



Appeal Decision

Site visit made on 5 August 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2020

Appeal Ref: APP/L3815/C/19/3236267

Land at Itchenor Park, Itchenor, Chichester, West Sussex

- 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 D Barty against an enforcement notice issued by Chichester District Council.
 - The enforcement notice was issued on 29 July 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, change of use of the Land to the storage of boats, boat hulls, moulds, frames, boat trailers, wooden pallets, metal cages, boxes, magazines and packaging.
 - The requirements of the notice are: (i) Cease the use of the Land for the storage of boats, boat hulls, moulds, frames, boat trailers, wooden pallets, metal cages, boxes, magazines and packaging, and (ii) Remove all boats, boat hulls, boat moulds, frames, boat trailers, wooden pallets, metal cages, boxes, magazines and packaging from the Land.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

Preliminary Matters

2. The allegation does not specify that there has been a 'material' change of use of the land. It is however plain from the notice that a material change of use is being enforced against and so injustice to the parties would not arise from making this correction.
3. The appellant contends that the Council has not identified the correct planning unit as it has not included the substantive boatyard area to the east. However, whilst it may be necessary to determine what the planning unit is in order to make an assessment of whether any material change of use has occurred, a notice does not need to identify the planning unit. I have also considered whether planning permission already exists for the matters alleged under the ground (c) appeal. The notice is clear in that it tells the recipient what the Council consider to be the alleged breach and what must be done to remedy that breach.

The ground (e) appeal

4. This ground of appeal concerns whether the enforcement notice was properly served on everyone with an interest in the land.
5. The Council accept that they failed to serve on an interested party, namely Wessex Bristol Investments Ltd, who own the moulds that are situated on the land affected by the notice.
6. However, even though the notice has not been served correctly on all the interested parties, I have powers under S176(5) of the Act to disregard non-service provided that neither an appellant nor other relevant persons had been substantially prejudiced by the failure to serve him or her.
7. The appellant brought the enforcement notice to the attention of Wessex Bristol Investments Ltd by means of email, prior to the date the notice would have taken effect or for an appeal to be lodged. Accordingly, they could then have chosen to engage with the process and/or make their own representations on the issues, should they have wanted to do so. No such concerns have been raised by them. Furthermore, comprehensive grounds of appeal have been brought against the enforcement notice, including that on ground (a). Accordingly, any relevant parties with an interest in the land cannot be said to have been substantially prejudiced.
8. I conclude that consequently the appeal on ground (e) fails.

The ground (b) appeal

9. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control had not occurred as a matter of fact at the time the enforcement notice was issued.
10. However, the appellant accepts that the storage use has occurred and so the ground (b) appeal must fail. I have considered whether planning permission exists and if the notice should more appropriately relate to a breach of condition under the ground (c) appeal.
11. The appeal on ground (b) therefore fails.

The ground (c) appeal

12. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
13. The appellant contends that condition 13 of planning permission WI/07/00188/FUL (the planning permission) allows for the storage of boats at the appeal site. Correspondence from the Council¹ in 2018 appears to agree with this proposition and a previous enforcement notice was withdrawn.
14. However, the Council then issued a further enforcement notice, which is the subject of this appeal. The Council now contend that there is no planning

¹ Emails of 12 July 2018 and 9 August 2018

permission for a storage use at the appeal site and consider the lawful use to be that of agricultural land. It also highlights a series of enforcement interventions where it has sought to prevent the encroachment of the boatyard onto the appeal site.

15. The appellant relies on the planning permission to support his contention that it allows for the storage of boats at the appeal site. However, that planning permission does not relate to a use of land, but the demolition of an office building and the erection of an office/boat building and extension and re-cladding of an existing boat manufacture building. As both parties recognise, there was then a requirement to plant and maintain landscaping at the appeal site; in accordance with condition 17 of the planning permission.
16. The appellants contention about the planning permission, which related solely to operational development as opposed the use of land, does not therefore demonstrate on the balance of probabilities that there is planning permission for the use of the appeal site for the storage of boats, in accordance with condition 13 of the planning permission, or otherwise. The fact that it was included in the red line as part of the application site, does not grant planning permission for the change of use of the land or confirm its automatic incorporation into the planning unit. It is simply an area of land where planting is required. The evidence does not demonstrate, on the balance of probability, that the storage use alleged is ancillary to the boat yard but even if that were the case, there has still clearly been a material change of use of the land identified on the plan. The appeal decision referred to is not therefore of assistance in this regard.
17. The appellant has not brought to my attention any other planning permissions or a certificate of lawfulness to demonstrate on the balance of probabilities that there has not been a breach of planning control.
18. The appeal on ground (c) therefore fails.

The ground (a) appeal

Main Issue

19. The main issue is the effect of the change of use on the landscape and scenic beauty of the Chichester Harbour Area of Outstanding Natural Beauty (AONB).

Reasons

20. The site lies outside of any designated settlement policy area and is approached via a narrow road that predominantly serves the boatyard. The site itself is located immediately to the west of the developed boatyard and is bounded by mature trees. It is mainly set to grass. The site is also in the buffer for the Chichester Special Protection Area, amongst other designations, and is in close proximity of a Conservation Area.
21. The change of use enforced against relates to the use of the appeal site for the open storage of boats and the other associated items attacked by the enforcement notice.
22. The site is in a sensitive location, which abuts a public footpath along the water's edge of Chichester Harbour. During my site visit I could see that parts of the site were overgrown, but nevertheless its character and appearance is

closely associated with farmland to the west, as opposed the developed boatyard to the east.

23. Whilst the site is well enclosed, and I accept that the wider visual impact is limited, it nevertheless forms part of a flat and otherwise open rural landscape with the distinctive special quality of being in close proximity of the Harbour.
24. The use of the land for the open storage of boats is therefore at-odds with its rural location. It has introduced a marine related storage use beyond the established harbour-side development which detracts from the distinctive and special qualities of the AONB. It has resulted in the erosion of this sensitive landscape and to some extent the perception of tranquillity associated with this.
25. I have very little evidence concerning the future needs of the boatyard or why the open storage of the boats and other items enforced against requires a countryside location. The appellant says that his fallback position is critical in assessing the merits of the ground (a) appeal. However, the matters raised under the ground (b) and (c) appeals have already failed and I also do not accept that a planning condition to restrict storage would mitigate the harm to the AONB I have identified.
26. I conclude that the change of use is harmful to the landscape and scenic beauty of the AONB in contravention of Policies 43, 44, 45 and 48 of the Chichester District Council Chichester Local Plan: Key Policies 2014-2029 (the LP). These policies, amongst other things, require development to: reinforce and respond to, rather than detract from, the distinctive character and special qualities of the AONB; provide measures for mitigation of any detrimental effects; require a countryside location; and, to not have an adverse impact on the tranquil and rural character of the area. For the same reasons the change of use contravenes the adopted Joint Chichester Harbour Area of Outstanding Natural Beauty Supplementary Planning Document and the conserving and enhancing the natural environment objectives of the National Planning Policy Framework. I however do not find conflict with Policy 50 of the LP as this is aimed at net increases in residential development.

Other Matters

27. The Council has also raised matters of sustainable development and nature conservation. However, as I have found the change of use harmful in respect of the main issue, I need not consider these other matters further.

Conclusion

28. For the reasons given above I conclude that the appeal on ground (a) should fail.

The ground (f) appeal

29. The purpose of the enforcement notice is to remedy the breach of planning control as it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives.

30. The appeal has already failed on grounds (b) and (c) and therefore the lawful use of the appeal site is not for the storage of boats, or any parts thereof. It is therefore not excessive to require the removal of boats and the other such items that are required to be removed by the notice.
31. As no other lesser requirements are before me, the appeal on ground (f) therefore fails.

The ground (g) appeal

32. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short.
33. The appellant puts forward that one year is required, as outside storage is essential in order to secure the long-term viability of the boatyard and that alternative storage areas would need to be sought. However, I have very limited evidence to persuade me how an additional 6-month period for compliance would help secure the long-term viability of the boatyard, or, what impediments there might be to securing alternative storage areas within the current period for compliance, notwithstanding that the moulds are said to be owned by a third party.
34. The appeal on ground (g) therefore fails.

Overall Conclusion

35. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission.

Formal Decision

36. It is directed that the enforcement notice be corrected by:
- inserting the words '*the material*' between '*Without planning permission,*' and '*change of use*' in section 3.
37. 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.

Paul T Hocking

INSPECTOR