



Appeal Decision

Site visit made on 6 September 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2021

Appeal Ref: APP/X4725/C/21/3276820

Land at Weeland Road, Crofton, Wakefield.

- 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 David Crowther against an enforcement notice issued by City of Wakefield Metropolitan District Council.
 - The enforcement notice was issued on 7 May 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, material change of use of land from agriculture to a mixed use of agriculture and storage of materials including but not limited to building materials, railway sleepers, timber pallets, timber frames and panel, roofing tiles, remnant of burnt metal, coping stones, metal framed wall panels, insulations sheets, plastic plant pots, bags of compost and a large steel water tank.
 - The requirements of the notice are:
 - a) Cease the use of the land for storage purposes; and
 - b) Remove all building materials, railway sleepers, timber pallets, timber frames and panels, roofing tiles, remnants of a burnt metal, coping stones, metal framed wall panels, insulation sheets, plastic pots, bags of compost and a large steel water tank and any other items not used solely for the purpose of agriculture.
 - The period for compliance with the requirements is 56 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the wording "and any other items not used solely for the purpose of agriculture" in paragraph 5(b). Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. During the appeal process additional grounds (b) and (c) have been pleaded. The Council has had an opportunity to comment on those additional grounds and have not therefore been prejudiced.

Enforcement Notice

3. The text "and any other items not used solely for the purpose of agriculture", in paragraph 5(b) of the notice has the potential to create confusion as to what is actually required. This is because it is unclear as to the nature of the items needed for agricultural purposes. This part of the requirement introduces a significant degree of uncertainty given the potential liability. The purpose behind the notice can be achieved by deleting this text and I shall do so as the

requirements are no more onerous than first issued and no injustice is caused to any party.

Appeal on ground (b)

4. The issue is whether as a matter of fact the Land was in use for a mixed use of agriculture and storage of materials. The burden of proof falls on the appellant to make out their case.
5. The appellant does not dispute that there were materials on the Land. His aim is to use some of the materials to partition the land and as part of its agricultural use, including the erection of fencing and walling. Materials not required, including the burnt out stable and water tank have been removed.
6. On my site visit I saw that some raised beds had been made utilising concrete sleepers and plastic plant pots had been planted out with saplings. There were also, among other things, substantial piles of old timber, railways sleepers, timber pallets, concrete and stone roofing tiles, bricks, bags of stone, dressed stone including coping stones, the remnants of a van body which contained insulated panels, corrugated sheets, metal gates and gate posts. Third party representations indicate that the land has been utilised in part for storage of materials during the last few years.
7. In conclusion, storage of building and other materials has occurred on the site as a matter of fact. The alleged breach reasonably describes the range and type of materials stored. The appeal on ground (b) does not succeed. As to whether the use of land for storage as part of a mixed storage and agriculture use amounts to a material change of use is appropriately dealt with in the appeal on ground (c).

Appeal on ground (c)

8. The issue is whether as a matter of fact and degree there was a material change in the use of the land from a lawful agricultural use to a composite agriculture and storage use. A main consideration is whether a significant difference in the character of the activities and use can be identified when compared to the lawful use.
9. A starting point is to identify the planning unit, which is the most appropriate physical area to assess the materiality of the change. A useful working rule is to assume that the unit of occupation is the appropriate planning unit.
10. The Land identified by the enforcement notice is a single two hectare field owned by the appellant and his brother. Vehicular access to the field is via a gate from Weeland Road. The field is bounded by trees and hedgerows. There is no physical separation between the area utilised for storage and the remainder of the field. I conclude that the appropriate planning unit comprises all the Land identified in the notice.
11. There is evidence that until 2015 the Land was rented to an adjoining landowner and used solely for agricultural purposes either for growing crops, hay for sale or to feed their horses. That agreement terminated in 2015. Since that time, evidence from third parties and the Council indicate that the land has remained fallow until recently when some raised beds have been created. The materials stored on the site have accumulated during the years following the termination of the rental agreement and the Land's occupation by

the appellant. The scale of the storage has escalated over time and is far in excess of what might be used for maintenance of field walls and fences, and most of the materials are not suitable for such maintenance.

12. Considering the Council's photographs which were annexed to their Officer Report¹, and observations on my site visit, the amount of materials on site has not significantly changed since the enforcement notice was issued. However, some of the burnt material and the water tank have been removed from the site. In addition, concrete sleepers have been utilised to create raised beds and the compost and plastic pots have been used to plant saplings. I observed on my site visit that most of the materials were stored within the northern corner of the Land close to the entrance gate. Pallets, bricks, stone and piles of timber were the predominant materials, although there was an old bath, metal gates and posts and lumps of concrete and a broken-up van body.
13. The appellant states that the intended use of the materials is in associated with agricultural activities on the Land and thus incidental to that use. However, to be incidental there has to be a functional relationship with the primary agricultural use and the functional relationship should be one that is normally found. In my opinion the storage on the site fails both of those tests. The storage use is a means to an end in that the materials are proposed to be used in building fences and walls and to partition the Land. Also, the materials have been accumulating over a protracted period of time, resulting in an atypical quality of permanency. Whilst appreciating that the COVID-19 pandemic may have delayed some progress, from what I saw and the evidence before me, the acquisition of the materials stored appears very much on an opportunistic basis and as a result the majority of those materials do not appear to be suitable or necessary for the building of stone walling, fences and partitioning the field. For example, piles of scrap timber, bricks, stone roofing flags, and old metal gates would not be used for that purpose.
14. The evidence leads me to conclude that there is a significance difference in the character of the use of the Land. Instead of a single main agricultural purpose, two main activities are carried on. The agricultural use and a storage use, where one use is not incidental or ancillary to the other, and the activities were not confined to separate and physically distinct areas of land. A material change of use occurred, resulting in a mixed use within the planning unit.
15. The meaning of development includes the making of a material change in the use of land. The change to a mixed agriculture and storage use as described in the notice would require planning permission. There is no record of a specific permission being granted on the Land.
16. In the alternative, the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) in Article 3 grants planning permission for the classes of development described as permitted development in Schedule 2 of the Order. None of the classes provide for a change of use to a mixed residential open storage use.
17. I conclude that as a matter of fact and degree the amount and type of storage increased to such a degree that the character of the planning unit materially changed from a single primary agriculture use to a mixed agriculture and storage use. Development took place for which no planning permission was

¹ Delegated Report, Planning Enforcement Action, dated 2 March 2021.

granted by the local planning authority. This material change of use is not permitted under the provisions of the GPDO. A breach of planning control occurred and the appeal on ground (c) fails.

Appeal on ground (f)

18. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
19. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the notice is to remedy the breach of planning control.
20. The appellant states that it is excessive to require him to remove all the materials from the site as it would leave him in a position whereby he would be unable to develop an attractive looking business and many of the materials on the site have and will be put to use in that agricultural use. However, I have found that the site is in a mixed use for agriculture and the storage of materials, and only the cessation of that unauthorised use and removal of the materials associated with that use would remedy the breach of planning control. There are no lesser steps available to me that would achieve the statutory purpose of the notice.
21. The appeal on ground (f) fails.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the notice with a correction.

Elizabeth Pleasant

INSPECTOR