



Appeal Decisions

Site visit made on 25 November 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 05 January 2021

Appeal A: APP/P1045/C/20/3256995

Land to the east of Alders Lane and north of Thatchers Lane

- 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 Philip Stokes against an enforcement notice issued by Derbyshire Dales District Council.
- The enforcement notice was issued on 1 July 2020.
- The breach of planning control as alleged in the notice is: -
 - a) Without planning permission, unauthorised engineering work, including retaining walls, to facilitate the formation of a compound area, the erection of enclosing walls and gate piers to this compound.
 - b) Without planning permission, utilising the compound for the storage of building materials, plant and equipment.
- The requirements of the notice are: -

In relation to the breaches set out in 3 (a):

 - i) Completely remove the compound, hardstanding, retaining walls and enclosure walls and piers from the site within the area hatched green on the attached plan, return the site to its original contours and replant the areas with grass.

In relation to the breach set out in 3 (b):

 - i) Cease the use of the area hatched green on the attached plan for storing building materials, plant and equipment.
- The period for compliance with the requirements is: -
 - i) 6 months in relation to the breach as set out in 3 (a)
 - ii) 3 months in relation to the breach as set out in 3 (b).
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (e) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

Summary Decision: The enforcement notice is quashed.

Appeal B: APP/P1045/C/20/3256996

Land to the east of Alders Lane and north of Thatchers Lane

- The appeal is made under section 174 of the 1990 Act as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Philip Stokes against an enforcement notice issued by Derbyshire Dales District Council.
- The enforcement notice was issued on 1 July 2020.
- The breach of planning control as alleged in the notice is: -

The extension of the domestic curtilage, engineering works and laying of hardsurfacing.
- The requirements of the notice are: -

A)

 - i) To cease the use of the area hatched green on the attached plan as residential curtilage
 - ii) Remove the hardstanding and retaining structures within the area hatched green on

the attached plan

iii) Regrade and replant the area hatched green on the attached plan as grassland B)

i) Remove retaining structures and hardsurfacing in the areas hatched blue on the attached plan and confine the access route and hardsurfacing within the area hatched black which accords with drawings 99-003 and 1950/16/200/B submitted with application 17/00107/PDA which is included as appendix 1 to this notice.

- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the 1990 Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

Summary Decision: The enforcement notice is quashed.

Procedural Matters

1. There are 2 appeals before me that relate to 2 enforcement notices on the same land and the appellant is the same for both appeals. As such, I have dealt with the appeals together as the issues relating to the enforcement notices are interrelated.

Background

2. In 2017 prior approval¹ (2017 PA) was granted for the conversion of an agricultural building to a dwellinghouse on part of the appeal site through Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). In 2018 planning permission² was granted in relation to the removal of excavated material, sifting out the rubble and the deposition of soil on the field to the south of the access from Alders Lane.

The Notices

3. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
4. The appellant identifies what he considers are the failings of the notices within his statements of case. In relation to Appeal A the appellant states that it is not clear if the enforcement notice (Appeal A notice) is alleging a material change in use and whether the storage of building materials, plant and equipment is part of a mixed use of the land. He has also highlighted that the areas relating to the separate requirements of the 2 enforcement notices overlap. In relation to the enforcement notice in Appeal B (Appeal B notice) he states that domestic curtilage is not a use of land.
5. The Council accepts that there is an overlap between the areas identified in the plans attached to the enforcement notices. It considers that this could be corrected without injustice to the main parties. It also considers reference to an extension of the domestic curtilage does represent a change of use of land forming part of the domestic property. The Council states that it considers that the compound, affected by the Appeal A notice, is used for the storage of plant, equipment and materials that are not associated solely with agriculture.
6. There is no dispute that the 2017 PA was granted with a tight area drawn around the building that was to serve as its 'curtilage'. Nevertheless, 'curtilage'

¹ Ref No: 17/00107/PDA

² Ref No: 18/00627/FUL

is a legal term describing the relationship of land to a building; it is not a use of land for planning purposes. The description of the alleged breach, relating to Appeal B notice, does not refer to a material change of use and within the reasons for issuing the notice the 4 year time limit (section 171B of the 1990 Act) is cited rather than the 10 year time limit. Nevertheless, the requirement at A) i) relates to the use as residential curtilage. It is clear that there is no dispute between the parties that part of the land is currently in use in association with the residential use of the former agricultural building. Moreover, the area of land in that use appears to be appreciably larger than that shown within the 'curtilage' on the 2017 PA.

7. Both parties have stated that the lawful use of the land prior to the 2017 PA being granted was agriculture and I have no reason to dispute this. I noted at the site visit that there was numerous pieces of plant, machinery and equipment within the compound area but that there were also pieces of machinery and equipment on other parts of the land. The reasons for issuing the Appeal A notice cite both the 4 year and 10 year time limit. Therefore, it is reasonable to consider that the alleged breach relates to a material change in use and operational development.
8. To make an assessment as to whether a material change of use has occurred the planning unit is an accepted tool for determining the most appropriate area against which to assess the materiality of that change. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes. A mixed or composite use is where the occupier carries on a variety of activities and it is not possible to say one is incidental to the other. The component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land.
9. The land affected by both enforcement notices (the land edged red) is the same and it is occupied by the appellant. Even though the compound area is formed by retaining structures, walls, fencing and gates there is little physical separation between the residential use, the agricultural use and the alleged storage use on the land edged red. This is highlighted by the overlap of the areas (hatched in green, blue and black) indicated on the plans attached to the enforcement notices.
10. There is little evidence before me to indicate whether an assessment of the planning unit has been undertaken by either party. Nevertheless, based on the evidence before me and my observations at the site visit it appears that the land edged red forms a planning unit. It is not necessary for the previous use to be recited in a notice alleging a material change of use. However, the description of what constitutes that alleged use needs to relate to the overall use of the planning unit so that the notice tells the person, on whom it is served, fairly what they have done wrong and what they must do to remedy it. Moreover, it is also required to enable the terms and scope of a deemed application under section 177(5) of the 1990 Act to be established.
11. Consequently, in these cases it is reasonable to consider that an alleged breach relating to a material change of use of the land edged red should cite a mixed use of residential, agriculture and storage of building materials, plant and equipment not associated with the agricultural use. Neither of the notices before me relate to a mixed use. I consider that the resultant lack of clarity and inherent uncertainty makes it very difficult for the appellant to tell what he

is supposed to have done wrong in relation to the use of the land. He may have wished to appeal on additional grounds for either or both of the notices if the alleged material change in use of the land had been clear and precise. As such, I do not consider that I can correct the notices in these respects without injustice to the appellant.

12. I acknowledge that both notices seek to restore the land to its previous condition. However, I consider that the appellant would also find it very difficult to tell what he needs to do to comply with them as the requirements of the notices overlap and conflict with each other and also lack clarity. The extent of the hatched green areas, as shown on the attached plans to the notices, could be corrected so that they did not overlap onto each other without injustice to either party.
13. Requirement i) in relation to the breaches set out in 3 a) of the Appeal A notice states: *'Completely remove the compound, hardstanding, retaining walls and enclosure walls and piers from the site within the area hatched green on the attached plan, **return the site to its original contours and replant the areas with grass.***' This conflicts with requirement B) i) of the Appeal B notice which states:- *'Remove retaining structures and hardsurfacing in the areas hatched blue on the attached plan and **confine the access route and hardsurfacing within the area hatched black** which accords with drawings 99-003 and 1950/16/200/B submitted with application 17/00107/PDA which is included as appendix 1 to this notice.'* The conflict and lack of clarity arises as parts of the hatched black area of that notice also overlap with the hatched green area of the Appeal A notice. In the areas of overlap the appellant would rightly be confused as to what works were needed to ensure compliance with both notices. It is not clear if or how the notices could be corrected to resolve the conflict and lack of clarity of these requirements without injustice to either party.
14. Although all the requisite components of both of the notices are in place, in my judgement, both notices are defective in a number of important respects, not least the vague manner in which the material change of use allegations are framed and the absence of any reference to a mixed use. All this leads me to conclude that the defects are such that the notices fail to tell the person, on whom they have been served, fairly what they have done wrong and what they must do to remedy it.
15. For the reasons given above, and having regard to all the other matters raised, I conclude that the notices do not specify with sufficient clarity the alleged breaches of planning control and the steps required for compliance. It is not open to me to correct the errors in accordance with section 176(1) (a) of the 1990 Act since injustice would be caused were I to do so. The notices are invalid and will be quashed. In these circumstances, the various grounds of appeal as set out in section 174(2) of the 1990 Act, and the applications deemed to have been made under section 177(5), do not fall to be considered.

Formal Decisions – Appeal A and Appeal B

16. The enforcement notices are quashed.

D. Boffin

INSPECTOR