



Appeal Decision

Site visit made on 8 July 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2020

Appeal Ref: APP/N1025/C/18/3219523

Land at Carr Hill Farm, Cole Lane, Ockbrook, Derbyshire DE72 3RD

- 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 Richard John Barton against an enforcement notice issued by Erewash Borough Council.
- The enforcement notice was issued on 20 November 2018
- The breach of planning control as alleged in the notice is: *without planning permission the material change of use of the Land from a mixed use comprising residential use (within area hatched black on the plan attached to this notice) and agriculture to a mixed use comprising:*
 - residential use (within area shown hatched in black on the plan attached to this notice);
 - agriculture;
 - the importation, storage and treatment of excavation, construction, demolition and soil waste;
 - a storage yard associated with a renderer's business;
 - a storage yard associated with a builder's business;
 - an agricultural contractor's and civil engineering contractor's yard;
 - an operating base for a grab hire business;
 - the storage of plant, machinery, equipment, containers, HGV trailers, lorry backs, skips, building materials and other items that are not ancillary to residential or agricultural use.
- The requirements of the notice are:
 - (i) Cease the use of the Land:
 - a) for the importation, storage and treatment of excavation, construction, demolition and soil waste;
 - b) as a storage yard associated with a renderer's business;
 - c) as a storage yard associated with a builder's business;
 - d) as an agricultural contractor's and civil engineering contractor's yard;
 - e) as an operating base for grab hire business;
 - f) for the storage of plant, machinery, equipment, containers, HGV trailers, lorry backs, skips, building materials and other items that are not ancillary to the residential or agricultural use.
 - (ii) Remove from the Land:
 - a) all imported excavation, construction, demolition and soil waste;
 - b) all plant, equipment and machinery used for storage and treatment of waste material;
 - c) all materials and equipment used in connection with the renderer's business;
 - d) all materials and equipment used in connection with the builder's business;
 - e) all plant, machinery, containers, equipment, materials, vehicles and other items associated with the agricultural contracting and civil engineering contracting business;
 - f) all HGV's, vehicles and any equipment and materials associated with a grab hire business;

- g) all plant, machinery, equipment, shipping containers (and contents), HGV trailers (and contents), lorry backs, skips, tyres, oil drums, metal beams, timber/plastic pallets, concrete/plastic drainage rings, concrete blocks, concrete kerbstones, bricks, stone blocks, roofing materials, uPVC frames, metal reinforcing mesh, metal fencing, lengths of timber, lengths of metal, metal and plastic pipes, the boat and any other items or materials that are not ancillary to the residential or agricultural use.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal succeeds in part on grounds (b) and (f), and it is directed that the enforcement notice be varied by:
 - In the sixth bullet point of alleged breaches *delete* "an agricultural contractor's and".
 - In Requirement 5.i)a) at the end *insert* "that is not ancillary to the residential or agricultural use".
 - In Requirement 5.i)d) *delete* "an agricultural contractor's and".
 - In Requirement 5.ii)a) at the end *insert* "that is not ancillary to the residential or agricultural use".
 - In Requirement 5.ii)b) at the end *insert* "that is not ancillary to the residential or agricultural use".
 - In Requirement 5.ii)e) *delete* "agricultural contracting and".

Subject to these variations the enforcement notice is upheld.

Application for costs

2. An application for costs was made by Erewash Borough Council against Mr Richard John Barton. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the appeal was initially lodged, the appellant has withdrawn appeal grounds (d) and (g). As a result of the withdrawal of ground (d), the procedure for determining the appeal has been changed from an Inquiry to Written Representations.
4. An appeal against ground (a) – that planning permission ought to be granted for the matters alleged in the Notice – was made much later in the appeal process but was deemed to have lapsed. Consequently, no application for planning permission is deemed to have been made under s177(5) of the 1990 Act. As a result there can be no consideration of the planning merits of the case.
5. This appeal, therefore, proceeds on grounds (b) and (f) only.

Appeal on ground (b)

6. An appeal on ground (b) asserts that the matters alleged in the enforcement notice have not taken place as a matter of fact. In order to succeed on this ground, the burden of proof falls on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred as a matter of fact.
7. The appellant is disputing the alleged 'agricultural contractor's and civil engineering contractor's yard'. He is also disputing the extent of 'the Land' to which the notice relates suggesting that the plan should be amended to enlarge the residential area and exclude fields to the south of the A52.

The Land

8. The residential area is shown 'hatched in black' on the notice. The appellant seeks to enlarge this area to include the courtyard shared by the two dwellings, and the pond and the grass around it to the south of the access track.
9. The residential use of the land is not in dispute and the notice does not require the residential use to cease. Furthermore, the notice is not seeking to legally or permanently define the residential curtilage or extent of the residential use on the Land. The inclusion of the residential black-hatched area on the notice does not interfere with the appellant's rights under the Human Rights Act 1998, nor does it have financial implications. As the matters alleged in the notice do not turn on the residential use, there is no need for me to amend the enforcement plan.
10. The second amendment to the plan seeks to remove the red-edged land to the south on the other side of the A52 dual-carriageway¹. I saw that the land is physically separated from the other land due to the intervening dual-carriageway. Pedestrian access from the farm is via the footbridge over the A52. Vehicular access requires an indirect route of 1-2 miles in order to cross the dual-carriageway and return on the other side. However, there is no substantive evidence to suggest that these fields function differently to other fields within the red line that I saw on my visit. Therefore there is no need for me to amend the plan.
11. The appellant's proposed modifications also show a much reduced area that excludes land containing HGV trailers and various other materials. This would not be an accurate record of the Land to which the alleged breach applies, and therefore would not be an acceptable amendment.

Civil Engineering contractor's yard

12. The civil engineering business is said to be a small but financially necessary part of his business. I saw evidence of items usually associated with such a business, including kerbstones, wire reinforcing mesh and bricks. I accept that some machinery may well be used for both agricultural and civil contracting work.
13. But as stated above, a ground (b) appeal is simply that the matters alleged in the enforcement notice have not taken place as a 'matter of fact'. Therefore,

¹ Shown shaded green on Appendix 2 of the appellant's Grounds of Appeal

from the appellant's own evidence and what I saw on my visit, there is no dispute that use as a civil engineering contractor's yard is taking place.

Agricultural contractor's yard

14. I accept that some farm equipment, such as the combine harvester, can sometimes be used or loaned out to do other farmers a favour. The machinery would sometimes need to leave the farm to get to other fields, including the appellant's own land south of the A52. In my experience, it is not unreasonable for farmers to lend out farm equipment, plant and machinery to other farmers, or even carry out some farm work for others because they have the equipment. This does not necessarily amount to an agricultural contracting business and the appellant's signed and dated² Statement of Truth confirms this.
15. The Council confirmed that removal of 'an agricultural contractor's yard' from the enforcement notice would not prejudice either party. From the evidence before me I am satisfied that any agricultural contracting use on the land is likely to be ancillary to the farm. I will therefore exercise my powers under s176(1)(b) of the 1990 Act to vary the notice accordingly.

Conclusion on ground (b)

16. The appeal succeeds in part in relation to the agricultural contractor's yard. Therefore, I will vary the notice to delete such references.

Appeal on ground (f)

17. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control, or to remedy any injury to amenity, which has been caused by any such breach.
18. The notice, as varied, requires various uses of the land listed under section 5.i)a) to f) on the notice to cease, and various items listed under section 5.ii)a) to g) to be removed from the Land, which are not part of the mixed residential and agricultural use. Therefore, the purpose of the notice is to remedy the alleged breach and the requirements do that.
19. For an appeal on ground (f) the appellant must show that the requirements of the notice are excessive to remedy the breach and that 'lesser steps' would achieve the same end.
20. The appellant considers the requirements to be 'excessive and overly punitive' and has suggested 'lesser steps' for some of the requirements, based on the premise that some of the plant and machinery required to be removed by the notice is also used in association with the general farming business and activities on the Land, including that some earth moving on the farm is necessary at times.
21. He therefore suggests that the phrase "*that is not ancillary to the residential or agricultural use*" is added to the ends of Requirement 5.i)a) and Requirement 5.ii)a). He refers me to a previous appeal decision³ on the Land where the Inspector considered the visual impact of waste piles on the Land. However, the Inspector's comments relating to the Green Belt and visual amenity are not relevant to the grounds of appeal before me.

² 29 May 2020

³ APP/U1050/A/09/2097766

22. From my experience I accept that from time to time there can be some earth moving and the temporary storage of stone or gravel as part of normal agricultural processes and jobs around the farm. The additional wording would ensure that any stone/soil etc is only for use on the appellant's Land and not as part of any waste importation and/or treatment business, and therefore its presence and usage should be modest and temporary for the job in hand. I therefore find the additional suggested wording, in relation to the cessation and removal of the waste business related activities from the Land, would be appropriate and still achieve the same end of removing the waste business and its activities.
23. The appellant also claims that the list of items that must cease to be stored on site is excessive, as is the list of items that must be removed, because some items are used as part of the normal farming practices on the land. To this end he regards the existing phrase "*that is not ancillary to the residential or agricultural use*" is not precise enough. I accept that some of the items may also be used for agriculture, and the appellant should know what these are. However, the appellant has not supplied a list of items he needs to retain on site to give the matter any greater clarity. Therefore, in the absence of substantive evidence I find the existing Requirements 5.i)f) and 5.ii)g) of the notice are not excessive.
24. With regards the civil engineering contractors business, I accept that some machinery would also double-up for use on the farm, but this is already provided for in Requirement 5.ii)g). Retaining the use and equipment for the civil engineering contractor's business would not remedy the breach and remove one of the alleged mixed uses. Hence the appellant's suggested amendments would not be a lesser step.
25. The appellant considers the cessation of the use of the storage shed, currently used by the renderer's and builder's businesses, does not reflect the application submitted for a Use Class B8 (storage) use. I understand that the Council has since declined to determine the application. Any concerns about that process are a matter between the appellant and the Council. I will therefore retain the requirements for these uses to cease and all materials and equipment in connection with them to be removed from the Land.
26. Since the appeal was lodged planning permission has been granted⁴ for the brick barn to be offices (Use Class B1). I observed that the building was being used for the storage of various domestic paraphernalia but the use of the brick barn, or its use as an office, does not form part of the matters alleged.
27. For the reasons above, the appeal of ground (f) succeeds in part only in so far as the words "*that is not ancillary to the residential or agricultural use*" should be added to end of the Requirements 5.i)a) and 5.ii)a) and b).

Other Matters

28. I acknowledge the various comments from a number of third parties. As the appeal is only proceeding on grounds (b) and (f) I have considered only matters in relation to these grounds.

⁴ ERE/0318/0044 granted 21 November 2019

Conclusion

29. For the reasons given above I conclude that there is no use on the land of an 'agricultural contractor's' business and that some of the requirements of the notice are excessive. The appeals under grounds (b) and (f) therefore succeed in part to that extent. I am varying the enforcement notice accordingly, prior to upholding it.

K. Stephens
INSPECTOR