
Appeal Decision

Site visit made on 8 December 2021

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Appeal Ref: APP/A2525/C/20/3263100

Bridge Farm, Gull Bank, Whaplode Drove, Spalding, PE12 0SS

- 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 Simon Healing against an enforcement notice issued by South Holland District Council.
 - The enforcement notice was issued on 14 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 use for agriculture to a mixed use consisting of the following uses: (a) to a vehicle repair business and associated storage of scrap vehicles, machinery and other paraphernalia at building no.1 shown edged blue on the attached plan no.2; (b) to residential use at building no.2 shown edged pink on the attached plan no.2; (c) to non-agricultural storage at building no.3 shown edged green on the attached plan no.2; (d) the storage of scrap vehicles on the land; and (e) a mini digger/plant hire business on the land.
 - The requirements of the notice are (i) cease all the uses specified in section 3 above; (ii) remove all items associated with the uses specified in section 3 above including all scrap vehicles and general storage.
 - The period for compliance with the requirements is four calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary matter

2. The appeal was originally made on grounds (c) and (d) only; ground (b) was added later. In dealing with these 'legal' grounds of appeal, the onus is on the appellant to demonstrate his case, the relevant test being the balance of probability.

The appeal on ground (b)

3. This ground of appeal, that the alleged breach has not taken place as a matter of fact, is advanced solely in relation to the alleged residential use. However, the appellant has provided no evidence to support this ground of appeal and it was apparent during my site visit that some form of residential use was taking place within the building identified as no.2 on the plan attached to the notice. The appeal on ground (b) therefore fails.

The appeal on ground (c)

4. Section 171A(1)(a) of The Act, as amended, states that carrying out development without the required planning permission constitutes a breach of planning control. The definition of development in Section 55 of The Act includes the making of any material change in the use of any buildings or other land. There is no dispute that the authorised use of the appeal site is for agricultural purposes and I agree with the Council that the carrying out of the mixed use alleged in the notice is so very substantially different from this as to constitute a material change of use requiring planning permission. There are no permitted development rights which would allow such a change of use to take place without the requirement for planning permission.
5. The appellant submits that building no.2 could be converted to a dwelling without the need for planning permission. However, under the terms of Class Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015, there is a requirement that, prior to beginning the development, an application must be made to the local planning authority for a determination as to whether the prior approval of the authority will be required on a range of matters. No such application has been made in this case and therefore any such development would have been a breach of planning control.
6. The appeal on ground (c) fails.

The appeal on ground (d)

7. For this ground to succeed, the onus is on the appellant to demonstrate that the mixed use set out in the alleged breach commenced more than 10 years prior to the date of issue of the notice (ie before 14 October 2010) and subsisted throughout the relevant 10 year period. The appellant's evidence needs to be sufficiently precise and unambiguous to make out his case on the balance of probability.
8. The appellant, a trained motor mechanic, states that he and his then partner bought the property in 2006. The associated house which adjoins the appeal site was derelict and they lived in a mobile home whilst he carried out extensive renovations. He states that he began to fix lawn mowers, service cars, repair tractors and other agricultural equipment and to hire out a digger. He also sold tools, machinery and other items via eBay. The appellant's partner also sold used furniture, although this use is said to have been discontinued at the site in 2017. I note that the furniture business formed part of the allegation on an enforcement notice issued by the Council in respect of this site in September 2018, which was subsequently withdrawn.
9. The appellant points out that he was rated for business purposes around 4-5 years ago, although this is of little benefit to his case, if that was the first time the property was so rated, as it was less than 10 years ago.
10. In support of his case, the appellant has submitted some 11 invoices dated between December 2006 and June 2008 and six signed statements from people and businesses that have used his services. He shows undated photographic evidence of having trade license plates.
11. Most of the above submitted invoices appear to relate to the motor trade in some way but are addressed to a variety of names such as "Green Lane",

“Green Lane Recovery” or to the appellant in person. However, the appellant has not provided any evidence of having set up any company or companies.

12. The appellant states that he has many more invoices. However, they have not been put before me and so are of little assistance in my assessment of his case. I appreciate that it might have been onerous to submit a large number of individual documents. However, it is significant that the appellant has provided no details of any business accounts which might indicate the type of activity taking place and the level of any trade. To my mind, the existence of some 11 invoices over a period of 18 months, a number of which are for small amounts of money, does not appear to indicate that business activity was taking place here on other than an occasional basis. Moreover, the invoices are only from 2006 to 2008 and do not include any for the following 8 years which would be needed to help demonstrate the continuity of the use over a relevant ten year period.
13. Five of the signed statements submitted by the appellant are identical and the sixth uses similar wording. They simply state that the business as described in the enforcement notice has been carried out as far back as December 2006 and has continued ever since. However, they are not very convincing in that they contain no personal insight and no detail of the exact nature of the business uses carried out at the site, where on the site the uses took place and what was the level of the uses. Given that the appellant asserts that there was a furniture business carried out on site for a number of years, it is curious that none of the statements mention this, albeit that this use does not appear on the present enforcement notice.
14. Other letters from nearby residents dispute the appellant’s version of events, pointing to an absence, or at least a very low level, of non-agricultural use up until around 2014/2016. At around this time, it is said that the use of the site changed such that cars were repaired and sold and scrap vehicles were stored on the land. Some time after 2016, the building no.1 was converted into 3 bays and equipped with vehicle ramps and spray facilities. Workers were seen on site other than the appellant. The glass house was converted to a workshop/storage unit.
15. Although the appellant disputes the exact date of some of the Google images, the series of historic aerial and street view photographs tends to support the evidence of a low level of activity from 2007 to 2009. In these photographs, the site has the appearance of a farmstead. There is a noticeable change in the character and appearance of the site from around 2014/2016, with a very substantial increase in the level of vehicles and other paraphernalia on site. This would support my view that, even if some low key business use had taken place prior to 2014/2016, at around that time the level and intensity of the use changed in a material way. It began to have a significant impact on the character and appearance of the site and an impact on the surroundings by way of increased activity.
16. At the time of my site visit, the yard contained a very large number of vehicles, many of which were damaged. Building no.1 was in use for car repairs, with two workers present, building no.3 and the former glass house were in use for storage of non-agricultural vehicles. There was an advertisement on the verge for digger hire and a digger was present on site. Building no.2 appeared to be largely in residential use. Based on the submitted evidence, it is my view that,

on the balance of probability, there was a material change of use from agriculture to the uses set out in the notice from around 2014 at the earliest, and therefore not more than 10 years prior to the date of the notice.

17. I have found the appellant's evidence to be imprecise and insufficiently clear to make out his case on the balance of probability. He has failed to demonstrate that the mixed use set out in the alleged breach commenced more than 10 years prior to the date of issue of the enforcement notice and subsisted throughout the relevant 10 year period. Accordingly, the appeal on ground (d) fails.

B.S. Rogers

Inspector