



Appeal Decision

Site Visit made on 19 July 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2021

Appeal Ref: APP/T2405/C/20/3263914

Land at Huncote Mill, Croft Hill Road, Huncote LE9 3GR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Alastair Brooks against an enforcement notice issued by Blaby District Council.
 - The notice was issued on 30 October 2020.
 - The breach of planning control as alleged in the notice is Without planning permission the material change of use of the land from agricultural to a mixed use of B1 (Research and Development) and B8 (Storage).
 - The requirements of the notice are to:
 - i. Cease the use of the Land for the mixed use of B1 (Research and Development) and B8 (Storage).
 - ii. Remove from the Land, all storage containers and all associated articles used in connection with the mixed use of B1 (Research and Development) and B8 (Storage).
 - iii. Remove from the Land the existing hard standing (approximate area edged green) and reinstate as grassland to existing adjacent land levels.
 - The period for compliance with the requirements is: 4 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f), (g) 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 enforcement notice is quashed.

Preliminary Matters

2. The land to which the notice relates comprises a substantial area within the ownership of the appellant, including a residential property, a garage building with an office at the first floor and a number of other buildings. The appellant and his wife live at the residential property, The Mill, and are both directors of a business, Abuss Ltd, which occupies part of the site, including the hatched area identified in the enforcement notice (EN) allegation. In addition to the appellant and his wife, the business has 5 other employees, including the appellant's daughter who lived at The Mill until Christmas 2020.
3. Section 171A (1) (a) to the Town and Country Planning Act 1990 as amended ('the Act') says that the carrying out of development without the required planning permission constitutes a breach of planning control. Section 173 (1) says that a notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of s171A (1) within which, in the opinion of the authority, the breach falls.

Section 173 (2) says that a notice complies with subsection (1) (a) if it enables any person on whom a copy of it is served to know what those matters are.

4. Section 173 (3) states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes. Section 174 (4) states that those purposes are – a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or b) remedying any injury to amenity which has been caused by the breach.

Previous use

5. The appellant states that the previous lawful use of the Land was as part of a shooting school under the terms of planning permission 08/0991/PX and not agricultural use. The Council dispute that the previous lawful use of the land was that of a 'shooting school' and that the appeal site benefits from no extant planning permission as the previous approved application was a personal permission for the previous owners of the land. However, condition 1 simply states that the use of the site as a shooting school shall be personal to the applicants. There is no requirement for the use to cease when the premises ceases to be occupied by the applicants.
6. Nevertheless, it is not suggested that the appellant is carrying on the shooting school within the site and I saw no evidence that this is the case. Whilst it is good practice for an enforcement notice alleging a material change of use to identify the previous use, it does not render the notice invalid or a nullity if it does not. It is the breach, which is what is alleged to have occurred, which must be identified. It would therefore be possible to correct the notice by deleting reference to agriculture in the allegation without causing injustice.

Present use

7. The appellant describes the business activities at the site as comprising business administration, testing, research and development, automatic and manual remote sensing of motorway network camera and telephone systems, testing and repair of faulty electronic equipment and data recovery and hard-drive replacement.
8. Whilst the appellant described the proposal on his planning application reference 18/0714/FUL as 'change of use from sui-generis to B1/B8', this is not determinative of the use of the site. Whether this description accurately describes the activities at the site is a matter of fact and degree. Although I saw that various items were being stored within the site, from the evidence before me and from my inspection of the site, these appear to be in connection with the research and development activities rather than a primary storage use.
9. Although outside the hatched area identified on the enforcement plan, I was able to inspect the garage. The appellant identifies the building as a mixed use of existing garage building to provide home office (Use Class B1(a) Office) together with WC, kitchen and domestic garaging at ground floor. From my inspection of the building, I saw that part of the ground floor and the first floor

of the building are used in connection with the business, while the remainder is used for the storage of residential paraphernalia.

10. There is some delineation between the dwellinghouse, the garage and the hatched area identified on the enforcement notice. However, there is no clear delineation between the residential and business use of the garage building. Furthermore, the hatched area was also being used for storage of residential paraphernalia at the time of my site visit. Although it is not clear whether such storage was taking place at the time the enforcement notice was issued, it is evident that there is overlap between the residential use of the land and the business.

The planning unit

11. Case law has established that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.
12. The appeal site is owned and occupied by the appellant for residential purposes and the operation of Abuss Ltd. Although the hatched area identified within the enforcement notice is physically separate from the wider site, it uses the same access as the residential property and is functionally connected to the use of the garage and dwelling.
13. Consequently, as a matter of fact and degree, I consider that the planning unit is in a mixed use for residential purposes and B1, now Class E(g) because the functional relationship remains even though there is a degree of physical separation between the uses.

The allegation

14. The breach of planning control alleges the material change of use of the Land from agriculture to a mixed use of B1 (Research and Development) and B8 (Storage), at the approximate location indicated hatched blue on the attached plan. The allegation attacks the material change of use of the Land from agriculture to a mixed use of B1 and B8 on part of the site, the location of which is indicated by blue hatching on the plan attached to the enforcement notice ('the enforcement plan').
15. Where there is a mixed use, it is not open to the local planning authority to decouple elements of it; the use is a single mixed use with all its component activities. Accordingly, the allegation should refer to all the components of the mixed use, even if only one is required to cease.
16. I am obliged to get a notice in order by correcting or varying its terms where necessary and where I can do so without causing injustice to the Council or the appellant, under the provision of s176(1)(a) and (b) of the Act.
17. Section 173(11) of the Act sets out that where an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and the requirements of the notice have been complied with, then so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A. Were I to amend the notice to include the residential

use, I would need to ensure that this did not inadvertently grant residential use upon part of the site by virtue of section 173(11).

18. Although an EN cannot require a lawful activity to cease, it is not clear that the previous lawful use of the hatched area was residential. Were I to correct the allegation but not the requirements, it would result in deemed planning permission being granted under s173(11) for residential use if the enforcement notice is upheld and the requirements are complied with. This would cause the Council injustice.

The requirements

19. The requirements should follow logically from the allegation in order to remedy the breach, or remedy any injury to amenity which has been caused by the breach. Although the breach is limited to the hatched area, the requirements apply to the entire site, as identified on the enforcement plan. Since the business activities are currently taking place in the garage building, which is outside the hatched area, the requirements go beyond what is necessary to remedy the alleged breach.
20. The Council advise it would have no issue with the area being amended and the enforcement notice being corrected and does not consider that a reduction in the area of land covered by the Enforcement Notice would cause any harm or injustice to either party. However, even if I were to reduce the area of land covered by the EN, the allegation would still need to be amended to reflect the fact that the land is in mixed use. Furthermore, the Council state it considers the use is unacceptable anywhere on the Land subject to the enforcement notice.
21. If I amend the breach, so that it includes the Land within the red line boundary, this would expand the allegation, which would cause injustice to the appellant, who may have chosen to argue the grounds of appeal differently. On the other hand, if I amend the requirements to require the cessation of the residential use in the hatched area, this would expand the scope of the requirements. The appellant may have chosen to argue his legal grounds of appeal differently. Furthermore, amending the requirements could affect the appellant's case under ground (a) because of the implications for assessing flood risk. This would cause the appellant injustice.
22. I do not consider that the inaccuracies in the notice are such as would necessarily render the Notice a nullity. This is because the matters that appear to the Council as constituting a breach of planning controls are generally stated. Nevertheless, I conclude that the notice is incapable of correction without injustice to the appellant or local planning authority and should therefore be quashed.

Conclusion

23. For the reasons give above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

24. In these circumstances, the appeal under the various grounds (a), (b), (d), (f) and (g) as set out in s.174(2) of the 1990 Act as amended do not fall to be considered.

M Savage

INSPECTOR