



Appeal Decision

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

Decision date: 26 January 2021

Appeal Ref: APP/E2734/C/16/3150461

White Wall Farm, White Wall Lane, Felliscliffe, Harrogate HG3 2JZ

- 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 Act).
 - The appeal is made by Mr M Grange against an enforcement notice issued by Harrogate Borough Council.
 - The enforcement notice was issued on 24 March 2016.
 - The breach of planning control as alleged in the notice is the material change of use of the land to a use for the storage of vehicles, vehicle parts and tyres.
 - The requirements of the notice are cease the external storage of vehicles, vehicle parts and tyres and remove all such from the site.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (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 deletion of 'Policies C1, C2, SG3 and SG4 of the Harrogate District Local Plan' in section 4 of the notice and the substitution instead of 'policies C1 and C2 of the Harrogate District Local Plan and policies SG3 and SG4 of the Harrogate District Core Strategy'
2. The ground (g) appeal succeeds and the period for compliance set out in section 5 of the enforcement notice is varied to be six months.
3. Subject to the correction and the variation the appeal is dismissed and the enforcement notice is upheld.

Correction of the enforcement notice

4. Development plan policies are incorrectly referenced in the reason for issue in section 4 of the enforcement notice. This error has been corrected. As there is no ground (a) appeal to consider this matter does not prejudice the Appellant.

Background

5. Over four years have passed since the appeal was submitted to The Planning Inspectorate. In that time many attempts have been made to arrange a Public Inquiry at which an Inspector could hear aural evidence. Those attempts have failed. The Appellant has maintained that his appeal should be heard at a

Public Inquiry so that he could cross-examine witnesses, who would have to be summoned to appear. However, the Appellant has not indicated why this would be necessary, has not indicated what questions he would be asking, and has not, most importantly, submitted a list of persons who would need to be summoned.

6. Consequently, following a review of all appeal documentation, it has been decided, under powers afforded by section 319A(4) of the Town and Country Planning Act 1990 as amended, that a Public Inquiry is not necessary. The appeal has therefore been determined with reference to written evidence and documents submitted by, principally, the Appellant and the Council.

7. Legal grounds of appeal are determined with regard to circumstances that existed on the land that is the subject of the enforcement notice on the date of issue of the notice. There is, furthermore and importantly, no ground (a) appeal to determine, so it has been decided that a site visit is not required.

Reasons

The ground (b) appeal

8. In 2011 the Council received complaints that land at White Wall Farm was being used for the external storage of vehicles, vehicle parts and tyres. This followed enforcement action by the Environment Agency in 2008 for the same activity and preceded similar action by the same Agency in 2012. Furthermore, though the Environment Agency's requirements were ultimately satisfied the land continued to be used for the external storage of vehicles, vehicle parts and tyres and an aerial photograph dated 6 October 2015, submitted in evidence by the Council, clearly shows the use to be ongoing.

9. Evidence indicates that the land was in use for the storage of vehicles, vehicle parts and tyres on the date of issue of the enforcement notice. The breach of planning control has occurred and the ground (b) appeal thus fails.

The ground (c) appeal

10. The Appellant maintains that planning permissions exist for the use alleged in the enforcement notice. In 2004 planning permission 6.99.26.J.FUL was granted for the conversion of a mistle building at White Wall Farm to use for Class B1 purposes. Condition 21 of the permission, which remained after an appeal had the effect of deleting two other conditions, prevents the outside storage of goods, materials and refuse outside the building other than in approved refuse storage areas. In 2006 planning permission 6.99.26.K.FUL was granted on appeal for the conversion of the mistle barn, a pole barn and a cow cubicle to Class B1 uses. Condition 13 of the permission states that there shall be no outside storage of goods, materials and refuse outside the building other than in approved refuse storage areas.

11. In 2007 planning permission 6.99.26.O.FUL was granted for an agricultural shed to be used for Class B1 purposes. Condition 14 of the permission prevents the outside storage of goods, materials and refuse (except in approved refuse areas). The Appellant lodged an appeal against various conditions of the permission and the Inspector varied condition 14 to "There shall be no storage of goods, materials and refuse outside of the confines of the building..., other than in

accordance with a scheme submitted to and approved in writing by the Local Planning Authority”.

12. None of the three aforementioned planning permissions, or any other permissions granted, permit the external storage of vehicles, vehicle parts and tyres. On the contrary, the permissions consistently seek to prevent outside storage other than refuse storage associated with Class B1 uses and in approved areas. In this regard, the external storage of vehicles, vehicle parts and tyres is not associated with any Class B1 use and is not approved or permitted by any planning permission. The ground (c) appeal thus fails.

The ground (d) appeal

13. To succeed under ground (d) the Appellant must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the use alleged in the notice was a principal use of the land that commenced more than ten years before the date of issue of the notice and thereafter continued uninterrupted. The critical date is 24 March 2006. The Appellant purchased White Wall Farm in 1997 but, because it was tenanted, did not take up possession until 2003. He claims that the enforcement land was first used for the storage of vehicles, vehicle parts and tyres shortly after he gained possession.

14. The planning Inspector who considered the appeal against refusal of planning application 6.99.26.K.FUL visited White Wall Farm on 26 September 2006 accompanied by an Officer of the Council, Mr Williams. In an internal memo dated 2 October Mr Williams stated that “It has been some months since I last visited the site, and there has been a significant increase in the number of vehicles etc being stored on the site. The attached sketch plan gives a rough idea of what is on site, which includes vehicles (some apparently scrap), container bodies, and other scrap machinery”.

15. A Planning Inspector visited White Wall Farm on 19 June 2007 after the close of a Public Inquiry held to consider an enforcement notice relating to the unauthorised use of the land for the stationing of a caravan. In his decision the Inspector describes the farm buildings and land around them but makes no reference to any external storage of vehicles, vehicle parts or tyres on the date of the visit. Another Planning Inspector visited White Wall Farm on 24 June 2008 and also did not mention in her description of the site in her subsequent decision the external storage of vehicles, vehicle parts or tyres on the land.

16. Mr Williams’ memo does indicate that vehicles and other items were stored on the land on 26 September 2006 but it is not clear whether the items were ancillary to the principal agricultural use of the land or constituted a separate use such that the land was in a mixed use on that date. It is possible that vehicles were stored on the land at the time of the two aforementioned site visits but it is likely that the Inspectors considered this use of the land not to be material or to be ancillary to the principle use of the land for agriculture, and not therefore worthy of mention in their decisions.

17. The application form for planning permission 6.99.26.O.FUL, dated 13 April 2007, indicates that the existing use of the site/building, which includes the enforcement land, was ‘agriculture’. Furthermore, the Inspectors did not mention any use of the land other than agriculture in their decisions. If the land was in

use for the external storage of vehicles, vehicle parts and tyres in 2006 and 2007 then that use was ancillary to the agricultural use of the land and was not part of a mixed use. The Appellant has not provided sufficient precise and unambiguous evidence to justify a conclusion, even on the balance of probability, that the external storage of vehicles, vehicle parts and tyres was a principal use of the land that commenced before 24 March 2006. The ground (d) appeal thus fails.

The ground (e) appeal

18. The Council accepts that they attached appeal guidance to the enforcement notice that related to listed building enforcement appeals and not guidance relating to planning enforcement appeals. The Appellant therefore maintains that the notice was not properly served on him. However, Section 176(5) of the Act makes provision for such an error to be disregarded if the Appellant has not been substantially prejudiced by the failure to serve the correct notice on him. The enforcement notice that was served on the Appellant, setting aside the guidance, was correct and the Appellant submitted a valid appeal before the statutory deadline. He has not been at all prejudiced by the failure of the Council to attach the correct guidance to the enforcement notice. The ground (e) appeal thus fails.

The ground (f) appeal

19. The breach of planning control is the storage of vehicles, vehicle parts and tyres and the requirement of the notice is 'cease the external storage of vehicles, vehicle parts and tyres and remove all such from the site'. In this regard the Council is under-enforcing because they are not seeking the removal of vehicles, vehicle parts and tyres from within the buildings on the land. The only remedy to the unauthorised external storage of vehicles, vehicle parts and tyres is the cessation of that use of the land and the removal of externally stored vehicles, vehicle parts and tyres from the land. The requirement of the notice is not excessive and the ground (f) appeal thus fails.

The ground (g) appeal

20. Two months is an insufficient time period to comply with the requirement of the notice and consideration must also be given to difficulties associated with the current COVID-19 health crisis. These difficulties do not justify a compliance period of 18 months as requested by the Appellant. They do, however, justify a compliance period of six months, which strikes a balance between the need to remedy a breach of planning control as soon as is reasonably possible and the need to provide adequate time to comply with the requirement of the notice. To this extent the ground (g) appeal succeeds and the enforcement notice has been varied accordingly.

John Braithwaite

Inspector