



Appeal Decision

by **M Madge DipTP, MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th March 2021

Appeal Ref: APP/N4720/C/20/3262513

Land at Stonehaven, Selby Road, Halton, Leeds LS15 0PG

- 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 Alasdair McLean against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 7 October 2020.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use to a mixed use of a dwelling house and for the storage and parking of vehicles, plant and machinery, importation and storage of waste building materials, siting of a storage container and skip incidental to a building business operated from the residential property.
- The requirements of the notice are:
 - Step 1 Cease the use of the Land for the purposes of the storage of vehicles and machinery associated with the building use, including the importation of waste building materials and remove from the site all materials and other parts and equipment used for the purpose of building and all vehicles, plant, and the storage container, and skips used in connection with the use from the site.
 - Step 2 Cease the unauthorised use as a building business from the Land.
 - Step 3 Remove any materials and detritus from the Land resulting from compliance with steps 1 – 3.
 - Step 4 Keep the Land free of vehicles, machinery, waste materials and other parts and equipment associated with the building business.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Application for costs

1. An application for costs was made by Mr Alasdair McLean against Leeds City Council. This application is the subject of a separate decision.

Decision

2. It is directed that the enforcement notice is corrected by:

The deletion of the words 'without planning permission, the unauthorised change of use to a mixed use of a dwellinghouse and for the storage and parking of vehicles, plant and machinery, importation and storage of waste building materials, siting of a storage container and skips incidental to a building business operated from the residential property' and the substitution of the words 'without planning permission, a material change of use to a mixed use comprising of a dwellinghouse and a building business, including the storage and parking of vehicles, plant and machinery, importation and storage of waste building materials, and the siting of a storage container and skip incidental to the building business' in paragraph 3: MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL.

The deletion of Steps 1 and 4 and the substitution of the words 'Step 1 Cease the use of the Land for the storage and parking of vehicles, plant and machinery, importation and storage of waste building materials, siting of a storage container and skip incidental to the building business.' in paragraph 5: WHAT YOU ARE REQUIRED TO DO.

The deletion of the words 'steps 1 – 3' and the substitution of the words 'steps 1 and 2' in Step 3 of paragraph 5: WHAT YOU ARE REQUIRED TO DO.

Subject to the corrections, the appeal is allowed, and the enforcement notice is quashed.

Preliminary matter

3. Various planning permissions and Lawful Development Certificates have been issued in relation to the erection of extensions and outbuildings at the property. The Council claim that these works were substantially complete by May 2019. The appellant however argues that the works were not completed until late 2020. While I saw that the extensions and outbuildings are complete, I also saw that building works are on-going to the appellant's kitchen, which is undergoing a complete refurbishment, including re-wiring, new insulation, re-plastering, kitchen units, worktops and redecoration.

The notice

4. The definition of 'development' is set out in S55(1) of the 1990 Act and includes '...the making of any **material** change in the use of any buildings or other Land'[my emphasis]. The allegation only identifies a 'change of use', however it is clear from the evidence that the appellant understands the allegation to represent development. Furthermore, the allegation does not precisely identify the mixed use. For clarity, I will correct the allegation to read *'without planning permission, a material change of use to a mixed use comprising of a dwellinghouse and a building business, including the storage and parking of vehicles, plant and machinery, importation and storage of waste building materials, and the siting of a storage container and skip incidental to the building business'*.
5. The requirements in paragraph 5 of the notice should reflect the matters alleged to avoid ambiguity. The wording of Step 1 shall be corrected accordingly.
6. Step 3 refers to complying with 'steps 1 - 3', when it should refer to 'steps 1 and 2'. This is a typographical error and I will correct the notice accordingly.
7. Steps 1 and 2 require the cessation of the unauthorised use of Land for the storage and parking of vehicles, plant and machinery, importation and storage of waste building materials, siting of a storage container and skip incidental to a building business operated from the residential property. Step 4 is therefore unnecessary and shall be deleted.
8. No injustice would be caused to the appellant or Council by the corrections identified as they put the notice in order.

Ground (b)

9. To succeed on this ground the appellant should show, on the balance of probability, that the property is not being used for the mixed-use purposes of a

dwelling and building business. The appellant's case is that he has been undertaking work on his property for a considerable number of years and the matters alleged in the notice are associated with that work. Except for the storage container, which he claims was originally sited in connection with the development of Stonehaven but has since been used for domestic storage purposes.

10. A considerable number of images, taken from security camera footage, show a variety of vehicles and machinery being driven up and down and parked on the shared private driveway at various times of the day. On a limited number of occasions, images suggest that laden vehicles have arrived on the shared drive and then left empty. Their contents possibly having been placed into the skip located on the appellant's driveway. Activity Sheets also show activity at times usually associated with work start and finish times.
11. While the appellant indicates that these activities were connected to his on-going development at the property, if that were the case, I would expect workers, vehicles, etc to remain at the property throughout the day. However, the Activity Sheets and images suggest that having been at the property for relatively short durations, vehicles would leave. Furthermore, if the on-going works throughout 2020 were predominantly internal works, there would appear to be little justification for the regular movement of machinery.
12. The images provided may not specifically show building materials or building equipment being loaded or unloaded on to vehicles. However, on the balance of probability, I consider it more than likely that the activities identified as being associated with the alleged building business have occurred.
13. The appeal on ground (b) fails.

Ground (c)

14. For this ground to succeed the appellant should show that, if the matters alleged have occurred, they do not constitute a breach of planning control. The burden of proof lies with the appellant, and the test of the evidence is on the balance of probability.
15. The lawful use of the Land is as a Class C3 dwellinghouse and the matter alleged is a mixed use of residential and building business. While the meaning of 'use' is provided in s336(1) of the 1990 Act, the concept of 'material change of use' ("MCU") is not defined. Establishing whether a MCU has occurred is achieved by identifying if there has been a significant difference in the character of the activities taking place, as a matter of fact and degree. The matter to consider is whether the change of use of the Land from Class C3 to Class C3 and building business was material.
16. The appellant claims that he and his son use work vehicles to travel to and from their place of employment. This is not unusual and would account for the overnight parking of such vehicles, which the images show taking place on the shared driveway and not on the Land. Whether those vehicles are loaded or not is immaterial. The appellant also confirms that his wife carries out office work associated with the operation of his business from home. This of itself would not amount to a MCU, particularly not during 2020 when people were encouraged to work from home due to the Covid 19 pandemic.

17. The images and Activity Sheets provide little evidence of the loading, unloading and storage of building materials, plant and equipment on the Land. Most activity shown takes place on the shared driveway, which is outside the Land identified in the notice. The appellant claims that all building materials brought to the site were in association with the on-going works to his property. He also claims that there would be no reason for him to store materials, plant or machinery at his home when he has a commercial yard. In the absence of any evidence showing building materials, plant or machinery on the Land, there is nothing to disprove the appellant's evidence.
18. I accept that the images do suggest that waste building materials were unloaded from a few vehicles into a skip located on the appellant's drive. These images do not however show a level of activity likely to be associated with business use.
19. There is no dispute that the storage container has been on the Land since 2010. It is generally accepted that a storage container is a 'building' for the purposes of s55(1) of the 1990 Act, due to their size, degree of physical attachment and permanence. The storage container has been on the Land for more than 4 years and is therefore immune from enforcement. While its original purpose may have been changed to ancillary residential use, the lawful use of the Land is Class C3. The use of the storage container therefore benefits from the planning permission under which Stonehaven was built.

Overall conclusion

20. On the balance of probabilities, the appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on ground (d) does not need to be considered.

M Madge

INSPECTOR