever reason come under this ground.
6. The main thrust of the appellant's case is that the site has been used for storage since 1986. In effect, the appellant needs to demonstrate that development has not occurred for the purposes of section 55 of the Town and Country Planning Act 1990 or that it constitutes permitted development.
7. Under section 55(1), 'development' includes the making of any material change in the use of any buildings or other land. There is no definition of a material change of use. It is a question of fact and degree in each case. It is an objective test. There needs to be some significant difference in the character of the activities from what has gone on previously.
8. The starting point is identifying the correct planning unit, and the present and primary uses of that unit. The planning unit is usually the unit of occupation unless a smaller area can be identified which is physically separate and distinct.
9. The street view images marked as 2009, show several cars parked on the land, some small boats on trailers and sheds. The appellant says that he was working on the boats and was using the land as part of his business. At that time the land fell within the same ownership as the dwelling at 'Whispering Trees'. From the images it appears to have formed part of its garden to comprise a single planning unit. This is undisputed by the appellant.
10. It appears that at least some of the storage use was incidental to the use of the dwelling as such and did not require planning permission by virtue of section 55(2)(d). If the nature and/or extent of the storage use had exceeded what could properly be regarded as incidental, then there would have been a mixed use of the whole site composed of residential and storage uses requiring planning permission. Either way, the physical and functional link was severed after the land now enforced against was separated from 'Whispering Trees' in July 2014 when it came under separate ownership.
11. Photographs supplied by the Council from 2015 show a fence along the newly created boundary. The land no longer formed part of the garden nor was it used in conjunction with the dwelling to be incidental to the residential use. Photographs from February 2019 show a caravan and steel container on the land and piles of rubble. Two separate planning units would have been created. Indeed, the appellant accepts that the land "did become its own unit" but argues that the sheds and paraphernalia were already there. The notice is not directed at the sheds, but to the use of the land. As a matter of fact and degree when the storage use became the sole primary use of the land, there was a material change of use of the land from the previous lawful residential use. This amounted to development requiring planning permission.
12. When a planning contravention notice ('PCN') was completed by the appellant in February 2019, it was asserted that a shipping container used for storage on the land was permitted development. No Class of development was identified within the Town and Country Planning (General Permitted Development)

(England) Order 2015 ('GPDO') and the argument has not been advanced further in this appeal. The container had been removed by the time of my visit.

13. The Council maintains that the container was not permitted development under Schedule 2, Part 1, Class E of the GPDO because it was not incidental to the use of a dwellinghouse. Class E applies to 'buildings'. If it was a building, then I agree that Class E cannot apply. From the photographs supplied by both parties, the container was a smaller shipping style container most likely brought onto the site as a complete structure. It does not appear to have been attached to the land and is shown in different positions. These factors indicate it was more likely to be a use of land rather than a building. If so, it was still not incidental to the use and enjoyment of a dwelling to be excluded from the definition of 'development' under section 55(2)(d). There is no category of permitted development drawn to my attention that might be applicable.
14. I conclude that the matters alleged in the notice do constitute a breach of planning control. The appeal on ground (c) fails.

The appeal on ground (d)

15. In a ground (d) appeal, the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is the balance of probabilities. The ground of appeal is that at the time the notice was issued it was too late to take enforcement action. Pursuant to section 171B(3) of the 1990 Act the immunity period for a material change of use of land is 10 years and not 4 years as argued by the appellant.
16. Therefore, to succeed on this ground the appellant must demonstrate that the change of use to open storage occurred at least 10 years prior to the date of the issue of the enforcement notice on 26 July 2019 and continued without material interruption for a period of 10 years after the date of such change.
17. In the PCN reply completed in 2019 the appellant stated that the use had started 8 years ago. It is not altogether clear if this response refers to the shipping container and caravan only or the storage use more generally.
18. In this appeal, it is the appellant's case that the land has been used for storage ever since 1986. Street view images dating back to April 2009 are produced along with a series of screen shots from social media. Various comments posted indicate that the land has always had sheds, cars, motorbikes, trailers, boats and other items on it. That may be so, but there was a change in the planning status of the land when it was separated from the dwelling at 'Whispering Trees' in July 2014. After that time the storage use could no longer be incidental to the residential use of the dwelling and there was a new chapter in the planning history. Time started to run afresh.
19. Clearly, the existing primary use of the land for storage purposes has not been ongoing for a continuous period of 10 years to have become immune from enforcement action.
20. The appeal on ground (d) fails.

KR Seward

INSPECTOR