
Appeal Decision

Hearing Held on 3 August 2021

Site visit made on 4 August 2021

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2021

Appeal Ref: APP/Q3115/C/20/3260176

Land west of Old Belchers Farm House, Little Milton OX44 7PU

- 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 M Hue-Williams against an enforcement notice issued by South Oxfordshire District Council.
 - The enforcement notice was issued on 17 August 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of land from agriculture to a mixed use, namely 1) agriculture, and 2) the displaying of art works.
 - The requirements of the notice are:
 - i. Stop using the Land for the displaying of art works.
 - ii. Dismantle and remove existing art works from the Land.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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DECISION

1. The appeal is allowed and the enforcement notice is quashed.

REASONS

The Land

2. The enforcement notice relates to a roughly square area of land of around 12 hectares (ha) to the west of the village of Little Milton. The western part (c3.2ha) is woodland, named The Sprogs, which became established after 1945. The remainder of the land is rough grassland with two small copses of trees. An avenue of oak trees crosses the land from the eastern boundary to the woodland, dividing the larger field into two parts. In August 2020 when the enforcement notice was issued 6 pieces of art were sited on the land.
3. All the land is owned by the appellant. The field area is enclosed by mature hedgerows. Post and rail fencing provides clear demarcation between the woodland and the adjacent arable field. Even though a ditch separates the field from the woodland there are at least two bridging points. Outside the site, public footpaths follow the northern, southern and eastern boundaries.

4. The appellant also owns the residential property known as Old Belchers Farm and Albion Barn, which is associated with the appellant's art dealership and gallery business. These properties lie to the east of the site within the built up area of the village. They are physically separate from the field and there was no evidence to indicate any significant functional relationship existed.
5. Taking account of ownership/occupation, physical features and the siting of the artworks I consider that the extent of the Land is correctly identified on the plan attached to the notice and that the Land is the relevant planning unit.
6. On 12 January 2021 planning permission was granted for "a change of use of land to provide sculpture park (existing agricultural use maintained) (temporary duration)". The site area is the same as the Land identified in the enforcement notice. Planning conditions time limit the permission to a period of 18 months and control various matters, including hours of use and the number, height and position of pieces of art that may be displayed. The use commenced on 2 July 2021 and when the accompanied site visit took place 17 pieces of art work were noted.
7. The grant of permission did not result in either the appellant withdrawing his appeal or the local planning authority withdrawing the enforcement notice, for the reasons explained at the hearing. In view of the dispute between the parties over whether development, as alleged in the enforcement notice, has taken place, a conclusion on the effect of section 180 of the 1990 Act¹ is not able to be reached without exploring the legal grounds of appeal.

Appeal on ground (b)

8. The issue is whether or not as a matter of fact the Land was agricultural land and works of art were displayed there.
9. The appellant described the everyday use of the land as farming, the growing of hay and trees². A small enclosed area in the north east corner in the past was used for keeping pigs and currently chickens are kept there. The woodland is managed at a very low level for most of the time and there is no evidence of active forestry.
10. There is no dispute that pieces of art were on the land in August 2020. They were identified on the site visit³. The Bad Dream House is sited within the copse on the southern part of the land. Within the woodland is Standing Timber, an enclosure between four trees formed of logs. A slim pole painted with a design and set within the ground is sited within the timber enclosure. A second similar pole is sited towards the western end of the avenue of trees. The Blood of the Gazelle is sited more centrally on the edge of the avenue. This piece is made of red Egyptian granite and stands on a concrete base. The two art works by James Capper were mechanical pieces and sited in the field. One was removed in September 2020 but the second remains, although in a different position. The art works were for the enjoyment of the appellant, who derived pleasure from seeing them when walking around his land for leisure

¹ Section 180 of the 1990 Act provides that where, after the service of a copy of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

² Grounds of appeal paragraph 25, appellant's statement aerial photograph at paragraph 70

³ The Council's enforcement report paragraph 4.2 contains a set of photographs of the art works

and relaxation. That being so they were being displayed, as opposed to being stored, for example.

11. I conclude that when the notice was issued the land was agricultural land and works of art were displayed there. The matters stated in the notice have occurred as a matter of fact and the appeal on ground (b) does not succeed.

Appeal on ground (c)

12. Ground (c) is a legal ground of appeal, distinct from any planning merits. In order for the appeal to succeed on this ground the appellant has to show that the matters alleged in the notice do not constitute a breach of planning control.
13. The issues are whether as a matter of fact and degree the displaying of art works became a primary use resulting in a change to a mixed use of the Land and, if so, whether there was a change in the definable character of the use such that development in the form of a material change of use occurred.
14. A mixed use is when two or more primary uses exist within the same planning unit and it is not possible to say one is incidental to the other. There is no doubt that for a long period of time agriculture has been a main purpose in the use of the land and therefore a primary use of land within the planning unit. Aerial photographs from over the last twenty years or so show that in 1999 the field and its distinctive features existed, namely the woodland to the west, the field (possibly ploughed) to the east, crossed by a diagonal avenue of trees and marked by two small copses.
15. No significant changes were evident in aerial images dated 2003, 2005 and 2006. In 2009 a dirt track stands out along the eastern edge of the woodland. In 2016 a track ran from the eastern boundary, parallel to the avenue, to the southernmost copse and a small number of objects can be seen towards each end of the track. The Council describes this as evidence of a piece of art being displayed but to my eye the image is not sufficiently clear to draw this conclusion.
16. The works of art were not brought onto the land all at the same time. The Blood of the Gazelle dates to October 2014. The Bad Dream House was present in October 2015. The Council's photographs taken at the time suggest some degree of assembly was involved. The remaining pieces were introduced by May 2017, the Capper moving vehicles being the last pieces in the sequence.
17. The displaying of art works has no identified link or functional relationship with the agricultural use, is not generally associated with agriculture and is not ancillary to that primary use. The display of pieces of art took place over the general extent of the land and were not confined to separate and physically distinct areas created within the planning unit. These considerations indicate a primary use, however at the hearing there was discussion as to whether 'displaying of art works' is correctly described as a use of land.
18. In view of the purpose behind the display, if anything the functional link was with the appellant's residential use of Old Belchers Farm but the Council confirmed at the hearing that a residential use was not suggested. Other possible descriptions of the uses considered were a sculpture park and a recreational use, neither of which capture the essence of what happened in this instance. The Council suggested a link with the appellant's gallery business because the pieces were catalogued on the Albion Barn website. However, on

the basis that the display of the pieces of art were solely for private enjoyment and were not advertised for sale, no business or retail use was demonstrated or occurred.

19. The question was raised as to whether building work was involved, the appellant drawing a comparison with planning permission that was granted for a bench, farm water trough and a stone mill wheel at Sunningwell. However, in carrying out its assessment before issuing the enforcement notice the Council concluded that the works of art were objects or chattels placed on the land, rather than building operations. In December 2019 the Council also refused an application for a lawful development certificate for the 'installation of objet d'art', rejecting the appellant's claim that the objet d'art (the Blood of the Gazelle) was a building operation. No appeal was made against this refusal and the appellant has not submitted detailed evidence in this appeal to support a case that the works of art on display involved building or other operations. Therefore in the absence of any evidence I am unable to conclude that operational development, rather than a change of use, was involved.
20. For the purposes of the Town and Country Planning (Development Management Procedure) (England) Order 2015 "landscaping" means the treatment of land for the purpose of enhancing or protecting the amenities of a site and the area in which it is situated and includes the laying out or provision of gardens, courts, water features, sculpture or public art. This description has similarities to what has happened on the appeal site in terms of enhancement, at least for the appellant but the placing of sculpture involved minimal treatment of the land and was not related to an outline planning permission. I agree with the main parties that 'landscaping' is not the appropriate term in this case.
21. In conclusion, on the given particular facts the displaying of art works at Little Milton is considered to be a use of the Land. The use is not ancillary to the agricultural use or any other use in the relevant planning unit. The Council was alerted to the presence of the art works in 2015, which indicates their introduction onto the land was noticed by members of the public. I do not regard the use to be so insignificant as to be 'de minimis'. I conclude, the displaying of art works became a primary use of the land and a change to a mixed use took place.
22. The National Planning Practice Guidance confirms there is no statutory definition of 'material change of use'. Generally, this type of development is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree, determined on the individual merits of a case. Case law has established that an essential consideration is whether there has been a material change in the definable character of the use of the land, as opposed to a change in the particular purpose of a particular occupier. Off-site impacts can be relevant, as well as the extent to which an existing use fulfils a planning purpose and the planning consequence(s) of the loss of an existing use. My assessment is concerned with what the actual use has been, not what may happen in the future or with proposals that were the subject pre-application inquiries in 2015 and 2017.
23. The display was of a small number of pieces of art in a large field. The two Capper works were sited in the open field but they were relatively small and, without focusing on the detail, they resembled pieces of farm machinery. This

was illustrated on the site visit when views of the existing Capper work were comparable to views of a combine, trailer and other agricultural machinery on farmland to the north west. The other pieces were either enclosed by trees (Bad Dream House and Standing Timber) or well related to the avenue of trees (Blood of the Gazelle and the freestanding pole). The predominant appearance of the land remained as farmland, despite the ability to see objects when on the land and to catch a glimpse from the surrounding public footpaths. In contrast the sculpture park now has considerably more sculptures on display, a number of which are easily visible from the network of public footpaths.

24. The installations did not result in any significant physical changes to the land. Ground preparation, where it occurred, appeared to be very minor. A photograph taken by the Council in May 2019 shows a mown path towards one of the Capper pieces. The Council was of the view that agricultural activities became limited to the growing of hay, rather than the regular seasonal pattern of agricultural activity evident in the series of aerial photographs. The growing regime may have changed, which is by no means clear from the images, but an agricultural use remains.
25. The appellant confirmed that members of the public were excluded from the land, except on one occasion a small number of people were allowed to see the mechanical Capper installations move under their own power. The pieces were there for the enjoyment of the appellant and his family when going for walks round the field when at their country home. No contrary evidence was provided by the Council and no changes in activity or patterns of comings and goings from the site were reported. By comparison, the public accessibility of the sculpture park was regarded by the Council as an important difference and distinguished it as a recreational community facility.
26. The lack of public access is probably why no significant off-site impacts, such as on-street parking, increase in traffic or loss of residential amenity, have been identified. The Council argued that the introduction of a private art collection onto the adjoining field was likely to have diminished the enjoyment of the countryside for some by changing its rural character and appearance. However, no representations were made either in support or against the appeal, which indicates any effect has been neutral.
27. The displaying of works of art on a small scale had no identified effect on the quality of the agricultural land, described as excellent or very good. The ability to carry out agricultural activity and land management was not impeded. There has been no planning consequences and no loss of the existing agricultural use. The location of the site within Green Belt would only be relevant in the event development is found to have occurred.
28. These considerations lead me to conclude that as a matter of fact and degree the change to a mixed use did not result in a material change in the definable character of the use of the land. Development did not occur and there was no breach of planning control. The appeal on ground (c) succeeds.

Conclusion

29. For the reasons given above the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under grounds (d), (a) and (f) set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have

been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Henry Venners BSc(Hons) MA
MRTPI

Principal, John Phillips Planning Consultancy

Michael Hue-Williams

The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Robert Cramp

Principal Planning Officer, Enforcement.