



Appeal Decisions

Site visit made on 10 March 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 April 2020

Appeal Ref: APP/D3125/C/19/3241177 and APP/D3125/C/19/3241178 4 Chimney Farm Cottages, Chimney, Bampton OX18 2EH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
 - The appeals are made by Mrs Gemma Rowland and Mr Nicholas Rowland on behalf of Oxford Construction Ltd against an enforcement notice issued by West Oxfordshire District Council.
 - The enforcement notice was issued on 28 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission, a material change of use of the land from C3 residential to a mixed residential and commercial use as a builders' depot and/or for the storage of items that are not ancillary to the residential use of the land including but not limited to builders' materials and equipment and builders' waste.
 - The requirements of the notice are within 2 weeks of the notice coming into effect:
 - (i) Desist from using the land for commercial purposes, including the parking of commercial vehicles and the storage of any plant or machinery typically used by the building trade.;
 - Within 1 month of the notice coming into effect
 - (ii) Remove all building materials, rubble, waste soil and other waste matter including wooden pallets, plastic and metal items from the land; and
 - (iii) Desist from storing on the land any materials used in association with, or waste matter of a nature typically produced by, the building trade.
 - The period for compliance with the requirements is 2 weeks for the first requirement and 1 month for the second and third requirements.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) 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.
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Decisions

1. It is directed that the enforcement notice is:

- corrected by deleting the words "shown edged red on attached plan" under section 2 of the enforcement notice (the land affected) and deleting the site plan attached to the enforcement notice.
- corrected by deleting the allegation within section 3 of the enforcement notice (the alleged breach in planning control) and its replacement with "Material change of use of the land from residential use to a mixed use for residential use and use as a commercial builders' storage depot".

- corrected by deleting the existing requirements and replacing them with the following:

“Within 2 weeks of the notice coming into effect:

- (i) Cease the use as a commercial builders’ storage depot;
- (ii) Remove vehicles parked in connection with the commercial builders’ storage depot;
- (iii) Remove all plant and machinery used in connection with the commercial builders’ storage depot;

Within 1 month of the notice coming into effect:

- (iv) Remove all items stored on the land in connection with the commercial builders’ storage depot use including building materials, rubble, waste soil, wooden pallets and other waste matter”.

2. Subject to these corrections, the appeals are dismissed, and the enforcement notice is upheld.

Procedural Matters

3. The allegation in the Enforcement Notice is poorly worded. Whilst the first part of the allegation is perfectly adequate, the second part which continues with “and/or” is imprecise, ambiguous and unnecessary. However, the appellants appear to have understood the allegation and, in my opinion, the misdescription does not render the notice unclear. It is necessary however to correct the allegation to remove unnecessary words but retaining the effect of what the Council is trying to achieve. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) of the Act to make this correction.
4. Furthermore, the requirements of the notice, under section 5 (What you are required to do) is also poorly worded. The first requirement mixes up the stopping of the unacceptable element of the use and the one-off removal of things that are a result of that use. It is therefore necessary to separate these out whilst keeping the elements that have different compliance periods separate. My understanding of the notice is not affected by this, and nothing within the appellants’ submissions indicates to me that it has been misunderstood by them as a result. Therefore, I consider that a correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.
5. Further to issuing the enforcement notice, the Council state that the red line area shown on the attached plan is incorrect in so far as it includes the area around the outbuilding of No 3 Chimney Farm Cottage. The Council have provided an additional site plan¹ showing what they consider to be the correct red line boundary which does not increase the scope of the land affected. However, it is clear from the address on the notice what the property is and therefore the notice as a whole identifies the property correctly. The appellants appear to have understood the allegation and, in my opinion, the minor error on the site plan does not render the notice unclear. It is necessary however to

¹ Appendix 5b of the Council’s appeal statement.

correct the notice by deleting the incorrect site plan from the enforcement notice. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to make this correction.

6. The appeals have only been lodged under ground (b). However, it is clear from the substance of their appeal submissions that the appellants are also seeking to appeal under ground (c), in so far as they consider that there has been no material change of use. As the Council have provided detailed comments on the appellants' statement, I am satisfied that neither party would be prejudiced by the inclusion of this. I have therefore determined the appeals on this basis.
7. At the time of my site visit, there was very little sign of the builders' storage depot use being active. However, as the appeals have been made under "legal grounds" only I am required to consider the appeals on the date that the enforcement notice was served.

The appeal on ground (b)

8. To succeed on this ground, the onus is upon the appellants to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.
9. I note that the appellants state that all building materials, equipment and vehicles on the property related to the recent extensive renovation works carried out to their property, which I was able to observe during my site visit. However, with regards to the operation of their construction company, the appellants have confirmed in an email to the Council² that *"there are occasions when materials will need to be stored at home. We also own a digger, dumper truck and a couple of vans, these have also been kept at our homes in the past. Mainly these are on site, but occasionally they are not needed and so end up at home"*. Furthermore, the appellants final comments also confirm that *"some work items are kept at home when needed"*, and that *"this is generally accepted for a number of scenarios where people require tools or equipment for their profession"*.
10. The Council and third parties have also provided detailed photographic evidence of specific items on site that have been referred to in submissions. The appellants also accept that they have stored some items related to their construction company at the appeal site. Therefore, on the balance of probabilities I consider that the matters as alleged by the notice have occurred as a matter of fact.
11. Accordingly, the appeals on ground (b) must fail.

The appeal on ground (c)

12. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. Like ground (b) the onus of proof lies with the appellants, the relevant test of the evidence being the balance of probability.
13. As outlined above, the appellants accept that they work from home and that construction machinery and materials are stored there in connection with the operation of their construction company. The appellants' case is that this is

² Email from Gemma Rowland dated 29 May 2019.

ancillary to the residential use of the site, and therefore there has been no material change of use. The concept of material change of use is not defined in statute or statutory instrument and therefore it is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously.

14. The residential use of the dwelling is a primary use taking place within the planning unit. The appellants have confirmed that construction materials, machinery and vehicles including a digger, dumper truck and vans used by the business have been stored at the property. In my opinion, from the evidence provided these items appear to have substantially affected the character and appearance of the property. As such, this has gone beyond the scope of what could reasonably be considered as being incidental or ancillary activities to the residential enjoyment of the property and has involved another primary use within this same planning unit.
15. I therefore conclude, as a matter of fact and degree, that a material change of use of the site had occurred from a residential use to a mixed use for residential use and use as a commercial builders' storage depot. Planning permission is required for such a change of use and there is none in place. Furthermore, the change of use is not permitted development. As such, there has been a breach of planning control and the appellants have not discharged the onus on them to demonstrate otherwise.
16. Accordingly, the appeals fail on ground (c).

Conclusions

17. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

R Satheesan

INSPECTOR