



Appeal Decision

Site visit made on 8 September 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/T0355/C/20/3245392

Land known as The Barn, Great Martins Farm, Beenhams Heath, Shurlock Row, Reading RG10 0QD

- 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 Vernon Moss against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead.
- The enforcement notice was issued on 20 December 2019.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land to store vehicles.
- The requirements of the notice are: (i) Cease the use of the land for the storage of vehicles; (ii) Remove from the land all vehicles that are being stored, parked or stowed with the exception of vehicles relating to the lawful use of the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The enforcement notice is quashed.

The enforcement notice

1. The enforcement notice alleges a material change in the use of the appeal site to a use for vehicle storage. During my visit, I saw that in excess of seventy vehicles were being stored at the site, mostly on land to the south of the appellant's dwelling. In addition to the dwelling, the site contains domestic gardens, outbuildings and areas of hard surface, as well as extensive open pasture. Residential and agricultural uses are therefore occurring at the site, in addition to the vehicle storage use. The main parties agreed that residential and agricultural uses are also taking place at the site and that both are primary uses.
2. There was no firm evidence before me to suggest that the site did not comprise a single planning unit. There was no obvious physical or functional separation between the residential, agricultural and vehicle storage uses. The Courts have established that where two or more primary uses are within the same planning unit and the uses are not ancillary to one another, a mixed use is taking place¹. Where, as in this instance, the alleged breach of planning control is a material change of use and more than one primary use is taking place within the planning unit the allegation is required to specify all components of the mixed use, even if it is considered expedient that only one of its components should

¹ *Burdle and Williams v SSE and New Forest DC* [1972] 1WLR 1207.

cease. The Courts have held that where there is a mixed use, it is not open to the Council to decouple elements of it. The use will be a single mixed use with all of its component activities². Consequently, the allegation in the notice is incorrect.

3. The power to correct and vary the notice in s176 (1) of the Act is wide, the relevant consideration being whether there would be injustice to the appellant or the Council. Neither main party objected to the notice being corrected to also refer to the residential and agricultural uses in the allegation. However, making such a correction without corresponding steps in the notice requiring the other components of the mixed use to cease would result in a deemed unconditional grant of planning permission for those activities in the event the notice were to be fully complied with, having regard to s173 (11) of the Act. As the concept of a mixed use provides for fluctuation in the scale and extent of the component uses without necessarily resulting in a material change of use, a consequence of correcting the notice would therefore be that residential use of land outside the curtilage of the dwelling would benefit from a deemed grant of planning permission. This cannot be an outcome that the Council would find acceptable. For this reason, the Council would suffer injustice if the notice were to be corrected along the above lines.
4. As well as correcting the notice it could be varied, so that there were corresponding steps to require the cessation of any residential use of land outside the curtilage of the dwelling. However, additional requirements would make the notice more onerous and I cannot be certain if other uses were required to cease that the appellant would not have made a different case to that before me now in relation to any additional requirements. Injustice would therefore arise.
5. I have also considered whether the notice could be varied by deleting the attached plan and substituting it with a plan reducing the site area to not include land in use for residential purposes. However, it is not clear from the evidence before me where the precise lawful boundaries of the residential use are. In any event, there appears to be some vehicle storage use taking place within that area which the Council may or may not regard as ancillary to the residential use. Consequently, it would still be necessary to include land in a mixed use on the plan. Such a variation would also have implications for the appellant's case at appeal, which refers to land that would no longer be a part of the site were the plan to be varied along the above lines. Furthermore, in the absence of evidence to indicate otherwise, reducing the land affected by the notice would not accurately reflect the extent of the correct planning unit. Moreover, if the planning unit was not enforced against as a whole the stored vehicles could simply be moved to another part of the site, thereby defeating the operation of the notice. As a result, varying the notice as set out above would also give rise to injustice.
6. The address in the banner heading above is the same as that in the notice at paragraph 1. However, both main parties referred to the address as "Beenhams Farmhouse". The plan attached to the notice is headed "Beenhams Farm". The notice could have been corrected to refer to the more accurate address, in the interests of certainty. There would have been no implications

² *R (oao) East Sussex CC v SSCLG & Robins & Robins* [2009] EWHC 3841 (Admin).

for the land affected by the notice and no injustice. However, this does not affect my findings on the matters set out above.

7. Accordingly, I find that the notice is incapable of correction.

Conclusion

8. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (c), (f) and (g) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Formal Decision

9. The enforcement notice is quashed.

Stephen Hawkins

INSPECTOR