
Appeal Decisions

Site visit made on 29 July 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2020

Appeal A: APP/Z4718/C/20/3251797

Appeal B: APP/Z4718/C/20/3251798

Land at the back of 33 Wilshaw Road, Meltham, Holmfirth HD9 4DZ

- 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 appeals are made by Mr Adrian Smith (Appeal A) and Mrs Lorraine Smith (Appeal B) against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 25 March 2020.
- The breach of planning control as alleged in the notice is: Without planning permission:
 1. The material change of use of land from agriculture or nil use to storage and the associated siting of a lorry back; and
 2. Operational development consisting of the erection of decking.
- The requirements of the notice are:
 - a) Cease the use of the land outlined in red for the use of storage
 - b) Remove the lorry back
 - c) Remove the area of decking.
- The period for compliance with the requirements is:
 1. To complete step 5 (a) above – within 28 days from the date that this notice takes effect.
 2. To complete step 5 (b) above – within 28 days from the date that this notice takes effect.
 3. To complete step 5 (c) above – within 28 days from the date that this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Summary of the Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Decisions

1. It is directed that the enforcement notice be corrected and varied by:
 - Deleting the text in paragraph 3 after the wording 'Without planning permission:' and replace it with 'operational development consisting of the erection of a lorry back and the erection of an area of decking.'
 - Deleting the following text in the first sentence of paragraph 4 'and within the last 10 years in respect of the material change of use'
 - Deleting all of the text in paragraph 5 and replacing it with 'Remove the lorry back and the area of decking from the Land outlined red on the plan attached to the notice.'

- Deleting all of the text in paragraph 7 and replacing it with 'Within 28 days from the date that this notice takes effect.'. Renumber paragraph 7 to paragraph 6.
 - Renumber paragraph 6 to paragraph 7.
2. Subject to the corrections and variations above, Appeal A and Appeal B are dismissed and the enforcement notice is upheld.

Procedural Matter

3. The appellants do not dispute that the decking is unauthorised and is development requiring planning permission. They have indicated that the decking will be removed as soon as COVID-19 restrictions allow it to be removed safely. At the time of my site visit I noted that the decking had been dismantled. My considerations in this appeal therefore relate solely to the alleged material change of use of land to storage and the associated siting of a lorry back.

Appeals A and B on ground (c)

4. The ground of appeal is that the matters alleged in the notice, namely the material change of use to storage and the associated siting of a lorry back, do not constitute a breach of planning control. The appellants' case is that the secure unit is a temporary structure as it is sitting on timber skids and can be moved easily by a hiab truck. It is not fixed to the ground except by its own weight and the cladding does not prevent it being moved. It is used to store mowers, etc for the upkeep of the land on which it is placed and does not fall within the definition of development in accordance with s55 of the Town and Country Planning Act 1990 (the Act), and there has been no material change of use of the Land.
5. Section 55 (1) of the Act includes in the definition of the word '*development*' the material change in use of the land. This is what the allegation in the notice is aimed at; a material change in use of the Land as opposed to the erection of a building on the Land. However, although the Council has alleged a material change in the use of the Land, they also consider the siting of the lorry back to be a building operation.¹
6. The Council refers to the tests for the siting of such items being set out in the case of *Cardiff Rating Authority v Guest Keen Baldwin's Iron & Steel Co Ltd* [1949] 1 KB 385. This decision and the need for three specific tests (as to what constituted '*a building*' for the purposes of the Act) was reinforced by the cases of *Skerritts of Nottingham Limited v Secretary of State for the Environment, Transport and the Regions* [2000] 2 P.L.R. 102 and *R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin).
7. In terms of '*permanence*', whilst accepting that the lorry back could be easily moved, it is clear that the appellant wishes for it to become a more permanent storage unit. A base of hardcore has been laid for it to sit on and construction works undertaken to clad it. Furthermore, it has already been on the Land for approximately two years. In addition, in its planning context it has an impact that would be significantly noticeable (in terms of its physical presence) if it

¹ LPA Statement of Case, Para 4.9

remains in this location. I appreciate that in terms of its 'fixation' it is not bolted to the ground. However, the courts have held that such a unit can, simply by its own weight, be considered to be fixed to the ground.

8. With regard to the three tests, I consider that because of its size, physical presence and degree of permanence, in this particular location, a building operation has occurred within the meaning of development under s55 (1) of the Act. The lorry back is a building rather than a mere chattel or moveable structure placed on the Land and it is not a temporary structure.
9. My conclusion is that there has been development for which no planning permission was granted by the local planning authority. This building operation is not permitted development under any of the provisions of the Town and Country Planning (General Permitted Development Order) (England), 2015. A breach of planning control has occurred and the appeals on ground (c) must therefore fail.

The Enforcement Notice

10. The breach of planning control alleged in paragraph 3 of the notice alleges a material change of the use of land to storage and associated siting of a lorry back, and operational development in respect of the erection of decking. However, taking into account my findings on Appeals A and B on ground (c), it is a building operation that has occurred with the erection of a lorry back which is being used for storage purposes. The breach of planning control should therefore relate solely to operational development rather than a material change of the use of the Land. Given that the lorry back has been on the Land for only two years, and taking into account the representations relating to operational development that have been made by the appellants and the Council, I am satisfied that there would be no injustice to either the appellants or the Council if I were to correct the breach to allege operational developmental consisting of the erection of a lorry back and the erection of an area of decking. The purpose of the notice would not change, only the wording of the breach and the requirements to reflect the corrected allegation.

Other Matters

11. I have had regard to the appellants' suggestion that there are many other storage units in fields, on land, and within the curtilages of houses in the vicinity of the appeal site. However, this consideration is not of relevant to my conclusions on an appeal on ground (c).
12. The appellants also suggest that the plan attached to the notice is wrong. However, from my own observations on my site visit, and in the absence of any substantive evidence which would support that suggestion, or an appeal on ground (e), there is no reason to correct the plan.

Conclusion

13. For the reasons given above and taking into account all other matters raised, I conclude that the appeals should not succeed and the enforcement notice is upheld with corrections and variations.

Elizabeth Pleasant

INSPECTOR