



Appeal Decision

Site visit made on 7 December 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2022

Appeal Ref: APP/R1038/C/21/3272250

Land adjacent to 1 Swathwick Lane, Wingerworth, Chesterfield S42 6QW

- 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 Peter Rhodes against an enforcement notice issued by North East Derbyshire District Council.
 - The enforcement notice was issued on 26 February 2021.
 - The breach of planning control as alleged in the notice is the unauthorised change of use of land from agriculture to residential use including the creation of a large concrete hardstanding and plinth and the installation of a water tank, diesel generator and diesel storage tank.
 - The requirements of the notice are:
 - (i) Cease the use of the land for residential purposes
 - (ii) Demolish the concrete hardstanding and plinth and remove the water tank, diesel generator and diesel tank and all arising demolition materials from the land.
 - The period for compliance with the requirements is 20 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) 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 and varied by:
 - i) Adding the title 'Plan 1' to the plan originally attached to the enforcement notice.
 - ii) Attaching Plan 2 (as attached to this decision) to the enforcement notice.
 - iii) Deletion of 'plan' from section 2 (The land affected) and its replacement with 'Plan 1'.
 - iv) Deletion of the wording at section 3 (The breach of planning control alleged) and its replacement with the following:
 1. *The creation of a concrete hardstanding and plinth within the area edged red on Plan 1; and*
 2. *The change of use of the land edged red on Plan 1, excluding the area shaded pink on Plan 2, from agriculture to residential use.*
 - v) Deletion of the wording from section 5 (what you are required to do) and its replacement with the following:

- a. Cease the use of the land other than that shaded pink on Plan 2 for residential purposes
 - b. Demolish the concrete hardstanding and plinth and remove all materials arising from demolition from the land.
2. Subject to the corrections and variations above, the appeal is allowed insofar as it relates to the land shown shaded pink on Plan 2 annexed to this decision and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for a concrete hardstanding and plinth on that land.
3. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to all land other than that shown shaded pink on Plan 2 annexed to this decision and planning permission is refused in respect of change of use of that land from agriculture to residential use and the creation of a concrete hardstanding on that land on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

4. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Procedural matters

5. The version of the North East Derbyshire Local Plan that was in force when the notice was issued has now been superseded by the 2014-2034 version, which was adopted in November 2021. I have had regard only to the new plan in reaching my decision.
6. I have been referred to aerial photographs which show that a hedge used to run across the site. The areas defined by this hedge have proved relevant to my decision, and the plan attached to this decision (Plan 2) shows the position of the hedge with a black line. I sought the views of both parties prior to preparing the plan, and both provided drawings showing their interpretation of the line of the hedge. I have had regard to those submissions, as well as the aerial photographs and other material before me in preparing the plan attached to this decision, using the map base provided by the appellant. I have modified the red line shown on the plan provided by the appellant to include the tapering tip of the northern end of the site. Apart from that, the boundary shown on the appellant's plan is an adequate interpretation of the small-scale plan attached to the notice.

The enforcement notice

7. The appeal site is land next to the appellant's home. It was originally part of a farm field, but it now accommodates a water storage tank, a diesel generator and a diesel storage tank. A concrete hardstanding has been created across the whole site. A raised concrete plinth has been formed below the storage tanks.
8. Information submitted by the appellant in the course of the appeal indicates that the generator is used in connection with his business, which is run from his home. In the light of this, the Council now considers that the allegation in the notice should refer to a change of use to a mixed residential and commercial use, and I am asked to correct the notice along these lines. The

Council advises that the notice was drafted on the basis of information provided by the appellant in response to a notice issued under s330 of the 1990 Act.

9. During the site visit I inspected part of the house. It has a room used as an office on the ground floor. This is a good-sized room and comfortably accommodated 2 desks and other office furniture. The property also has a small room containing computer servers, apparently used in connection with the appellant's business and home. I understand that the generator provides a backup electricity supply for the servers. The Council does not challenge this, albeit taking the view that it is the business activity that primarily leads to the need for the generator.
10. The appellant does not consider that there is a mixed use at the site and there is no appeal on ground (b) (that the matters stated in the enforcement notice have not occurred). However, since the Council itself now casts doubt on the allegation, it is important to consider whether it is correct.
11. The starting point for deciding questions relating to the change of use of land is to determine the planning unit. The leading case relating to planning units is *Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207*, in which Bridge J suggested three broad categories of distinction:
 - A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
12. In this case, I understand that the site targeted by the notice, together with the appellant's house (No 1 Swathwick Lane, also known as 'The Old Rectory') and the adjoining farm field is all within the ownership of the appellant. The appeal site adjoins the main grounds of the dwelling and is accessed from it. The water tank on the appeal site is apparently used to supply the irrigation system for the grounds of the house. As I have said elsewhere, the generator is used as a back-up electricity supply for the servers at the property. It therefore seems to me that the activities taking place on the appeal site are related to the use of the Old Rectory and its grounds, and are consequently part of the same planning unit. By way of contrast, the remaining part of the farm field, although also in the appellant's ownership, is clearly a physically separate area in use for agriculture and not, therefore, part of the same planning unit.
13. Is the planning unit formed by the appeal site and the appellant's house and garden in a single or mixed use? In my view, the property is primarily used as a dwelling. It is a large house with extensive grounds and the office, while large enough for 2 people, is a relatively small element, given the scale of the property. The servers used in connection with the appellant's business are contained within a single room linked to the garage. The Council has not identified any other parts of the property used for business purposes and,

setting aside the appeal site for the moment, I saw no obvious external features at the Old Rectory to indicate anything other than residential use.

14. Although the tanks and generator are large items, I do not see that they are intrinsically incompatible with residential use. In any event, the whole planning unit must be considered in deciding on what the use actually is. In this case, having regard to the size of the dwelling and its grounds, I am not persuaded that its use in connection with the appellant's business has altered the fact that it is primarily used as a dwelling. Considered as a whole, those elements used in connection with the appellant's business, including those on the appeal site, have not changed the character of the use. Overall, therefore, I am not persuaded that business activity at the property is of sufficient scale as to amount to more than an ancillary or incidental use, and conclude that the notice issued by the Council was correct in its reference to residential use.

The appeal on ground (d)

15. The ground of appeal under s174(2)(d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The time periods for taking enforcement action are set out at s171B. The relevant periods in this instance are 4 years from the substantial completion of operational development and 10 years from the date of the breach in respect of the change of use.

The operational development

16. The appellant states that the water tank was brought onto the site in 2001. A 2007 aerial photograph provided by the Council shows the water tank in place, and I have no reason to doubt the appellant's evidence on this point.
17. The appellant states that the generator and diesel tank were installed in late 2011/early 2012. These items are not shown in the 2011 aerial photograph provided by the Council but, since the month of the photograph is not given and the generator was not even purchased until December 2011, little can be read into that. Both items are present in an aerial photograph from April 2017.
18. The Council queries whether or not the tanks were initially permanently installed. If not, it is argued, they could have been chattels placed on the land rather than development. An application for a Certificate of Lawful Use or Development¹ relating to these items was refused in 2019 and was not appealed. The planning officer's report at that time concluded, on the basis of the available evidence, that, prior to the completion of concreting works in 2017/18, the items were simply resting on the ground and should be regarded as chattels.
19. However, I am not persuaded that this is the case. There is nothing from any of the aerial photographs to suggest that the tanks or generator have moved since being brought onto the site. Moreover, it appears to me that they are located on concrete bases that existed before the further concreting carried out at the site in 2017 or 2018. This is evident from photographs provided by the appellant, which show the tanks and generator already installed on pre-existing concrete bases while the additional concrete area was being constructed.

¹ Ref 19/00409/LDC

Although the additional concreting has hidden the original bases, I have no reason to conclude that the items were moved as part of those works.

20. Moreover, it seems improbable that the tanks and generator would have been brought onto the site and remained uninstalled (and therefore, presumably, unusable) until 2018. Consequently, I conclude, on the balance of probability, that the water tank was installed on the site in 2001 and the diesel tank and generator in late 2011 or 2012, as claimed by the appellant. It is therefore clear that these operational developments were substantially completed more than 4 years before the notice was issued.
21. The remaining concreting was not carried out until 2017 according to the appellant. The Council suggests that those works were not substantially completed until 2018, but the difference is of no consequence, since it had been in place less than 4 years before the notice was issued in either event. Consequently, it is common ground that this was unlawful at the time that the notice was issued.

The change of use

22. The appellant advises that the water tank is used to irrigate the grounds of The Old Rectory – a claim I have no reason to doubt. An aerial photograph shows the tank in place in 2007. In the photograph, a strip of land along the north-eastern side of the site is defined by a hedge. This appears to me to include all the land now occupied by the water tank, diesel tank and the generator. The appellant has provided a photograph (said to be dated 16 August 2001) showing this area. The water tank is shown in the photograph, although it is not possible to tell whether it had been fixed in place or is operational at that time. The hedge can also be seen and what appears to be a loose stone surface has been laid. The strip of land defined by the hedge is shown shaded pink on 'Plan 2', attached to this decision.
23. The same approximate area, slightly truncated, is shown edged red on a drawing entitled 'Site as Existing (14-07-11)'². That drawing shows the water tank and what appears to be the concrete base for the generator, but does not include the land on which the diesel tank is now located. The same approximate area is also shown in an annotated aerial photograph attached to a letter from a local resident dated 12 September 2018³. In that image, the land is labelled 'Additional Area taken between 2000 and 2010'.
24. All of this evidence leads me to conclude that the strip of land defined by the hedge in the aerial photograph was no longer in agricultural use by the end of 2001 or thereabouts. The evidence suggests that it was used in connection with the water tank, which is used in connection with the residential occupation of The Old Rectory. I have no substantive evidence to show that the use of the land subsequently changed, and have dealt elsewhere with the question of a mixed use. On the balance of probability, therefore, I conclude that this part of the appeal site was in residential use at the time the notice was issued and had been in that use for more than 10 years prior to that. Consequently, the use was lawful at the time the notice was issued.
25. An annotated plan of 13 October 2011 attached to a planning officer's site notes, to which the Council refers, is sketchy and difficult to interpret with

² Appellant's Statement, Item 5

³ Appellant's Statement, Item 7

confidence, but does not appear to me to undermine any of my conclusions above, albeit it makes no mention of a concrete base for the generator. The drawing attached as Item 2 to the appellant's statement defines a significantly different area, not consistent with the aerial photographs, and is of little assistance in determining lawfulness.

26. The evidence relating to the use of the remaining part of the site is more limited. The hedge was removed/alterd at some point after the 2010 aerial photograph and various works took place on the site, as indicated in an aerial photograph from 2011. However, the precise date of these changes is not clear. The drawing entitled 'Site as Existing (14-07-11)' shows the hedge in place and gives no indication of changes to the south-western side of it. It seems probable that the works shown in the 2011 aerial photograph related to the installation of the generator and fuel tank, which the appellant advises took place in late 2011/early 2012.
27. Overall, the evidence before me does not show, on the balance of probability, that any residential use of the remaining part of the appeal site (that is, the area other than that on the north-eastern side of the hedge) was lawful by the time the notice was issued, and I conclude that the allegation in the notice was correct insofar as it relates to the change of use of that area.

Operational development as part of a change of use

28. The courts have established⁴ that operational development that has facilitated a material change of use may be regarded as part and parcel of the change of use, and so be required to be removed by a change of use notice. The Council argues that this is the case here and that the notice can therefore target the operational development, even if it has been in place for more than 4 years.
29. However, I have concluded that the installation of the water tank and the residential use of the entire strip of land on which the tanks and generator were located date back to well over 10 years before the notice was issued. Consequently, the water tank was lawful when the notice was issued, whether a 10 year (change of use) or 4 year (operational development) time period is applied.
30. Since I have concluded that the land was already in residential use well before the diesel tank and generator were installed on it, it follows that those items were not part and parcel of that change of use. Accordingly, the 4 year time period for operational development applies to those items and they too were lawful when the notice was issued.
31. I have noted the suggestion by local residents that there has been deliberate concealment of the development, but am not persuaded that such concealment has been demonstrated in this case, such as to invoke the provisions of sections 171BA, 171BB and 171BC of the 1990 Act.

Conclusion – ground (d)

32. For these reasons I conclude that, on the balance of probability:
- i) no enforcement action could be taken in respect of the operational development comprising the installation of the water tank, diesel tank

⁴ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598 and *Somak Travel v SSE & Brent LBC* [1987] JPL 630,

and generator, or the change of use of the strip of land on which those items are sited when the notice was issued;

- ii) enforcement action could be taken in respect of the change of use of the remaining part of the site (outside the strip previously defined by a hedge) and the area of concrete hardstanding created in 2017/18.

33. Accordingly, the appeal on ground (d) succeeds in part and I have corrected the notice to remove reference to the operational development other than the hardstanding. I have also made consequential changes to the requirements of the notice and provided a new plan to supplement that attached to the notice, so that part of the site can be excluded from the change of use allegation.

The appeal on ground (a)

34. The appeal on ground (a) relates to the corrected allegation, namely the unauthorised change of use of land from agriculture to residential use (relating to a reduced site) and the creation of a concrete hardstanding/plinth. The main issue is the effect of the development on the character and appearance of the area.

35. Swathwick Lane in the vicinity of the appeal site has a row of dwellings on the north-eastern side but, on the south-western side, The Old Rectory sits on its own, surrounded by farm fields. The appeal site is land in the corner of a field next to The Old Rectory and Swathwick Lane and is outside the development limits identified by the North East Derbyshire Local Plan 2014-2034.

36. The operational development comprising two tanks and the diesel generator is now lawful due to the passage of time. I have also found that the strip of land on which they are sited is now in lawful residential use. To the extent that the concrete apron fills the gaps between these items and is contained within that strip of land, it is not visually harmful. This is because the character of the strip of land has already changed due to the installation of the tanks and generator, and the hardstanding is seen in the context of these items of plant. Consequently, there is no reason to withhold permission for the area of concrete hardstanding constructed on that strip of land. So far as that element of the development is concerned, there is no conflict with the aims for sustainable development and the countryside within Local Plan Policies SS1 and SS9, the policies of the Wingerworth Neighbourhood Plan or with the National Planning Policy Framework (the Framework).

37. The situation regarding the hardstanding on the remainder of the site is different. The lawful use of that land appears to be for agriculture and its appearance before the unauthorised works were carried out reflected that, as shown in the various aerial photographs before me. The hardstanding is an intrusive built feature which has an urbanising effect on the land, causing harm to the rural character of the area. The hedge along Swathwick Lane significantly limits views of the hardstanding, which is at a lower level than the road surface. Additionally, there is only a single footway at this point, running along the opposite side of Swathwick Lane, which limits views of the site further. Nevertheless, the site is not entirely obscured from view, and the concrete is noticeable due to the stark contrast with the adjoining farm land.

38. Moreover, even with the concrete removed, the continued use of this part of the site in connection with the residential occupation of The Old Rectory would

mean that it would have a residential character and would amount to encroachment into the countryside. That change of character is likely to remain apparent even if additional planting were carried out. Consequently, both the concrete hardstanding and the change of use have harmed the rural character of the area, leading to conflict with Local Plan Policies SS1 and SS9, which seek to protect the character of the countryside, and with the similar aims of Policy W2 of the Wingerworth Neighbourhood Plan. This leads me to the view that there is conflict with the development plan as a whole. There are no matters raised that outweigh the harm arising from this, and I will therefore refuse to grant planning permission for that element of the development.

39. I have considered the planning conditions suggested by the Council. However, they must be seen in the context that the only planning permission I shall grant relates to the concrete hardstanding on that part of the site which is already occupied by the storage tanks and generator and which I have found to be in a lawful residential use. Since I have concluded that the limited operational development I have permitted is not visually harmful, there is no justification for a landscaping scheme. Nor is the painting of the tanks and generator justified, since I have found them to be lawful. Nor is a condition linking the use of the land to the occupation of 1 Swathwick Lane (The Old Rectory) justified, since the permission I have granted does not relate to the use of the land.

The appeal on ground (f)

40. The appeal on ground (f) is primarily concerned with the 2 tanks and the generator, all of which I have found to be lawful. I have also found the residential use of part of the site to be lawful. I have made consequential changes to the requirements of the notice to reflect these findings and, to that extent, the appeal on ground (f) succeeds.
41. I have also concluded that the concrete in part of the site is not visually harmful and have granted planning permission for it. Any inconsistency with the requirements of the notice arising from that planning permission is addressed by s180 of the 1990 Act. Consequently, it is not necessary to vary the requirements of the notice in that respect.
42. The remaining elements are the residential use of the remaining part of the site and the concrete on it. I have concluded that these elements are harmful and contrary to the development plan. It is important that the notice requires the cessation of the use and removal of the concrete in order to remedy the breach of planning control. While enhanced boundary treatment might improve the appearance of the site, it would not fully address my concerns and would not remedy the breach of planning control, which is the purpose of the notice. Accordingly, the appeal on ground (f) fails insofar as it relates to these elements of the development.

The appeal on ground (g)

43. The appellant suggests that 12 months should be allowed instead of the 20 weeks specified in the notice. However, that appears to be primarily due to concerns arising from the need to make alternative arrangements if the generator and tanks were to be lost, a consideration that no longer applies. The removal of the concrete and cessation of residential use appear to me to be relatively straightforward matters to resolve. Moreover, it is desirable that

the breach of planning control is remedied without undue delay. Consequently, I conclude that the time for compliance should remain unchanged and the appeal on ground (g) fails.

Conclusion

44. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one element of the matters the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and refuse to grant planning permission for the remaining part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the 1990 Act.

Peter Willows

INSPECTOR



Plan 2

This is the plan referred to in my decision dated:

by P H Willows BA MRTPI

Land adjacent to 1 Swathwick Lane, Wingerworth, Chesterfield S42 6QW

Reference: Appeal Ref: APP/R1038/C/21/3272250

Scale: NTS

