



Appeal Decision

Hearing Held on 7 September 2021

Site visit made on 7 September 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 12 October 2021

Appeal Ref: APP/L3625/C/19/3233726

Land to the north of Nutley Dean Business Park, Small Hills Road, Horley, Surrey RH6 0HR shown edged in RED in the plan attached to the notice

- 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 Billy Finn against an enforcement notice issued by Reigate & Banstead Borough Council.
 - The enforcement notice (Reference Number E.01/872) was issued on 25 June 2019.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the land from agricultural land within the designated Green Belt, to land used for storage.
Without planning permission, the development of hardstanding areas and bunding measuring in excess of 2m in height and associated storage of shipping containers, building materials, objects and debris all associated with the change in use of the land in the approximate position hatched black on the plan attached to the notice.
 - The requirements of the notice are to:
 - a. Cease the use of the land for storage within the area hatched black on the plan.
 - b. Remove all the shipping containers within the area hatched black on the plan (and do not relocate within the area outlined in red on the plan).
 - c. Remove all the hardstanding and bunding within the area hatched black on the plan (and do not relocate within the area outlined in red on the plan).
 - d. Remove all debris, objects and materials associated with the change of use identified at paragraph 5a from the area hatched black on the plan and re-grass that area to return it to agricultural land.
 - The period for compliance with the requirements is 120 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (b) (d) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered.
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Decision

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

Procedural matter

2. At the hearing it was confirmed by both main parties that no costs applications would be made, and that the earlier written submissions to that effect were withdrawn.

The ground (b) appeal

3. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that matters stated in the notice had not occurred as a matter of fact on the date it was issued.

4. In essence, the notice alleges an unauthorised material change of use of the land facilitated by shipping containers, hardstanding, bunding, building materials, objects and debris. Significantly, it specifically alleges that the material change of use said to have occurred was from *agricultural* to *storage*.
5. It was agreed by the main parties at the hearing that the planning unit at the time the notice was issued corresponded to the area shown edged in red on the enforcement plan and within the occupation and ownership of the appellant. This view is supported by the application of the *Burdle*¹ tests for the reasons highlighted by the appellant, and I have seen or heard nothing which would lead me to a different finding.
6. Notwithstanding the allegation made, the Council's hearing position was that at the time the notice was issued the pre-existing use of the planning unit was in fact a mixed use of agricultural and B2 general industrial and B8 storage uses² due to the latter commercial uses having been established at the southern part of the unit. On the Council's own submissions, therefore, the allegation is incorrect as to (i) a change of use having taken place from a single primary agricultural use, and (ii) a change of use having been made to a single primary use of storage, since the Council told the hearing that the new use was mixed as it continued to include the pre-existing B2 and B8 uses. I also note that there appears to be residential use of a building within the planning unit as part of a mixed use and which has also been omitted from the uses described in the notice. For these reasons, that change of use stated has factually not occurred.
7. Within this context, the appellant has put forward a suggestion of an extensively amended allegation should I be minded to use my power under s176(1) of the Act to correct the notice accordingly. I have considered the use of my discretion under that provision very carefully, as I may not exercise it unless satisfied it would cause no injustice to the appellant or Council.
8. When asked for its view on the suggested new allegation, the Council's responses were somewhat equivocal. While Ms Astley on behalf of the Council appeared to confirm in one brief response that it would not be inappropriate to make such an amendment, it was evident from her contributions overall that the Council did not accept that the mixed use as set out by the appellant was correct. In particular, Ms Astley rejected the appellant's submissions (and live unsworn evidence) that at the date the notice was issued the planning unit had an agricultural use as part of the mixed use. She remained firm as to that position, stating that officers had not witnessed such a use nor had responses to Planning Contravention Notices evidenced such a use.
9. The notice allegation is wholly wrong (even on the basis of what has been accepted by the Council) and, in the circumstances, I am not satisfied that using my power to correct the allegation amid disagreement on this key issue would not cause injustice to a main party. To include agricultural use in the alleged new use is inconsistent with the Council's enforcement concerns that what has factually occurred in its view is a material change of use which excludes agricultural use to the detriment of the Green Belt and the open rural character and appearance of the area. To exclude agricultural use from the allegation would cause injustice to the appellant since omission would affect the terms of the deemed planning application and its consideration.

¹ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

² The Town and Country Planning (Use Classes) Order 1987 as amended

Conclusion

10. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed. In these circumstances the appeals under the various other grounds 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.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Billy Finn (appellant)
Stephen Whale (Landmark Chambers)
Phil Rowe BA HONS BTP (PROwe Planning Solutions)

FOR THE LOCAL PLANNING AUTHORITY:

Nancy Astley (Senior Planning Enforcement Officer)

INTERESTED PERSONS:

Marcus Slegg
(Finger Post Signs)

DOCUMENTS

- 1 Statement from Mr Slegg
- 2 Statement from Mr Crowhurst
- 3 Aerial photograph 2013 (agreed by the main parties to have been taken on 6 June 2013)