



Appeal Decisions

Inquiry Held on 8 June 2021

Site visit made on 11 June 2021

by Katie Peerless Dip Arch RIBA

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

Decision date: 5 July 2021

2 Appeals at Land at Oak Tree Farm, Partridge Lane, Newdigate, Dorking RH5 5BW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Cameron Kearl against enforcement notices issued by Mole Valley District Council.
 - The enforcement notices were issued on 23 July 2020.
 - The evidence to the Inquiry was given under oath.
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Appeal A: APP/C3620/C/20/3259609

- The breach of planning control as alleged in the notice is the material change of use of the site to a mixed use of agriculture and;
 - i) The importation and storage of building materials and builders' waste; ii) The importation, deposit and disposal through land-raising of mixed inert waste, comprising mixed waste soils, concrete and rubble; iii) The importation, deposit and disposal of mixed non-inert waste, comprising unsalvaged broken timbers, wood, metals & plastics; iv) The importation, deposit, sorting, salvage and storage of mixed non-inert waste, comprising assorted timber, white goods, insulation materials, porcelain, boards, scrap metal, associated plastics and tyres; v) Residential use of mobile homes; vi) Residential use of a building; vii) The stationing of assorted roll on/roll off commercial and domestic type skips and storage containers for sorting, storage and export of assorted salvaged waste materials comprising timber, wood, white goods, building materials, porcelain, metal and tyres; viii) The stationing of assorted shipping containers and vehicle bodies for storage of builders materials; ix) The importation, deposit and disposal of lorry bodies, refrigeration units and caravans; x) The storage and distribution of scaffolding materials; xi) A builder's yard (utilising the northern half of the main barn building) comprising the storage of plant, vehicles, machinery, builders' materials and portable toilets and laying of hardstanding and fencing associated with the mixed use.
- The requirements of the notice are:
 - 1) Cease the use of the site for: i) The importation and storage of building materials and builders waste; ii) The importation, deposit and disposal of general waste, earth, scrap, tyres and wood; iii) Residential use of mobile homes shown hatched green on plan 2 attached to the enforcement notice; iv) Residential use of a building shown hatched yellow on plan 2 attached to the enforcement notice; v) The stationing of skips and storage containers for import, deposit, storage and export of waste: vi) The stationing of storage containers for storage of builders materials; vii) The importation, deposit and disposal of lorry bodies, refrigeration units & caravans; viii) The storage and distribution of scaffolding materials; ix) A builder's yard (utilising the northern half of the main barn building) comprising the storage of plant, vehicles, machinery and builders' materials.
 - 2) Remove from the site:
 - i) All building materials and builders waste; ii) All general waste, earth, scrap, tyres and wood; iii) All mobile homes and caravans; iv) All storage containers and refrigeration units; v) All lorry bodies, skips & caravans; vi) All scaffolding materials; vii) All plant,

vehicles, machinery, builders' materials and portaloos associated with the builder's yard; viii) All hardstanding and fencing which facilitates the unauthorised mixed use of the site the extent of which is indicated on plan 2 attached to the enforcement notice within the area hatched in blue; ix) The 5no. open sided structures and remove the associated hardstanding the locations of which are shown hatched red on plan 2 attached to the enforcement notice; x) The low level building, the location of which is shown hatched red on plan 2 attached to the enforcement notice; xi) The open sided corrugated metal building, the location of which is shown hatched red on plan 2 attached to the enforcement notice; xii) The wooden pitched roof building, the location of which is shown hatched red on plan 2 attached to the enforcement notice;

- The period for compliance with the requirements is: for requirements 1(i) & (ii): 1 month. For requirements 1 (iii)– (ix): 6 months. For requirements 2 (i) – (xii): 18 months
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) & (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/C3620/C/20/3259610

- The breach of planning control as alleged in the notice is the erection of: a) 5 no. open sided structures; b) A low level building; c) An open sided corrugated metal building d) A wooden pitched roof building;
 - The requirements of the notice are: i) Demolish the 5no. open sided structures and remove the associated hardstanding; ii) Demolish the low level building; iii) Demolish open sided corrugated metal building; iv) Demolish the wooden pitched roof building; v) Remove all resulting material and waste from the site following compliance with steps i), ii), iii) & iv).
 - The period for compliance with the requirements is: for requirements (i) and (v): 12 months. For requirements (ii) to (iv): 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) & (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. It is directed that the enforcement notice be varied by the substitution of plan 2 attached to this Decision for plan 2 attached to the enforcement notice, and the substitution of the following wording for requirements ix) – xi) for requirements ix) – xii) of the notice: ix) The 2 no. open sided structures numbered 1 and 8, the locations of which are hatched red on plan 2 attached to this Decision and remove the associated hardstanding; x) The low level building numbered 7, the location of which is shown hatched red on plan 2 attached to this Decision; xi) The wooden pitched roof building numbered 6 which is shown hatched red on plan 2 attached to this Decision. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is allowed insofar as it relates to the erection of 3 buildings (numbered 1, 6 and 8 on the plan attached to this Decision) and associated hardstanding and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for 2 no. open sided structures and associated hardstanding a wooden pitched roof building subject to the following conditions:
 - 1) The buildings hereby permitted, numbered 1, 6 and 8 on plan 2 attached to this Decision, shall be used only for agriculture or forestry and no other uses whatsoever.
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- 2) Within 3 months of the date of this decision, building numbered 5 on the plan attached to this Decision shall be demolished and the resultant materials removed from the site.
3. It is directed that the enforcement notice be varied by the substitution of plan 2 attached to this Decision for plan 2 attached to the enforcement notice, and the substitution of the following wording for requirements i) – iv) for the requirements i) – v) of the notice: i) Demolish the 2 no. open sided structures numbered 1 and 8, the locations of which are hatched red on plan 2 attached to this Decision and remove the associated hardstanding; ii) Demolish the low level building numbered 7, the location of which is shown hatched red on plan 2 attached to this Decision iii) Demolish the wooden pitched roof building numbered 6 which is shown hatched red on plan 2 attached to this Decision; iv) Remove all resulting material and waste from the site following compliance with steps i), ii) & iii)

Main Issues

4. I consider the main issues in this case are:

On ground (b) (Appeal A (ix) only): whether the alleged breaches of planning control have taken place as a matter of fact;

On ground (c) (Appeal A (ii) only): whether the alleged breaches of planning control do not require a grant of planning permission to authorise them;

On ground (d): whether the alleged breaches of planning control are immune from enforcement action through the passage of time and

On ground (a) (Appeal B only):

- (i) whether the development represents inappropriate development within the Green Belt and, if so, whether there are any material considerations that outweigh the harm caused by such development, and any other harm, and are sufficient to justify the proposal on the grounds of very special circumstances;

If these grounds fail then on ground (f) (Appeal A only): whether the requirements of the notice exceed what is necessary to remedy the breach of planning control or any injury to amenity and, on ground (g) (both appeals): whether the time for compliance is reasonable.

Site and surroundings

5. The appeal site is situated in Green Belt countryside between the villages of Newdigate and Charlwood. It contains a residential property, various buildings including a central main barn, other smaller barns and animal shelters (some in use at the time of the site visit) and there are a number of caravans, some occupied residentially, located around the site. The built development on the land, which includes areas of hardstanding, is situated adjacent to the centre of the boundary that runs approximately north west to north east along the bottom of the holding. The land surrounding this is laid to grass.
6. The site has a long history of planning enforcement with a number of enforcement notices being upheld at appeal. The full chronology of these are set out in the parties' evidence. I saw at the site inspection that whilst the Council has confirmed that some of the notices have been complied with, there are others that are still outstanding.

7. Situated around the site are various containers, lorry bodies, redundant refrigeration units, building materials (new and used), scaffolding, farm machinery and implements, animal feed, tyres, gas bottles, metal fencing and other metal items, various domestic items such as disused white goods and toys and what can only be described as heaps of general rubbish. Some of the containers, lorry bodies and buildings were being used for storage of farm equipment and vehicles, tools and building materials, animal feed and more miscellaneous items apparently unconnected with either agriculture or a builders' yard.

Reasons

Preliminary matter

8. The appellant makes the case that the structure, marked in yellow on Plan 2 attached to the enforcement notice, which is described as a building is mis-described and is, in fact, a caravan. At the site visit, I saw that the structure had started life as a mobile home but has been adapted to an such an extent that I consider it could no longer meet the definition of a caravan. To be a caravan the unit must be '*composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices*' and, when assembled be '*physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)*¹.
9. The unit has been clad externally with insulating material that is, in places, fixed to the original fabric and in others is supported on a separate frame surrounding the mobile home. This frame is in turn attached to a wooden structure that is firmly fixed to the ground. These modifications could not be readily separated from the original mobile home in order for it to be transported in one piece off the site. I therefore conclude that the structure now has the permanence of a building and there is no need to amend the description of it in the enforcement notice.

Appeal A

Ground (b)

10. I saw at the site visit that all of the uses referred to in the enforcement notices were taking place on site to some degree. The appellants dispute that there are any refrigeration units on site but, whilst those present are not in use and have had their operating parts removed, the items that the Council pointed out to me that they intended to refer to in the notice were clearly previously in that use. I consider that it is reasonable to describe the units in this way and the appeal in respect of them fails.

Ground (d) – mixed use

11. In order to succeed on ground (d), the appellant would need to show that the combination of primary activities that make up the mixed use of the site, whatever they might be concluded to be, have been taking place continuously, without the intervention of any other unauthorised primary use, for a total of 10 years prior to the issue of the enforcement notice.

¹ Definitions from the Caravan Sites Act 1968

12. It seems to me that the main elements of mixed use that the appellant claims are now lawful on the site are agriculture, a builders yard and a caravan site and the storage of various items, either ancillary to these uses or, if not linked to them, that have been stored on site for more than 10 years.
13. The last enforcement action that identified an unauthorised use was an enforcement notice issued by Surrey County Council on 11 January 2010. That notice was appealed² and the Inquiry into the case was heard in August 2010, with a decision on it being issued on 26 August 2010, after a site visit carried out on 5 August. The notice was upheld and the Council confirmed that it had been complied with in a letter dated 6 April 2011.
14. The appeal related to the importation of various waste materials including scrap metal and vehicles and the Inspector concluded that the mixed use enforced against was not immune from enforcement action. There were no appeals on grounds (b) or (c) in respect of the allegations relating to imported mixed waste including wood, asbestos, scrap metal and tyres and scrap vehicle bodies and indeed the Inspector noted that items on the land included disused cars, old lorry bodies, trailers and piles of mixed waste.
15. The case of *Beach v SSETR & Runnymede BC [2001] EWHC 381 (Admin)* established that mixed uses of land, even if they subsisted for a period exceeding 10 years prior to the issue of an enforcement notice, could not be treated as individual long term uses and, in that case, the Inspector had correctly considered that fluctuations and development of new uses comprised a change in the totality of use.
16. The Inspector who determined the 2010 appeal also applied these principles and set out, in some detail, the various uses that this site had been subject to since it was purchased by the appellant's father in 1986. He concluded that '*it is inconceivable that the use has continued without a material change in any ten year period since [the appellants father] Mr Kearl bought the site*' and '*it is impossible for there to have been a use of the land that became lawful by being continued for a ten year period at any stage in the history of the land*'. The appeal decision was not challenged and I find no reason to dispute these findings.
17. Therefore, at the time when the site visit was undertaken by the previous Inspector in August 2010, he concluded that there was an unlawful mixed use taking place on the site and the notice was upheld, even though the appellant was striving to demonstrate that the use had acquired immunity. The mixed use now alleged to be unlawful in this enforcement notice is different from the unlawful mixed use found to exist in August 2010, as it now includes enforcement against a builders' yard and residential caravans. The appellant confirmed that his building business began around 2001, so in any event, would not have been lawful by 2010.
18. Following the *Beach* principle, even if these uses existed prior to 2010, they cannot have acquired individual immunity as separate entities as they have always been part of an unlawful mixed use. Therefore, the current mixed use cannot have acquired immunity by the time this notice was issued in July 2020. The appeal on ground (d) in respect of the mixed use consequently fails. The appeal on ground (d), as it relates to the operational development, will be considered under Appeal B.

² Ref: APP/B3600/C/10/2122231

Ground (f)

19. The appellant's case on ground (f) is that some of the requirements of the notice are imprecise. However, the parties do not dispute that the site comprises a single planning unit and the notice calls for the removal of all unauthorised materials that do not relate to the 'fall back' position of a use for agriculture combined with the authorised residential use of the farmhouse.
20. It was also made clear at the Inquiry that the Council intended to 'under enforce' in respect of the land raising which is the subject of allegation (ii) and there is no requirement to remove this part of the development.
21. All the other requirements are related to the components of the mixed use enforced against which comprise the breach of planning control or are facilitating those components. The Council has confirmed that it is seeking to remedy that breach and it is not excessive for the notice to require their removal or for the various uses to cease. The appeal on ground (f) consequently fails.

Ground (g)

22. The appellant seeks more time to comply with the requirements but has not specified exactly how long he considers would be needed. The notice calls for the importation of building materials and builders' and other waste to cease within one month and it seems to me that this is a reasonable time scale.
23. In respect of the requirements to cease the unauthorised residential uses and the other uses within 6 months, again I consider that this would give the occupants and the builders' business sufficient time to relocate. If there proves to be a problem in this regard the Council has the power under s.173A of the Town and Country Planning Act 1990 to vary the time for compliance if circumstances indicate this would be reasonable.
24. All the other requirements, which concern the removal of the builders' materials, plant and machinery, scaffolding, general waste, caravans, lorry bodies and storage containers and various sheds and operational development facilitating the unauthorised use need to be completed within 18 months. Under Appeal B I will consider whether some of the operational development is authorised and required for agriculture but, where it is not, I consider that 18 months is sufficient time to remove the unauthorised items that I saw at my site inspection. The appeal on ground (g) therefore fails.

Appeals A and B

Ground (d) – operational development

25. This ground of appeal applies to 4 buildings and open sided sheds on the site that the appellant submits were completed more than 4 years before the issue of the enforcement notice. These comprise 2 barns to the west of the site (nos. 2 & 3 on revised plan 2 attached to this Decision) which are used for livestock, hay and silage, a workshop to the north east of the main central barn (4), and another cattle shed parallel to the main entrance drive (9).
26. The appellant gave evidence, supported by dated photographs, explaining that he constructed these buildings himself and confirmed under oath that they were completed at least 4 years prior to the issue of the enforcement notice. Although the Council submits that his evidence was somewhat ambiguous, I consider that he was specific enough about the dates in his evidence and the Council had no evidence of its own to counteract what he recalled.

27. From what I saw at the site inspection, I saw that the buildings are somewhat rudimentary and could well have been completed in the time frames suggested. I conclude therefore that the 4 buildings described above are immune from enforcement action and the appeal on ground (d) in respect of them succeeds. This means that both enforcement notices will be varied to reflect this finding.

Appeal B

Ground (a)

28. In the event that the appeal on ground (d) fails, or in the cases where it is accepted by the appellant that the 4 year immunity period does not apply, planning permission is sought for 5 of the buildings on the site. These comprise the 2 barns (2 & 3) in the west already considered under ground (d), another open sided barn to the north of them (1), a reconstructed barn adjacent to the central barn (6) and another cattle shed (8) in what is known as the front yard, close to the entrance drive.
29. I have already concluded that the 2 western barns (2 & 3) are immune from enforcement action through the passage of time and I will therefore now consider the other development for which the appellant seeks planning permission.
30. If these 3 remaining buildings are for agricultural purposes they would not be '*inappropriate development*' in the Green Belt as set out in paragraph 145 of the National Planning Policy Framework (the Framework).
31. The first of these is the open fronted steel framed hay store in the west of the site (1), which is a typical farm building in an agricultural use. The second is an open-fronted cattle shed that was in use for this purpose at the time of the site visit (8).
32. The Council submits that once enforcement notice A has been complied with, there would be other buildings, principally the main barn which is presently partly in an unauthorised storage use, that would be a suitable alternative to these buildings, which are not therefore genuinely required for agriculture. The appellant has explained that the herd of cattle kept on the site has expanded in number over recent years and that the new buildings are required to care for them. He also explained why the main barn is not suitable for keeping the cattle in over the winter and I have no reason to doubt this explanation. In any event, the Framework does not use the phrase '*genuinely required for agriculture*'; all that it states is that exceptions to inappropriate development include '*buildings for agriculture and forestry*'.
33. The buildings and associated hardstanding are contained within the operational part of the agricultural unit and, although of no design merit, are nevertheless typical agricultural buildings of modest size that do not appear out of place in this location. Provided they remain in an agricultural use, I consider that planning permission should be granted for these 2 buildings and hardstanding.
34. The final building for which planning permission is sought is the barn in the centre of the site which stands next to the main barn (6). This building has been constructed at right angles through the middle of a previously existing building, the ends of which still remain, although the southern end has been detached from the new section. This part and the central section are enforced against, whereas the northern part is not, although the appellant has volunteered to dismantle this end of the original building if planning permission is granted to retain the central section.

35. I consider that the central section can be considered as an exception to inappropriate development in the Green Belt as set out in paragraph 145 of the Framework. In my view it can either be considered under sub-sections (c) or (d) of that paragraph. Paragraph 145(c) allows for an extension or alteration of an existing, lawful building that, if the remaining parts of the original are demolished, would not result in a disproportionate addition over and above the size of the original. If it is not considered to be an alteration, it would fall within the definition in 145(d) which allows for replacement buildings that are not materially larger than the original and in the same use.
36. At present the building is used for storing old tractors and the Council submits that this is not an agricultural use but rather storage of personal items that are no longer able to be used on the farm. This may be so, but this is not the test set out in paragraph 145(c). This only limits the size of the building. If considered under 145(d) the building would be required to remain in the same use as previously. The authorised use of the original building would have been for agriculture or uses ancillary to this and if the new building is to be considered '*not inappropriate*' under 145(d), it would need to remain in this use.
37. As previously noted, there is no requirement in the Framework to demonstrate that the building is '*required*' for agriculture, only that it must be put to this use. In these circumstances, planning permission will also be granted for this building, subject to the condition that the other sections are demolished. A condition will also be imposed to make clear that the all the buildings are granted permission for agricultural or forestry purposes only, because of the site's location in the Green Belt, where development is otherwise strictly controlled.

Other matters

38. The converted mobile home (now a building) included in Appeal A is also shown on the plan attached to enforcement notice in Appeal B. However, this has been dealt with in Appeal A and the appellant has not asked for planning permission for it to be considered and has not paid the fee to include this building in the appeal on ground (a).

Conclusions

Appeal A

39. For the reasons given above I consider that the appeal should succeed on ground (d) in respect of the buildings numbered 2, 3, 4 and 9 as shown on plan 2 attached to this Decision and the notice will be varied accordingly. Otherwise, the appeal fails and the enforcement notice is upheld. However, as planning permission will be granted under Appeal B for buildings 1, 6 and 8, the requirements of the upheld notice will cease to have effect so far as inconsistent with the permission.

Appeal B

40. For the reasons given above, I conclude that the appeal should succeed in part only on ground (d), and I will vary the notice accordingly. I conclude that the appeal should succeed in part on ground (a) and planning permission will be granted for the other parts of the matter the subject of the enforcement notice.

41. I have not quashed the notice or removed the requirements in respect of the development permitted, to ensure that it is bound by the conditions attached to the planning permission which authorises them but, by virtue of s180 of the Act, the requirements of the upheld notice will cease to have effect so far as inconsistent with the permission. The appeal on ground (g) does not therefore need to be considered.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

Alan Masters	Of Counsel
He called	
Cameron Kearl	Appellant
Brian Woods BA MRTPI	WS Planning

FOR THE LOCAL PLANNING AUTHORITY:

Roderick Morton	Advocate for Mole Valley District Council
He called	
Neill Whittaker BSc (Hons) MA MRTPI	Ivy Legal Ltd for Mole Valley District Council



Plan

This is the plan referred to in my decision dated:

by Katie Peerless DipArch RIBA

Land at: Oak Tree Farm, Partridge Lane, Newdigate, Dorking RH5 5BW

Reference: APP/C3620/C/20/3259609 & 325910

Scale: NTS

