



Appeal Decision

Site visit made on 30 November 2021

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 10 December 2021

Appeal Ref: APP/X0415/C/21/3269277

Snowhill Farm, Chesham Road, Ashley Green, Buckinghamshire HP5 3PW

- 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 Michael Parsons (Carapax Ltd) against an enforcement notice issued by Chiltern District Council.
 - The enforcement notice was issued on 8 January 2021.
 - The breach of planning control as alleged in the notice is the material change of use of the Land to use for open storage (Class B8) including storage of tensile metal poles and structures stored on racking, and associated operational development integral to that change of use, comprising the construction of concrete hardstanding (the "Hardstanding") in the approximate position shown cross hatched on the Plan attached to the notice for purposes ancillary to the storage use ("the Unauthorised Development") and the erection of a detached open fronted building in the position hatched on the Plan attached to the notice (the "Building") and.
 - The requirements of the notice are:
 - i) Cease the use of the Land for use for storage (Class B8) and remove from the Land the tensile metal poles and structures, the racking and all materials and equipment brought onto the Land in connection with the B8 storage use;
 - ii) Demolish/dismantle the Building and remove all resulting debris and materials from the Land;
 - iii) Remove the concrete Hardstanding from that part of the Land shown cross hatched on the Plan attached to the notice and remove all resulting debris and materials from the Land; and
 - iv) "Rip" the Land from where the Hardstanding was laid to alleviate compression of the ground and remove from the Land all material arising from the ripping.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary matters and background

2. The land edged red on the notice plan lies immediately to the north of the Golden Eagle public house and has access to the main A416. Immediately to the north of the notice land is the residential property and its garden. This now has a separate access to the highway. From the sales particulars provided in evidence by the appellant it would appear that both areas of land were offered for sale and were purchased together by the appellant in August 2014.

3. The Council issued a Planning Contravention Notice (PCN) in March 2015 alleging a material change of use of the whole of the land to '...purposes unrelated to the use of the land for a mixed use for agriculture and residential purposes to a use falling within Class B8...' An additional allegation related to the erection of palisade fencing but that is not material to this appeal.
4. The response to the PCN confirmed the sole owner of the whole property as Carapax Ltd. The replies to the questions asked confirmed the respondent's understanding of the previous uses of the various buildings and confirmed that a new area of hardstanding had been installed at the front of the property and used for open storage '...as per the original use.'
5. It is not clear what, if any, action the Council then took. Nevertheless, in December 2015 Carapax Ltd submitted an application for a Certificate of Lawfulness (LDC) (the LDC application). The use claimed as lawful was a mixed use of the land and buildings, but excluding the existing dwelling and curtilage, for '...car mechanics workshop, storage, distribution, workshop associated with market traders florist business, storage of roofing materials, joinery company workshop, caravan storage and repairs workshop and outside storage of caravans.' The land to which this application related has not been identified in the evidence by either party. The application was refused and the LDC was not granted.
6. In November 2016 Carapax Ltd applied for retrospective planning permission for a 'change of use of land for open storage with ancillary workshop and the erection of a detached open fronted vehicle store (mixed use Class B1/B8)' (the 2016 application). Planning permission was refused. Again, the land to which the application related has not been identified.
7. In May 2017 the Council issued a notice alleging 'The change of use of the Land to a mixed use for open storage (Class B8) and workshop (Class B1) including storage of tensile metal poles and structures stored on racking and the erection of a detached open fronted building in the position shown hatched on the Plan (the "Building") and construction of associated concrete hardstanding (the "Hardstanding") in the approximate position shown cross hatched on the Plan ("the Unauthorised Development")' (the 2017 notice). That plan has not been supplied in evidence. An appeal under s174 was lodged on ground (a) only. An appeal against the refusal of the 2016 application made under s78 was considered by the same Inspector.
8. The notice was quashed. The Inspector concluded that the breach of planning control alleged was not specified with sufficient clarity and that injustice would be caused if the powers of correction available in s176(1) of the Act were used to effect the necessary changes. The s78 appeal was dismissed.
9. The notice before me has not been identified by either party as being issued under the 'second bite' provisions available under s171B(4)(b) of the Act. Nevertheless, it seems to me that the wording of the breach of planning control alleged is intended to address the shortcomings identified by the previous Inspector. As can be seen in the summary details above, the appeal has been made on all of the grounds available within s174 except ground (e) which concerns improper service of the notice.

The appeals on grounds (b), (c) and (d)

Introduction

10. In appeals on the legal grounds the Planning Practice Guidance confirms that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's/appellant's version of events less than probable, there is no good reason to refuse the application or dismiss the appeal, provided the applicant's/appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate/allow the appeal on the balance of probability. That guidance is based on established case law. The burden of proof does however rest on the applicant/appellant, not the Council.
11. At paragraph 7 of the previous Inspector's decision letter the point is made that operational development that facilitates the material change of use alleged as the breach of planning control does not need to be identified separately in the allegation. The Inspector continued by saying that, where they are, those works should clearly be described as facilitating the alleged material change of use so that no uncertainty arises. It was this defect that was among the reasons that caused the previous notice to be quashed.
12. As can be seen from the summary details above, that advice has not been followed in drafting the alleged breach. However, the appellant appears to interpret the words '...associated operational development integral to that change of use...' as meaning 'facilitating' and, given the background set out above, I will determine the appeal on that basis.
13. The appellant's evidence has addressed these three grounds of appeal together, as has the Council's response. The core case made is that when the notice was issued, the period during which the Council could take enforcement action had ended. That is an appeal on ground (d). Indeed, it is not clear to me what case is being advanced on the other two legal grounds. I shall therefore deal with the appeal on ground (d) now.

The evidence

14. In essence, the evidence put forward is that submitted in support of the LDC application. For the appellant, this includes letters and affidavits from those who have a detailed knowledge of the site, including those who used it, and an executor of the estate. For the Council, it includes representations from local residents when the LDC application was made. These respondents too have a detailed local knowledge of the use of the site over many years. Some of this evidence is in the form of affidavits and the appellant relies on some of the statements made.

Appraisal

15. Key to the determination of any appeal where a material change of use is alleged is an understanding of the planning unit and how, if at all, it has evolved over time. Neither party has explicitly addressed this in their evidence.
16. The first date of significance is 1954 when Mr and Mrs Dell purchased Snowhill Farm. At that stage it was a working dairy farm with land to either side of the A416. On ill-health grounds Mr Dell retired from dairy farming around the late

- 1960s or early 1970s. I do not believe the precise date to be important. He died in 1974.
17. From this date, Mrs Dell continued the renting out of land and buildings to local people and trades people for storage of caravans and materials associated with their businesses which Mr Dell had begun on retirement. This continued to December 2013 when Mrs Dell died.
 18. There is a remarkable degree of agreement between those providing evidence on behalf of the appellant and those making representations to the Council on the LDC application. On the balance of probabilities, I believe it to be common ground that there was low level storage of caravans and the like in the open, mostly towards the front of the site, and storage of materials by trades people, some of whom wrote to the Council to that effect, in various buildings. What was disputed by local people was any use of the buildings for what might be termed collectively 'industrial purposes'.
 19. I turn now to the planning unit applying the very well-known principles established by the court in *Burdle & Williams v Secretary of State for the Environment & New Forest DC* [1972] 1 WLR 1207.
 20. Until Mr Dell retired it is my judgement that Snowhill Farm comprised a single planning unit in agricultural use with the residential use of the house being part and parcel of that primary use.
 21. That changed in the late 1960s or early 1970s when Mr Dell retired from dairy farming. As I understand it, some of the fields were rented to other farmers. However, it is what happened to the yard surrounding the house that is material to this appeal.
 22. From the sworn evidence of Mr Sidwell, the nephew of Mr and Mrs Dell, and that of Mr Quick buildings D, E and F were used for storage. Although both claim that buildings A and B were used as a car mechanics workshop, this is disputed by local people and has not been pursued in the form of corroborating evidence through this appeal. It is not claimed therefore that at any point that storage was part of a wider mixed use of the land. There is no clear evidence to suggest that it was.
 23. While the ownership remained the same and there was a single point of access, there became two units of occupation that were functionally and, to a limited extent, physically separate from one another. One was the house and the garden immediately surrounding it, the other was the residual yard land and buildings in storage uses by third parties. In my view, these two separate areas had become two distinct planning units by 1974 at the latest.
 24. In my judgement nothing changed in 2014 when Carapax Ltd purchased the property. It remains two planning units. The provision of a dedicated vehicular access for the house has reinforced the physical separation and I noted the clear functional distinction between the appeal site in a storage use on the one hand and the residential planning unit on the other. That both planning units are in the ownership of a limited company does not alter this conclusion, nor does the slight change in the boundary between the two since 2014.
 25. The notice relates to the planning unit that has been in a storage use since at least 1974. While the planning unit may have extended beyond the notice land

prior to 2014, there has been no material change of use in the notice land itself since 1974, in my judgement.

26. Before concluding on the ground (d) appeal it is necessary to consider the Council's primary case. In essence, the Council view the period between Mrs Dell dying and Carapax Ltd purchasing the property as amounting to a break in the continuity of the use. In simple terms, it believes that 2014 represented a new chapter in the planning history of the site and the Council was therefore well within the 10-year period available to it to take enforcement action in 2021. Although it does not refer to it explicitly, this is the principle established by the court in *Thurrock BC v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 226.
27. Unfortunately, the Council appears to have misdirected itself on the law on this point. It seems clear from the officer report on the LDC application that the Council has worked backwards from the date of the application (and now the issue date of the notice) rather than forward from the date when the breach began. It is the latter that s171B(3) of the Act requires.
28. As I have concluded, on the balance of probabilities, the breach began around 1974 and there is no evidence from the Council or others to suggest that it did not continue substantially uninterrupted thereafter for a period of well over 10 years. The lawfulness of the storage use of the planning unit that is the appeal site is therefore established.
29. As the appellant has pointed out in legal submissions, once lawfulness has been established, a break in the continuity of the use (while probate was resolved and the property sold in this case), cannot end the lawfulness. The commentary to s57 of the Act in the Encyclopedia of Planning Law and Practice (EPL) identifies the six events that can lead to the loss of existing use rights. None apply in this case.
30. In fact, at paragraph 5.30 of its appeal statement, the Council appears to accept that a low-level storage use is lawful and had not been abandoned (one of the six events referred to in the EPL commentary) by the time the appellant purchased the site. Rather, it seems to be suggesting that the current use is materially different due to the intensive nature of the use. Local planning authorities alleging a material change of use by intensification must make that clear in the allegation and, more importantly, the reasons within the notice, so that the recipient may respond accordingly.

Conclusion

31. To conclude on this ground of appeal it seems to me that the previous planning unit in an agricultural use became two separate planning units around 1974. One comprised the house and garden, the other the yard and buildings in various storage uses. The latter planning unit is fundamentally the appeal site and both planning units have continued in those same uses ever since. While there may have been a break in the continuity of the use of the appeal site for the period of probate in 2013-2014 this cannot bring the lawfully established use to an end. It follows therefore that at the issue date of the notice the period during which the Council could have taken enforcement action against the breach of planning control alleged had ended. The appeal on ground (d) therefore succeeds.

Overall conclusion

32. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various 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.

Brian Cook

Inspector