



Appeal Decision

Site visit made on 4 January 2021

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 07 January 2021

Appeal Ref: APP/P4415/C/20/3258542

Land at Walseker Lane, Woodhall, Harthill, Sheffield S26 7YJ

- 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 Mark Hewitt against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The enforcement notice was issued on 22 July 2020.
 - The breach of planning control as alleged in the notice is the material change of use of the land from agriculture to a mixed use of agriculture, the importation and storage of waste, including the storing of non-agricultural vehicles, equipment, materials and items: The keeping of dogs, including the siting lorry bodies and caravans, the erection of walls and laying of hardstandings in association with the keeping of dogs.
 - The requirements of the notice are 1. Permanently cease the use of the land for importation and storage of waste; 2. Permanently cease the use of the land for keeping of dogs; 3. Permanently cease the use of the land for storing of non-agricultural vehicles, equipment materials and items; 4. Permanently remove from the land all waste; 5. Permanently remove from the land all lorry bodies and caravans; 6. Demolish and remove from the land all walls, hardstandings and other operational development carried out to facilitate the keeping of dogs; and 7. Permanently remove from the land all non-agricultural vehicles, equipment, materials and items.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (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.
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Decision

1. The enforcement notice is corrected by the insertion of 'of' between 'siting' and 'lorry' in the breach of planning control in section 3 of the notice.
2. The enforcement notice is varied by:
 1. the deletion of 'caravans,' in the breach of planning control in section 3 of the notice;
 2. the insertion of 'not associated with the lawful agricultural use of the land' after 'caravans' in requirement 5 in section 5 of the notice;
3. Subject to the correction and variations the appeal is dismissed and the enforcement notice is upheld.

Procedural matter

4. There is a typographical error, the omission of a word, in section 3 of the enforcement notice. The notice has been corrected accordingly.

Reasons

The ground (b) appeal

5. The enforcement land, about 0.35 hectares and roughly rectangular, is on the west side of Walseker Lane behind residential properties. The northern part of the land is in agricultural use whilst the southern part is occupied by derelict and dilapidated buildings, truck bodies, caravans and other items.

6. The Council was notified, in a letter dated 26 August 2020, that a dilapidated building in the south-west corner of the land was to be used for Class B1 purposes from 27 August 2020 under permitted development rights afforded by Class R of The Town and Country Planning (General Permitted Development) Order 2015. The building has not been the subject of any refurbishment works to make it suitable for any office use and the fixing of a sign to the outside of the building does not provide any indication that the use has been commenced. In any event, the letter and the purported commencement date of the use postdate the date of issue of the enforcement notice and this matter, therefore, is not relevant.

7. The lawful use of the land on the date of issue of the enforcement notice was agriculture. The storage of, specifically, non-agricultural vehicles, equipment, materials and other items on the land is a breach of planning control. Close to the centre of the site are two lorry bodies that have been adapted to create kennels for the keeping of dogs, paved hardstanding has been installed to create runs for the dogs and the five runs are subdivided by block walls. The keeping of dogs to this degree cannot be claimed to be "...on the site in association with the lawful use of the site...", and the hardstanding and walls installed to facilitate the keeping of dogs is also a breach of planning control.

8. From photographic evidence and from information gained at the site visit there are many used and clearly waste items on the land that do not derive from any past lawful use and must therefore have been imported onto the land. The importation and storage of waste and the storage of non-agricultural vehicles, equipment, materials and other items on the land was occurring on the date of issue of the enforcement notice. On that date dogs were being kept on the land and lorry bodies, walls and hardstanding had been installed to facilitate the keeping of dogs. These are breaches of planning control. There is no evidence to indicate that any caravan was on the land in association with the keeping of dogs.

9. The breach of planning control alleged in the enforcement notice has occurred as a matter of fact, apart from the siting of any caravans in association with the keeping of dogs. To this limited degree the ground (b) appeal succeeds and the notice has been varied accordingly.

The ground (c) appeal

10. For the reasons given above the purported change of use of a building on the land to Class B1 use under permitted development rights is not relevant. Planning permission has not been granted for the change of use of the land as alleged in the notice and none of the elements of the breach of planning control is permitted development. The ground (c) appeal thus fails.

The ground (d) appeal

11. The Appellant maintains that some elements of the alleged breach of planning control are immune from enforcement action through the passage of time. He has referred to at least one caravan, the storage of lorry bodies, and the storage of non-agricultural vehicles, equipment and items such as a skip and a shipping container. For a breach of planning control to be immune from enforcement action the Appellant must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the breach commenced more than ten years before the date of issue of the notice and subsisted continuously thereafter. The critical date in this case is 22 July 2010.

12. Aerial photographs and streetview images provide snapshots in time of what was on the land before the critical date and during the ten year period. They show a changing use of the land though some features, such as a lorry body close to the south-east corner of the land and another to the north-west of this lorry body, were established before the critical date and have been in place throughout the ten year period. These and other features were in place to support the lawful use of the land for agriculture and are not associated with the unlawful uses of the land that have been introduced since the Appellant purchased the land a few years ago.

13. The breach of planning control identifies those uses that have been introduced to create a mixed use of the land with the lawful use of agriculture. These uses have been introduced during the ten year period and are not immune from enforcement action. The features on the land that have been in place since before the critical date and that were introduced to support the agricultural use of the land do not justify a conclusion that the breach of planning control, or any element of the breach, is immune from enforcement action through the passage of time. The ground (d) appeal thus fails.

The ground (f) appeal

14. The building that was the subject of the Class R notification is not in office use and there is no lawful business use of the land. The lawful use of the land is agriculture and it is not excessive for the Council to require the removal of all non-agricultural vehicles, equipment, materials and other items. There are items on site, such as a caravan and a lorry body or two, that have been in place to support the lawful agricultural use of the land and it would be unreasonable for the Council to require their removal. Other caravans and lorry bodies are not associated with agriculture and they should be removed to comply with requirement 5 of the enforcement notice. To provide certainty on this matter requirement 5 of the notice has been varied to be 'Permanently remove from the land all lorry bodies and caravans not associated with the lawful agricultural use of the land'.

15. It is not excessive for the enforcement notice to require the cessation of unlawful uses of the land; the importation and storage of waste, the keeping of dogs and the storage of non-agricultural vehicles, equipment, materials and other items. It is also not excessive for the notice to require the removal, in addition to non-agricultural items, of all waste and all that has been introduced, such as walls and hardstandings, to support the unlawful keeping of dogs. With regard to the removal of waste and comments made in the appeal statement, an aerial photograph indicates that the land was in a tidy state in 2018 and it is only since the land was purchased by the Appellant that it is, partly, in an untidy state.

16. The requirements of the notice are not excessive, are reasonably specific, and do not require the removal of any items that are associated with the lawful agricultural use of the land. The Appellant can be in no doubt what is required to remedy the breach of planning control. The ground (f) appeal thus fails.

The ground (g) appeal

17. The Appellant has not indicated, as he is required to do, what he considers to be a reasonable compliance period. In any event, three months is a reasonable time period to comply with the requirements of the notice and works of improvement to any buildings on the land could be lawfully carried out during the compliance period. The ground (g) appeal thus fails.

John Braithwaite

Inspector