The Planning Inspectorate

Appeal Decisions

Site visit made on 22 February 2022

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal A Ref: APP/L3815/C/21/3273338
Land east of Farmfield Nurseries, Selsey Road, Hunston, Chichester, West Sussex PO20 1AU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Malcolm Smith against an enforcement notice issued by Chichester District Council.
- The notice was issued on 11 March 2021.
- The breach of planning control as alleged in the notice is the material change of use of the land to a general storage use including the storage of vehicles, trailers, tyres, wheels, wheeled bins, boxes, buckets, plastics, tins, household goods, shopping trolleys, commercial goods, wooden pallets, concrete, hardcore, sheds insulation materials, building rubble, and sundry items.
- The requirements of the notice are: (i) Cease the use of the land for general storage including the storage of vehicles, trailers, tyres, wheels, wheeled bins, boxes, buckets, plastics, tins, household goods, shopping trolleys, commercial goods, wooden pallets, concrete, hardcore, sheds insulation materials, building rubble, and sundry items; (ii) remove from the land all stored items, including vehicles, trailers, tyres, wheels, wheeled bins, boxes, buckets, plastics, tins, household goods, shopping trolleys, commercial goods, wooden pallets, concrete, hardcore, sheds insulation materials, building rubble, and sundry items.
- The period for compliance with the requirements is: Six months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/L3815/C/21/3273341
Land east of Farmfield Nurseries, Selsey Road, Hunston, Chichester, West Sussex PO20 1AU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Malcolm Smith against an enforcement notice issued by Chichester District Council.
- The notice was issued on 11 March 2021.
- The breach of planning control as alleged in the notice is the erection of two container buildings.
- The requirement of the notice is: Remove the said container buildings from the land.
- The period for compliance with the requirement is: Three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeal A: APP/L3815/C/21/3273338

1. The appeal is dismissed and the Enforcement Notice (EN) is upheld.

Appeal B: APP/L3815/C/21/3273341

2. The appeal is dismissed and the EN is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act.

Procedural Matters

3. The site visit was arranged on the basis that the appellant/agent would be available to allow me access on to the land, but other than that I would be unaccompanied during the visit. However, at the appointed time there was no one there. I understand since that the appellant was not available on that day. However, the appeal site is right next to the road and there are clear views across the land. I was therefore able to clearly see what was on the land and by standing in the site entrance I was able to have a close look at the metal containers. Going on to the site would not have assisted my assessment of the merits of the appeals. As such, I am satisfied that along with the submitted written evidence I can proceed to make my decisions on both appeals. Neither side has therefore been prejudiced by me not going on to the land.

4. The developments I am considering are those attacked in the two ENs as described in the banner headings above. Therefore, any background to a new application proposal that includes a new barn and hardstanding is a development that is not before me. The details provided about that have little relevance to the appeal developments.

5. In legal grounds of appeal, such as under s174(2)(b) and (c) of the 1990 Act, the burden to make out the case rests firmly with the appellant and the test of the evidence is the balance of probability.

Ground (b) – both appeals

Appeal A

6. An appeal on this ground is based on the claim that, as a matter of fact, the matter the subject of the EN has not occurred. It is not about whether some of the items may be there for legitimate purposes, for example because they may be stored on the land for future purposes such as agriculture. In any event, the appellant confirms that it is his "intention to *commence* agricultural activities on the land" (my emphasis). Based on photographs taken by the Council on several occasions whilst investigating the use of the land from November 2020 to June 2021, and what I saw recently, there have been no signs of any agricultural activity. Consequently, there is no mixed use that is occurring. I also consider that the alleged breach of planning control is clear in that it is for "the use of the land for general storage". I see no ambiguity by then referring to that use "including" a list of items stored. Using the word "comprising" instead would add no greater clarity and it means the same thing.

7. As a matter of fact, on the appeal site there are items that are clearly stored there, and they have been for some time. Many of those are included in the list set out in the EN, such as trailers, tyres, wheels, wooden pallets, shopping trolleys and vehicles. The fact that a previous pile of hardcore and building rubble might have been levelled to create a hardstanding does not mean that this should be removed from the list of stored items. Nor does it matter that one of the vehicles may be the appellant's own car, given that there are several vehicles on the land. That is because I do not see the list as being a closed list. If some items are removed or others brought on, that would not affect the integrity of the EN which is directed at a general storage use.

8. In view of the above, this ground (b) appeal fails.

Appeal B

9. In this EN the Council has alleged the carrying out of a building operation comprising the erection of two container buildings. Therefore, irrespective of what they might be used for, the issue is whether the containers are, as a matter of fact and degree, buildings.

10. The steel containers are large items that are no doubt heavy. There is no evidence to show that they could be moved around easily, and they are attached to the ground by their own heavy weight. Although they might be moved in the future, they have also been in the same place since around November 2020 which has given them a significant degree of permanence. With these well-established tests in mind, I find that, as a matter of fact and degree, the metal containers are buildings that fall within the definition of operational development at s55 of the 1990 Act. They are not a use of land.

11. The matter alleged in this EN has occurred, meaning this ground (b) appeal also fails.

Ground (c) – both appeals

12. An appeal on this ground is based on the claim that there has not been a breach of planning control.

Appeal A

13. I acknowledge that there is an extant planning permission for a stable building on the site for which pre-commencement conditions have been discharged. The appellant also has in mind to change the design of the building to make it more suitable for agricultural purposes. Furthermore, the use of the previous pile of hardcore and rubble to create a rough hardstanding may coincide with what has been approved. Nevertheless, whilst it might be the case that some of the items there have a legitimate future purpose, it is very difficult to justify that the sheer extent of the material strewn across the land, including stacks of concrete blocks, several vans, and many other items that I cannot see would have a place in any intended agricultural activities, is simply not stored there. There are also no signs of any agricultural use of the land and so, for the time being, even items such as trailers that might be used for transporting hay, are also being stored.

14. In view of the above, as a matter of fact and degree, I find that there has been a been a material change of use of the land to general storage that constitutes development, for which planning permission has not been granted. There has therefore been a breach of planning control.

Appeal B

15. I have found above that the containers are operational development. S57 of the 1990 Act specifies that planning permission is required for development. There is no evidence that the buildings have planning permission and so there has been a breach of planning control. This ground (c) appeal fails.

Ground (a) – appeal B

16. The large steel containers have an industrial and construction site appearance that is incongruous with the rural setting of the appeal site. Their location next to the road means that they are visually prominent, and the temporary green mesh fencing does not lessen their visual presence. It may be possible to plant a roadside hedge, but this would take some time to establish before it had a meaningful screening effect. In the meantime, the harm to the character and appearance of the area would persist. Painting the buildings would not lessen their adverse visual impact and timber cladding would give them an odd appearance in my view.

17. I note that a temporary planning permission is requested to enable the appellant to build a barn as part of establishing a smallholding. However, in the absence of any agricultural activity, the timescale and basis of that venture is uncertain. Also, the harm to the character and appearance of the area would continue which I consider unacceptable. A temporary planning permission is not justified.

18. The appeal development does not accord with the sustainable development and design aims of policies 1, 2 and 45 from the Chichester Local Plan: Key Policies 2014-2029 (CLP). The appellant has referred to other CLP policies but in the context of the development for a barn, which I have clarified above is not a development that is before me.

Ground (f) – both appeals

19. The issue for consideration is whether the steps required by the ENs to be taken, or the activities required by the ENs to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by those breaches.

Appeal A

20. The EN alleges a material change of use of the land to a general storage use. It requires that use to cease and for all stored items to be removed from the land. The purpose of the EN is therefore aimed at remedying the breach by discontinuing the use of the land under s173(4)(a) of the 1990 Act. It is also clear that the EN is only targeting 'stored items' to be removed. On this basis, the requirements are the minimum necessary to remedy the breach. Consequently, they are not excessive steps. There is no ambiguity in the requirements of the EN. This ground (f) appeal fails.

Appeal B

21. The EN alleges the erection of two container buildings, and it requires them to be removed from the land. It is therefore clear that purpose of the EN is to remedy the breach of planning control under s173(4)(a) of the 1990 Act. The EN does no more and no less than is necessary to remedy the breach. As such, the step required by the EN to be taken is not excessive. Painting the containers another colour or cladding them in timber would not remedy the breach and are matters of planning merit that I have considered above.

22. This ground (f) appeal fails.

Ground (g) – both appeals

23. In both appeals an extended period of 12 months is requested. However, 6 months in which to cease the storage use and to clear all stored items is not unduly short, and three months is not unreasonable to remove the steel containers. The background of a planning application for a barn is noted. However, that should not delay compliance with either EN. Both ground (g) appeals fail.

Conclusions

24. I conclude that the appeals should fail and the ENs are upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act relating to Appeal B.

Gareth Symons

INSPECTOR