



Appeal Decisions

Site visit made on 17 December 2019

by Mr A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2020

Appeal A, B and C Refs: APP/C/17/3219637, 28 and 70

Land adjacent to the north of the Limes Café, Old Rufford Road, Bilsthorpe, Nottinghamshire NG22 8TH

- 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 J E Wright (on behalf of HHS Ltd) (Appeal A), Challenge Ltd (Appeal B) and Dr Michael Woodcock (Appeal C) against an enforcement notice issued by Newark and Sherwood District Council [the notice].
- The enforcement notice was issued on 21 November 2018.
- The breach of planning control as alleged in the notice is stated in the Appendix attached to this decision.
- The requirements of the notice are stated in the Appendix.
- The period for compliance with the requirements is stated in the Appendix.
- The appeals are proceeding on the grounds set out in section 174(2) (b), (c) and (d) of the Town and Country Planning Act 1990 as amended. Ground (a) was selected in all of the Appeals, but the prescribed fees have not been paid within the specified period and the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Decision

1. All the Appeals are dismissed, and the enforcement notice is upheld.

Preliminary matter

2. Given the current public health emergency, and the Government's restrictions on travel, I asked, via The Planning Inspectorate, the appeal parties to comment on from the specified period of compliance. On the available evidence, I consider that, due the nature of the work required by the notice, the period of compliance specified on the notice is reasonable. The Act permits the Council to waive or relax any requirement of a notice and may extend any period specified in accordance with section 173(9). These powers are discretionary and purely within the Council's gift. I will proceed on this basis.

Ground (b)

3. The land occupied by the appellants, known as the Limes Café, is situated on Old Rufford Road, which is classified as the A614. The parcel of land outlined on the site plan attached to the notice is situated to the north of a cluster of buildings. It is roughly rectangular in shape accessed via a hard-surfaced parking area [I will refer to this area as 'the notice land']. The notice alleges a change in the use of the notice land to a Haulage Yard, which is described in section 3 to the issued notice.
4. Essentially, the appellants ground of challenge is that the matters alleged have not in fact occurred. There is some tension between the parties regarding the previous use of the notice land. The appellants focus on the mixed-use as café, retail, storage and distribution, hotel/hostel and camping and caravanning use, but the details submitted do

not show this use is lawful. On the other hand, the Council claims that the notice land has a nil use. The unchallenged aerial imagery of the notice land captured between 2005 and 2009 shows the notice land covered in vegetation. The 2013 image shows the area being occupied by caravans and trailers. There is no information to make this evidence less than credible. In my assessment, the presented evidence points in the likelihood that the notice land is in agricultural use or, at the very least, was undeveloped land.

5. The Council's evidence is particularly instructive of the notice land's use during the period leading up to the issuing of the notice. Photograph 1, which has not been discredited, shows several lorry bodies deposited upon the notice land on 18 July 2019. Moreover, in response to searching questions found in the Planning Contravention Notice¹, the appellants describe the purpose of the notice land's use in the following terms: *parking and storage of vehicles and trailers on a short and long term basis, including 24 hours a day, 7 days a week, overnight stays of drivers and passengers, loading/ unloading and exchange of loads, storage of loads, vehicle washing and maintenance. Parking and storage of road maintenance vehicles, plant and materials. Other associated transport services. Access and egress and parking related to residential premises.* This is broadly consistent with the description given at section 3 of the issued notice of the 'Haulage Yard'.
6. I am satisfied that the notice correctly identifies the area where the alleged unauthorised use was taking place. On the balance of probabilities, the evidence shows that at the date of issue the alleged breach, change of use of the notice land to Haulage Yard as described in section 3 to the notice, had in fact occurred. The appeals on ground (b) must fail.

Ground (c)

7. The nub of the appellants' argument is that there has been no breach of planning controls, because no material change in the use of the notice land has occurred. The claim is that the notice land is used in connection with the mixed-use of the Limes Café as retail and restaurant/café, storage and distribution, hotel/hostel and camping and caravanning. However, as I have said elsewhere, the evidence points in the direction that the notice land's previous use was agricultural or, at the very least, was undeveloped. The introduction of the Haulage Yard is a primary use of the notice land, due to the scale of the operations. The extent and nature of the activities for example the open-air storage of goods in transit, parking of trailers and vehicle washing, and the loading and unloading of material is significantly different in comparison to an agricultural or no use. I do not consider that the Haulage Yard is reasonably ancillary or incidental to the Limes Café.
8. The Haulage Yard has resulted in a physical change to the appearance and layout of the notice land and the way in which the wider site is used. For example, the notice land is accessed from the parking area. The activities are likely to result in an increase in comings and goings given the extent of the operations. The Haulage Yard is likely to have significant off-site impacts which require assessment. I find that the introduction of the Haulage Yard has resulted in a change in the definable character of the notice land effecting a change in its use. The latter firmly falls within the scope of s55(1) of the Act.
9. Even if the appellants are correct in that the notice land is used in connection with the mixed-use of the Limes Café, I consider that the introduction of a new primary use has resulted in a change to the mixed-use of the entire land, due to the nature and scale of the Haulage Yard operations. The single mixed-use comprises retail, restaurant/café,

¹ Issued 24 September 2018, signed and dated and returned on 13 October 2018.

storage and distribution, hotel/hostel and camping and caravanning and Haulage Yard. The evidence presented indicates that the character of this use is significantly different and has on and off-site effects thereby changing the definable character of the notice land's mixed-use. Whichever way one scrutinises the presented evidence I consider that, in all intent and purposes, the scale of the alleged activity is markedly and significantly different in land-use terms.

10. Contrary to the appellants' assertion, a Haulage Yard does not fall in any of the classes of use specified in the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended. There is no permitted development right to introduce the Haulage Yard without express planning permission.
11. Pulling all of the above points together, the appellants have failed to show that express planning permission is not required for the Haulage Yard. Express permission is required, and it has not been obtained. On the balance of probabilities, I find that the matters constitute a breach of planning controls. The appeals on ground (c) must fail.

Ground (d)²

12. It is a well-established principle that, if the Council has no evidence of its own, or from others, to contradict or otherwise make the appellants' version of events less than probable, there is no good reason to dismiss this ground (d) appeal, provided their evidence alone is, on the balance of probabilities, sufficiently precise and unambiguous³.
13. In pursuing this ground, it's the appellants responsibility to submit sufficient evidence, which meets the balance of probabilities, and shows the change in the use of the notice land to Haulage Yard occurred on or before 21 November 2008 [the relevant date] and was thereafter continuous for a period of 10 years without significant interruption. This requires more than just general or unsubstantiated statements. There is no general duty on a decision-maker to explain what evidence might have satisfied him, or her, as opposed to deciding on the basis of the evidence provided.
14. The challenge is that the alleged use is immune from enforcement action because it started some 60 years before the date of the notice, which is well before the relevant date. The claim is that the land occupied has been used in connection with the Limes Café and has been in a mixed use of retail, restaurant, storage and distribution, and hotel or hostel. Additionally, lorry drivers and caravanners have stayed overnight sleeping in their cabs and caravans or at the bungalow. It is contended that a legal charge and conveyance state that the three acres land includes a bungalow and roadside café. Sales describe the whole land as being used in connection with the roadside café.
15. An interested party's statement, which purports to be a witness statement, indicates that the whole site has been used in connection with the roadside café for over 50 years, but the appellants assert the use began 60 years ago. At final comments stage, the assertion is that the entire land has been used 40 years predominantly as a car, lorry, trailer and caravan park. The statements are not statutory declarations and there is inconsistency. This affects the weight I attach to them.
16. As I have said elsewhere, the notice relates to a separate parcel of land and, apart from generalised statements about the activities, the information provided does not sufficiently show the notice land's previous use as a Haulage Yard. It does not clearly

² Section 174(2)(d) states that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

³ The authority of *Ravensdale Limited v Secretary of State for Communities and Local Government* [2016] EWHC 2374 (Admin) reviews the relevant case law regarding the onus of proof upon an appellant in this type of case.

show the alleged activities existed some 60 years ago, because the statements made are not specific enough.

17. The appellants claim that notice land has not been part of the countryside or agriculture since 1946. In support of these claims the appellants state documentary evidence will be submitted, but, apart from generalised and broad assertions, there is no firm date as to when the Haulage Yard commenced, the nature of the activity or the scale of the notice land's use. The evidence presented about the previous use starting some 60, 50 or 40 years ago is far too ambiguous and imprecise. The submitted information is too weak and sparse in nature and substance. Given the significant degree of imprecision and the lack of specificity and detail, I attach limited weight to the unsupported assertions.
18. In a similar vein, I find the evidence about the use of the notice land on or before the relevant date vague and incomplete. The aerial imagery shows the condition of the notice land in 2005, 2007, 2009 and 2013. Although a snapshot in time, these images are particularly instructive. The 2005 to 2009 photographs show the notice land in green vegetation. This evidence discredits the claim that the notice land has been used in connection with the Limes Café as a Haulage Yard for the past 60, 50 or 40 years. Moreover, it casts a long shadow over the claim that the alleged use began on the relevant date.
19. There is an added complexity. In about 2012, the notice land was predominantly used for the sale of caravans and that activity covered the entire area with about 20 caravans. This is consistent with the 2013 aerial image which seems to show that the nature and scale of this type of activity changed the physical appearance and character of the notice land. The subsequent enforcement investigation resulted in the submission of a retrospective application for the caravan sales. But that application was refused in July 2012⁴, and a subsequent appeal dismissed in April 2013. While the appellants may not have been a party to this particular unauthorised use, the evidence presented indicates that use existed in fact and falls within the immunity period. To my mind, there was an intervening unauthorised use of the notice land for caravan sales, which casts considerable doubt over the assertion that the Haulage Yard had been continuous without significant interruption.
20. Applying the balance of probabilities test to the evidence presented, I find that the material change of use of the notice land, as alleged on the notice, did not occur on or before 21 November 2008. There is no persuasive evidence that the notice land has been continuously used thereafter for the alleged matters for a period of 10 years without significant interruption. I conclude that the ground (d) appeal must fail.

Conclusion on all Appeals

21. For the reasons given above and having regard to all other matters, I conclude that the appeals should not succeed on grounds (b), (c) and (d). I have upheld the enforcement notice.

A U Ghafoor

Inspector

⁴ Council ref: 12/00684/FUL.

Appendix to appeal decisions APP/C/17/3219737, 28 and 70

The matters which appear to constitute the breach of planning control

Without planning permission, 'development' consisting of the material change of use of the land to use as a 'Haulage Yard' including the following activities; the storage and parking of trailers on a short and long term basis, overnight stays by drivers and passengers, the loading and unloading and exchange of loads, storage of loads, vehicle washing and maintenance, parking and storage of road maintenance vehicles, plant and machinery and other associated transport services.

What you are required to do

- a) Cease the use of the land as a Haulage Yard, including;

The storage and parking of trailers on a short and long term basis.

Overnight stays by drivers and passengers.

The loading and unloading and exchange of loads, storage of loads.

Vehicle washing and maintenance.

Parking and storage of road maintenance vehicles, plant and machinery.

Other associated transport services.

- b) Remove from the land;

All lorry trailers, cabs and all other vehicles and associated plant and machinery.

All lorry loads.

All vehicle washing and maintenance equipment and supplies.

All road maintenance vehicles, plant and machinery.

Other associated transport services.

Time for compliance

- a) 56 days

- b) 72 days

End.