



Appeal Decision

Site visit made on 18 May 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

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

Decision date: 20 July 2021

Appeal Ref: APP/T0355/C/20/3264601

Land known as The Barn, Great Martins Farm, Beenhams Heath, Shurlock Row, Reading RG10 0QD (also known as Beenhams Farm, Beenhams Heath)

- 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 Vernon Moss against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead.
 - The enforcement notice, numbered 17/50102/ENF, was issued on 4 November 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the land from a mixed use comprising residential and agricultural uses (sue generis) to a mixed use comprising residential use, agricultural use and the use of the land for the storage of motor vehicles (sue generis).
 - The requirements of the notice are:
 - i. *Cease the use of the land for the storage of motor vehicles.*
 - ii. *Remove from the land all motor vehicles that are being stored, parked or stowed except for the those relating to the lawful uses of the land.*
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by:

- (i) by the deletion of the words "sue generis" and the substitution with the words "sui generis" in the allegation of the breach of planning control;
- (ii) by the deletion of all the words in requirement i. and its substitution with the words "Cease the mixed use of the land comprising residential use, agricultural use and the use of the land for the storage of motor vehicles (sui generis)";
- (iii) by the deletion of all the words after the word "stored" in requirement ii and the substitution with "other than a maximum of 10 vehicles stored within the curtilage of the dwellinghouse known as Beenhams Farm for purposes incidental to the enjoyment of the dwellinghouse as such, and vehicles on the agricultural land which are used for the purposes of agriculture.";
- (iv) by the deletion of 3 months as the period for compliance and its substitution with:

- a) The removal of 30 vehicles within 3 months.
 - b) The removal of all other vehicles within 6 months other than those referred to in requirement ii).
2. Subject to these variations and corrections, the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Mr Vernon Moss against the Council of the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate Decision.

Procedural matters

4. I have a duty to get the enforcement notice in order, if I can do so without prejudice to the Council or the appellant. The description of the alleged breach misspells the Latin phrase "sui generis". I shall correct this typographical error, as no prejudice would arise.

Appeal on ground (c) – that the matters stated in the notice do not constitute a breach of planning control

5. The starting point is to identify the lawful uses of the land. There is no dispute that a residential use is lawful; the farmhouse is a longstanding one. The remainder of the land has a lawful use as agriculture. Whilst I noted that there was a horse in a stable and one grazing on a field, this is insufficient evidence on its own to conclude that the land has an equestrian use.
6. It is difficult to be precise as to where the residential use ends and the agricultural use begins; as is typical of many farmhouses, the uses bleed into one another. It seems to me that the access drive, and the front and rear gardens are largely enclosed by the boundary enclosures, hedges and fencing. There is a difference in the character of the land to the north of the hedge line that roughly encloses the lawned area, which is dotted with statues, and contains a small animal pen. The boundary of the residential curtilage to the east of the house is less clear, but it seems to me that the hedge and fence lining the field access represent a physical boundary albeit that in this vicinity, the distinction between the two uses is less clear.
7. However, that is not critical for the purposes of the appeal on this ground. Alleging a mixed use does not mean that there is a lawful residential use or agricultural use over the whole of the appeal site.
8. Section 57 of the Act provides that planning permission is required, subject to certain exceptions which do not apply here, for the carrying out of development. Development is defined in Section 55 of the Act as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 58 explains the various ways in which planning permission can be granted, but the appellant does not argue that planning permission has been granted, either expressly or under a development order.
9. S.55(d) provides that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not be taken for the purposes of the Act to involve development.

10. The appellant has stored cars and vans on some land which is clearly part of the residential use of the dwellinghouse, whilst the bulk of the storage takes place on agricultural land. Over 80 cars were present on the land at the time of my visit, mainly Volkswagen models, many of which were in poor condition. The appellant argues that these vehicles are parked rather than stored, but many of them have clearly not moved for many years, and many are so densely packed together that walking between them is impossible. A parked vehicle is one which is in current use, and is kept for the short term or even longer, between periods of use. Whilst some of the vehicles I saw may be capable of being used as such, the majority were not. I am in no doubt that, in the round, the vehicles are stored rather than parked.
11. I consider that the visual impact of such a large and scattered collection of vehicles has materially changed the character of the land, whether that be in residential use or agricultural use. I am mindful that the appellant has already removed over 20 cars
12. The appellant has explained that he is a collector of iconic cars, and that it is his hobby to restore and exhibit them. Some of the cars are cannibalised for spare parts. The appellant is entitled to use land within that curtilage for incidental purposes. However, the majority of the stored vehicles are kept on land that does not form the residential curtilage of the dwelling, and thus fall outside of the provisions of s.55(2)(d).
13. Moreover, the numbers of cars stored on the site exceeds what could reasonably be considered to be incidental to the use of the dwellinghouse as such. I consider that the number of vehicles, together with the large area they cover, results in a use which is materially different from the authorised uses of the appeal site. I therefore find, as a matter of fact and degree, that the mixed use as alleged in the notice constitutes a material change of use of the land, amounting to development for which no planning permission exists, and that the matters alleged in the notice constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

Appeal on ground (f) – that the steps exceed what is necessary to remedy the breach or ameliorate the injury to amenity

14. As no appeal has been made under s.174(2)(a) of the Act, I am unable to consider the planning merits of varying the notice to achieve a less harmful result short of full compliance. I therefore have to confine my consideration to whether the requirements seek more than is necessary to remedy the breach.
15. The requirements of the notice need to reflect the breach, which is one of a mixed use comprising residential use, agricultural use and the use of the land for the storage of motor vehicles. Accordingly the notice must require that mixed use to cease, rather than just one element of it, so that the notice must be corrected to require the cessation of the residential use, agricultural use and the use of the land for the storage of motor vehicles. This does not mean that the residential and agricultural uses have to cease, as there is no dispute that they are lawful, but it is the overall mixed use which must cease. I shall vary the notice accordingly.
16. The second requirement of the notice recognises that some vehicles may be parked, stored or stowed on the land in connection with the lawful uses of the land. This goes beyond the breach of planning control as alleged – parking and

stowage are different from storage. I shall therefore vary the notice to remove reference to both parking and stowage.

17. However, the notice is imprecise and uncertain as to the scope of lawful incidental rights – it is not a nullity as it can certainly be given a sensible meaning, but in practical terms it gives rise to a degree of uncertainty. I consider that the storage of a certain number of cars within the residential curtilage would be lawful. The question is what is the appropriate number? The Courts have rejected the proposition that because a use is a hobby therefore it must follow that it is incidental to the enjoyment of a dwellinghouse.
18. Although it related to a case involving the erection of a building, the findings of the Court in *Emin v Secretary of State for the Environment and Mid-Sussex District Council (1989)* are also of relevance to incidental uses in general. The Court acknowledged that such questions are largely a matter of fact and degree, but some key principles were set out. The Court held that the nature and scale of the activities are important as there must be a prospect that they could go beyond a purpose merely incidental to the enjoyment of the dwelling house as such and constitute something greater than a requirement related solely to that use.
19. The Court also acknowledged that the fact that such a building used for a purpose incidental to the use of a dwellinghouse as such has “to be required for a purpose associated with the enjoyment of a dwelling house cannot rest solely on the unrestrained whim of him who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case”. It also reinforces that incidental uses should remain at all times ancillary or subordinate to the use of the dwelling house, and that it is necessary to determine whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that incidental purpose.
20. Taking into account the size of the dwellinghouse, its ancillary buildings and its large curtilage, I am of the view that, in addition to the day-to-day vehicles used and parked by occupants, it would be reasonable to vary the requirements of the notice to allow the storage of 10 vehicles in connection with the hobby of car collecting within the curtilage of the dwelling. I shall also vary the notice to allow the storage of vehicles required for the purposes of agriculture on the remainder of the land.
21. By varying the notice in the manner I have indicated, deleting reference to “parking” and “stowing”, it would allow parking within the curtilage of the dwelling to an extent that is incidental to the residential use, so that the scenario put forward of party guests being prohibited from parking on the site would not arise.
22. To this extent the appeal on ground (f) succeeds.
Appeal on ground (g) – that the period for compliance falls short of that reasonably required
23. The appellant argues that whilst three months is sufficient time to physically move the vehicles, it would not allow adequate time to sell those which have value, or to find homes for them. A balance needs to be struck between the

public interest in remedying as quickly as possible the planning harm arising from the unlawful use and the appellant's private interests. I shall therefore require that 30 vehicles be removed within 3 months and the remainder within 6 months. This would allow the appellant to remove those which have little or scrap value soonest, whilst giving more time to sell or re-home those which may have greater value. To this limited extent the appeal on ground (g) succeeds.

Conclusions

24. For the reasons given above, I conclude that the appeal on ground (c) fails, and that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on grounds (f) and (g) succeed to that extent.

JP Roberts

INSPECTOR