The Planning Inspectorate

Appeal Decision

Site visit made on 26 May 2020

by JP Roberts **BSc(Hons) LLB(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 06 July 2020

Appeal Ref: APP/W1850/C/19/3228929
Land at Doward Farm, Whitchurch, Ross-on-Wye, Herefordshire HR9 6DU

- 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 Mark Dew against an enforcement notice issued by Herefordshire Council.
- The enforcement notice was issued on 18 April 2019.
- The breach of planning control as alleged in the notice is:
  Without planning permission the unauthorised material change of use of the land from agricultural to a mixed use of agricultural and for the siting and storage of old/scrap cars, vans and non-agricultural vehicles.
- The requirements of the notice are:
  Cease the use of the land for the storage of old/scrap cars, vans and non-agricultural vehicles and permanently remove the old/scrap cars, vans and non-agricultural vehicles from the land.
- The period for compliance with the requirements is 180 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be corrected by substituting the word "171B(4)(b)" with "171A(1)(a)". Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

2. The notice alleges a breach of planning control "within paragraph 171B(4)(b)" of the Act. However, this section of the Act does not deal with the meaning of a breach of planning control. Rather, it clarifies the circumstances under which an enforcement notice may be issued where the local planning authority has previously taken or purported to have taken enforcement action. The breach of planning control in this case is alleged to be a material change of use of the land, and therefore the breach is one within paragraph 171A(1)(a) of the Act.

3. I have a duty to get the notice in order if I am able to do so. The appellant is clear as to what it is that the Council has alleged, and therefore no-one would be prejudiced by my correcting the notice. I shall therefore do so.

Appeal on ground (d) – that the time for taking enforcement action has passed

4. S.171B(3) of the Act provides that in a case involving a material change of use, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. S.171B(4)(b) says that this does not prevent taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

5. In this case, the Council issued an enforcement notice in respect of the same breach on 30 August 2016. That notice was quashed on appeal, but nevertheless, the Council purported to take enforcement action within 4 years prior to the issue of the current notice, and thus the provisions of s.171B(4)(b), apply here, meaning that the onus of proof on this ground is for the appellant to show, on the balance of probabilities, that the breach of planning control commenced prior to 30 August 2016.

6. The enforcement notice does not address all of the land at Doward Farm which I saw to be used for the storage of vehicles. It excludes land to the north-east of the northernmost barn, all of the land to the south east of the buildings and the buildings themselves. There are currently about 70 vehicles stored on the land edged red, and it is clear from their condition that many of them have been stored there for many years. There are also various piles of timber, lengths of profiled metal, a pile of tyres, an assortment of what looks like pub garden furniture and a number of miscellaneous items. Significant parts of the site were inaccessible due to an overgrowth of thick and tall nettles, which may have hidden other items from view.

7. I have been provided with copies of two sworn affidavits, one from the appellant Mr Mark Dew, and one from his father, Lt Col Peter Dew, both signed in August 2016. Both of these say that the land edged red on the enforcement notice has been used for the storage of cars for more than 10 years. Both of the affidavits contain much extraneous material, relating to the farm generally, the use of the barns and land outside of the enforcement notice site, and about the cars and the appellant's ambitions. However, the evidence about the scale and nature of the use of the enforcement notice site is scant.

8. The Council has provided me with a copy of an aerial photograph dated 15 July 2006. This was just over 1 month and 10 years before the relevant 10 year period. That photograph is not entirely clear, but it appears to me that at best, only a couple of vehicles are shown on the enforcement notice site. Whilst there are about 30 or so vehicles shown on land at the farm outside of the enforcement notice site, the area now in dispute appears largely devoid of vehicles.

9. Whilst I recognise that this photograph portrays the position on just one day, bearing in mind that the purpose of the vehicles being on the site is to store them, it would be unlikely for the use of the site to have occurred by that date and for cars to be missing for that day. The appellant's evidence is that he would drive them around the farm on occasion, but that would only involve one vehicle at a time, and thus if the use had commenced before the relevant date, it would be expected that there would be many more cars to be seen on the site.

10. The photograph is not wholly inconsistent with the appellant's account of events. It may well be the case that cars were stored on the enforcement notice land for more than 10 years prior to the 2006 date. However, the evidence is silent on exact numbers and locations of cars in relation to the site edged red. Thus, whilst cars may have been stored there from time to time, there is insufficient evidence to show that it amounted to a material change in the use of the land. From the evidence, it seems to me, on the balance of probabilities, that the breach had not occurred on 15 July 2006.

11. Next, I have to grapple with whether the breach commenced during the 45 day period between 15 July 2006 and 30 August 2006. The appellant has not said that there was any significant importation of cars onto the site during that small period. My point above about the lack of evidence to show that any change in the use of the site, if it occurred, was material also applies to this period. I therefore conclude on the balance of probabilities that the time for taking enforcement action had not passed by the date of issue of the notice. Accordingly, the appeal on ground (d) fails.

Appeal on ground (a) – that planning permission should be granted

Main issue

12. The main issue is the effect of the development on the character and appearance of the surrounding area, which lies within the Wye Valley Area of Outstanding Natural Beauty (AONB).

Reasons

13. Paragraph 172 of the National Planning Policy Framework (NPPF) says that AONBs have the highest status of protection in relation to landscape and scenic beauty and great weight is to be afforded to conserving and enhancing their landscape and scenic beauty. Planning permission should be refused for major developments in these areas other than in exceptional circumstances, and where it can be demonstrated that they are in the public interest

14. The Council argues that the storage of cars is "major development". The area of storage is small, amounting to no more than 0.16 hectares (by the Council's calculation). It is wrapped around buildings and is partly bounded by other land used for car storage which is not part of the notice site. Whilst the vehicles are all fairly densely parked, other than a car on a trailer, none are higher than a single vehicle. Taking all these matters into account, but giving particular weight to the question of size, I find that the development is not "major" in the context of the AONB.

15. As the Council accepts, the site is not prominent in public views. It is largely shielded by the barns and Doward Farmhouse, and by roadside hedges along Doward Lane, although glimpses may be more possible when the hedges are not in leaf. However, the site is clearly visible from the houses in Little Doward, on higher ground to the west of the appeal site. It is also glimpsed from road serving Little Doward, a public highway, and is likely to be more visible in winter, when there is less foliage.

16. The site sits in an attractive landscape, in a valley at the base of The Doward to the west, a wooded hill topped by the earthworks of an Iron Age fort , and a lower wooded hillside to the east. The agricultural fields in the valley are dotted with houses and farms, and the area has a high scenic value. I have

not been told of any viewpoints from the top of The Doward from where the site can be seen, and I could not see it on my visit for the dense mainly deciduous trees which cover its slopes, and I would consider it likely that the density, combined with the number of evergreen trees, would preclude views in winter.

17. The appearance of the stored cars is very much at odds with the scenic beauty of the area. The cars are stored in a haphazard fashion, many are faded and rusting, and their multiplicity of colours stands out against the green of the adjacent fields and the narrow palette of colours of the buildings. They are an obviously man-made feature, at odds with the rural landscape. Whilst the site is generally well-screened, it is still visible from some private and, to a lesser extent, public viewpoints, and it fails to conserve the natural beauty of the area. The degree of harm is moderate, but it nevertheless carries great weight. It conflicts with Herefordshire Unitary Development Plan Policy LD1 and Policy WG14 of the made Whitchurch and Ganarew Neighbourhood Development Plan, both of which include protection for the AONB.

Other matters

18. The site lies to the east of Little Doward, a Scheduled Ancient Monument, (SAM) designated for its defensive earthworks in connection with an Iron Age fort towards the summit of The Doward. Whilst the site lies within the setting of the SAM, forming part of the lowland overseen by the fort, I consider that the car storage, because of its distance from the earthworks, the extensive tree screening in between and the limited extent to which it can be seen, would not materially harm the setting of the SAM.

19. The appellant's collection includes some vintage classic cars, and he hopes to be able to restore these cars and to create a museum to show some of the "greats" of British car manufacturing. However, few of the 70 or so vehicles stored on the enforcement notice site could be considered as classics. There is an abundance of marques, including about 10 Peugeot 205s, a smattering of commonplace Fords and VWs and around 18 vans. Many of them are badly rusted, damaged or decayed. It seems to me that most of the vehicle storage has no credible association with motoring heritage.

20. Through openings in the barns I could see some cars stored there. The thick layers of dirt on those I could see suggests to me that no work on their restoration had been carried out in some time. Whilst I have no reason to doubt the appellant's motives, I am not convinced that there is sufficient evidence that a motoring museum would come to fruition. I therefore afford the benefits that might flow from such a development very little weight, and it is insufficient to counteract the great weight that must be afforded to the conservation of the natural beauty of the AONB.

21. I have given consideration to the potential for carrying out planting to help screen the site, but not only would it take some time to grow to be effective, there can be no guarantee that in the long term the planting would not succumb to disease, die or be removed. No other conditions would adequately mitigate the harm.

22. The requirement of the enforcement notice to remove the vehicles engages with the rights of the appellant to respect for property, under Article 1 of the First Protocol, which is a Convention right enshrined into UK law by the Human

Rights Act 1998. However, this right is not absolute, and interference may be justified in the public interest. In this case, upholding national and local planning policy, and the importance of conserving the natural beauty of the AONB are matters of legitimate public interest.

23. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the appellant's rights would not be insignificant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.

24. I therefore conclude that the appeal on ground (a) should fail and that the deemed planning application under s.177(1) of the Act should be refused.

Appeal on ground (g) – that the period for compliance is too short

25. I consider that 180 days is a reasonable time to arrange and carry out the removal of the vehicles from the site. I recognise that it may not be easy to find alternative premises to store them, having regard to the cost of renting or buying suitable space and the likely value of the vehicles concerned. However, that should not stand in the way of securing compliance with the notice. The appeal on ground (g) therefore fails.

Conclusion

26. For the reasons given above, I conclude that the appeal should be dismissed, that planning permission should be refused, and that the notice, subject to correction, should be upheld.

JP Roberts

INSPECTOR