



Appeal Decision

Site visit made on 17 August 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2020

Appeal Ref: APP/V1505/C/19/3219855

Land at Great Oaks, Thomas Road, Bowers Gifford, Essex

- 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 Mrs Julia Hills against an enforcement notice issued by Basildon District Council.
 - The enforcement notice was issued on 22 November 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of vacant land for the storage of plant equipment and waste materials associated with a jobbing tradesperson together with the storage and/or parking of motor vehicles and other chattels.
 - The requirements of the notice are:
 - (i) Cease the unauthorised use by removing all motor vehicles, trailers, plant equipment, tools and equipment, waste materials and other chattels and/or associated with a jobbing tradesperson from the land.
 - (ii) Dismantle all associated structures facilitating the unauthorised use of land and remove all resultant detritus.
 - (iii) Return the land to its former condition by levelling and re-cultivating with grass seed.
 - The period for compliance with the requirements is:
 - (i) 1 month after this notice take effect.
 - (ii) 2 months after this notice takes effect.
 - (iii) 3 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision

1. The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Matters concerning the notice

2. The Notice includes the term 'and/or' within the allegation. It is important that the allegation is clear. S176(1) gives me the power to correct any defect, error or misdescription in the Notice or vary the terms of the Notice so long as I am satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority. It is clear from the evidence before me that it is both the storage and parking of motor vehicles and other chattels that the Notice attacks. I shall therefore delete 'or' from the allegation and am satisfied that the correction can be made without causing injustice.
3. Requirement 5(i) of the notice combines the requirement to cease the unauthorised use and remove the various items associated with the use. For clarity, the requirement should specify the use that the Council wishes to cease. This is clear from the notice and as such, neither party would be prejudiced if I correct the notice in this regard. I will correct the notice to

require the use of the land for the storage of plant equipment and waste materials associated with a jobbing tradesperson together with the storage of and parking of motor vehicles and other chattels to cease. I shall also delete 'or' from requirement 5(i) as it introduces uncertainty for the appellant.

Procedural Matters

4. Appeals against the Notice were originally submitted by Mr John Hills¹ and Mrs Julia Hills². Prior to determination of the appeal Mr Hills passed away. The appeal will therefore proceed in Mrs Hills' name only.
5. When the appeal was lodged the appellant requested a hearing. However, the Council has confirmed it is happy for the appeal to proceed by way of written representations and, following my assessment of the evidence I am satisfied that I have sufficient information on which to make a decision.
6. The Council makes reference to third party photographic evidence within its statement and has also drawn my attention to a representation it received from the occupier of 'Selmar'. However, the Council has not made this evidence available as part of the appeal and so I am unable to afford it any substantive weight in my consideration of the appeal.

Ground (d)

7. An appeal on ground (d) is made on the basis that, at the date when the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Section 171B(3) of the Town and Country Planning Act 1990 (as amended) sets out that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
8. There is no dispute that the site is being used for the alleged use. Consequently, the main issue is whether the use began more than 10 years before the date of the issue of the enforcement notice, the relevant date being 22 November 2008³ and, if so, whether it continued without significant interruption for at least 10 years thereafter. Case law has established that it is for the appellant to make their case on the balance of probabilities.
9. The appeal site comprises an irregular shaped plot of land bound by wooden fencing. The land is generally flat, with a number of mature trees on its periphery and a section of dense vegetation extending from the western edge towards the middle of the site. The appellant states that the agreed planning unit is the whole site, i.e. that which is being enforced against and, on the basis of the evidence before me and what I saw on site, I agree with this conclusion.
10. A chronology of use of the appeal site submitted by the appellant setting out details of ownership and occupation of the site from 1963 onwards. The appellant purchased the land from Mark Nicholson in 2015, at which time it is stated that the whole site was covered with building materials and dense undergrowth. It is also stated that there remained a barn, stable and shed plus

¹ Appeal reference APP/V1505/C/19/3219854

² Appeal reference APP/V1505/C/19/3219855

³ Namely 10 years prior to the date of issue of the notice.

- a corrugated shed located along the western boundary and south of the entrance.
11. A letter signed by Mr Nicholson, the previous owner, describes a 2.5 acre plot of land at 201 Pound Villa which, during the 1970's to early 80's was used to store caravans, with the rear part of the land used as a small builders yard and plant storage which was accessed from Thomas Road. Within the letter Mr Nicholson also confirms that he used the field for the keeping of horses during this period.
 12. Prior to 1992, it was necessary to show that the breach of planning control had taken place prior to 1 January 1964 and that it had continued from then; s174(2)(e) as originally enacted. However, it is not alleged that the use took place prior to 1964. Although Mr Nicholson's letter details that his parents purchased the site in 1963, the use of the land as a builder's yard and plant storage is stated to have occurred during the 1970's to early 1980's.
 13. After 1992, there is a paucity of information regarding the use of the site until 2005, when Mr Nicholson states that Jim Hislop used the site for storing building materials while he renovated nearby barns/workshop. However, no details have been provided to show how the site operated. Moreover, whilst Mr Nicholson's evidence is not disputed, it appears to relate to a much larger area of land. As a result, it is not clear which uses Mr Nicholson is suggesting took place where.
 14. Aerial photography provided by the Council, dated September 2008, shows the appeal site to be relatively clear, with vegetation and what appear to be one or two vehicles on the land as well as a small number of other objects on the ground. From the aerial photographs provided, it seems more likely that the storage of caravans referred to by Mr Nicholson was taking place on land to the east of the appeal site.
 15. In addition to the use of the site by Mr Hislop, it is stated that Paul Caygill stored a caravan inside one of the buildings between 2008 to 2017. A signed letter, dated 24 December 2018, confirms that Mr Caygill had an agreement to store a caravan within the barn situated on the land, which was stored on land next to the barn due to a state of irreparable [sic]. A signed letter, dated 16 December 2018, states that Mr Paul M Dann has been 'using the land since April 2009 for the sole purpose of storing a trailer [sic] and various building materials such as timber within the barn, until it fell into disrepair when I then stored materials on the land'.
 16. Both Mr Caygill and Mr Dann make reference to a barn in their letters. The appellant advises there was a building on the land, possibly 10m or so wide and even deeper with a gabled roof, which was cleared away in 2016 and has provided me with photographs which show a barn⁴. The appellant has also provided a plan setting out the location of the barn, to the south of the entrance. However, no such building is evident (within the appeal site) on the pre-2016 aerial photographs provided by the Council and it is not possible to ascertain the location of the barn from the photographs provided by the appellant.

⁴ Detailed as being removed by appellant in 2016 and materials from its deconstruction stored in open on site.

17. Although the site is vegetated, I would expect to be able to see a barn 10m or so wide on aerial photography, particularly as it is possible to see vehicles and other paraphernalia stored on the land to the east of the appeal site in both the 2008 and 2010 aerial photographs. This calls into question whether the matters detailed by Mr Caygill and Mr Dann relate to the appeal site or some other piece of land within the vicinity of the site.
18. It is stated that Mr Hislop left the site in 2009, after which some building materials remained which were used by Mr Nicholson for maintenance of other buildings on site. Aerial photography provided by the Council, dated December 2010 show a relatively clear site, with limited disturbance evident. Aerial images dated July 2013 and August 2014 show dense vegetation, which is likely to reflect the time of year the images were taken, with no apparent items associated with the alleged use evident.
19. Aerial photographs dated April 2017, May 2017 and June 2018, by contrast, show material being stored on the ground and disturbed ground, most likely as a result of vehicles moving frequently within the site. The appellant asserts that there is no evidence of abandonment, rather the normal ebb and flow of the intensity of the uses. The appellant accepts that the 2017 and 2018 photographs show an increase of activity on the ground compared to previous years. However, it is asserted that due to the dense vegetation one cannot be certain what is on the ground.
20. I accept it is not possible to determine whether any materials were stored beneath the vegetation. However, had there been activity within the site of any significance, I would expect to see some evidence of disturbance, as can be seen in the later aerial photographs. Whilst I accept that aerial photographs represent a snapshot in time and do not always provide a continuity of evidence when it comes to establishing (or disproving) uses, they do point towards there being very little activity within the site prior to 2017.
21. I accept that the uses do not have to occur on each and every part of the site, however, there should be at least some substantive evidence of activity within the appeal site as a whole. Furthermore, fencing which was present during my site visit and which is evident in later aerial photographs submitted by the Council appears absent in aerial photographs prior to 2017, with no apparent delineation between the appeal site and the land to the east. This, together with Mr Nicholson's description of a 2.5 acre plot of land, suggests that the appeal site previously comprised part of a wider site.
22. Thus, for the reasons given above, it has not been demonstrated with sufficient precision and lack of ambiguity that, on the balance of probabilities, the use in question took place without material interruption, such that the planning authority would not have been able to take enforcement action, throughout the relevant period. The appeal on ground (d) therefore fails.

Ground (f)

23. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

24. The appellant states that no structures have been identified by the Council which have been unlawfully erected in connection with the uses and that the Council has failed to identify any structure which might have been in place for less than 4 years prior to 22 November 2018. S173(5) gives power to require the alteration or removal of buildings or works, or the carrying out of building or other operations, for the purposes of remedying the breach. Where works have facilitated and been part and parcel of the change of use, the removal of such works can be required, even though not specifically itemised in the change of use allegation. As such, I consider requirement (ii) does not go beyond what is necessary to remedy the breach.
25. With regards to requirement (iii) the appellant asserts that it is unnecessary and unreasonable to require the land to be levelled and grassed since the land would be agricultural and would seed quickly over time. From the evidence before me it appears that the site was previously a grassed field. The requirement to re-cultivate the site with grass seed does not therefore represent an improvement. However, as set out above, I saw that the land appeared generally flat and so I agree it is unnecessary to require that the site is levelled. Accordingly, I shall vary the notice to remove the requirement to level the land. To this extent the ground (f) appeal succeeds.

Ground (g)

26. An appeal on ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant has drawn my attention to the corona virus (Covid-19) pandemic and suggests that 6 months is a reasonable period for compliance if the EN is upheld. Whilst Covid-19 has had a profound effect on all areas of life in the UK, restrictions are significantly more relaxed than they were at the start of the pandemic. I see no reason why it would not be possible for the appellant to arrange for the site to be cleared.
27. The Council states that the appellant has had sufficient time during the course of the appeal to discuss the matter of temporary planning permission for the storage of building materials on the land, in order for replacement site(s) to be found. However, I note that the requirements now fall upon Mrs Hills rather than Mr Hills, who was directly concerned with the use of the site and in this regard I am sympathetic.
28. Whilst I would agree that 6 months is too long to cease the use, I consider one month to cease the to return the land to its previous condition is too short. I consider 3 months to comply with requirement (i) is a more reasonable time period given the circumstances of the appellant and I will vary the notice accordingly. I will also vary the period for compliance with requirements (ii) and (iii) to reflect the additional time given for compliance with requirement (i).

Conclusion

29. For the reasons given above I conclude that the requirements are excessive and that a reasonable period for compliance with requirement 5(i) would be 3 months. I shall also vary the period for compliance with requirement 5(ii) and 5(iii) to reflect the change to 5(i) and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) and (g) succeeds to that extent.

Formal Decision

30. It is hereby directed that the enforcement notice be corrected by:

- Within section 3 of the Notice, after the words 'with the storage and' delete '/or' so that it reads 'with the storage and parking of...'
- Within section 5(i) of the Notice, after the words 'Cease the' the insertion of 'use of the land for the storage of plant equipment and waste materials associated with a jobbing tradesperson and the storage and parking of motor vehicles and other chattels' and the deletion of 'unauthorised use by removing' and the replacement with 'and remove'

31. The appeal is allowed on ground (f) and (g) and it is directed that the enforcement notice be varied by:

- Within section 5(iii) of the Notice, the deletion of 'levelling and' so that it reads 'Return the land to its former condition by re-cultivating with grass seed.'
- Within section 5(i) of the Notice, the deletion of 1 month and the substitution of 3 months as the period for compliance.
- Within section 5(ii) of the Notice, the deletion of 2 months and the substitution of 4 months as the period for compliance.
- Within section 5(iii) of the Notice, the deletion of 3 months and the substitution of 5 months as the period for compliance.

32. Subject to these variations and corrections the enforcement notice is upheld.

M Savage

INSPECTOR