



Appeal Decision

Site visit made on 1 March 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2022

Appeal Ref: APP/H1033/C/21/3281256

Land at the Former Birch Vale Quarry, Oven Hill Road, Birch Vale SK22 1BY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Jonathan Dennis Roberts against an enforcement notice issued by High Peak Borough Council.
 - The notice, numbered HPE/2019/00012, was issued on 23 June 2021.
 - The breach of planning control as alleged in the notice is:
 - 3.1 Without planning permission, the material change of use of the land from a former Quarry to land used for the stationing and occupation of two touring caravans with associated timber building for residential purposes. For the purposes of identification and the avoidance of doubt the touring caravans and associated timber building is shown in the attached photograph marked EN02, EN03 and EN04 (the touring caravans and associated timber building).
 - 3.2 Without planning permission, and in association with use of the touring caravan, the placing of a shed on the Land for the purposes of storage that is ancillary to the residential use identified at 3.1 above. For the purposes of identification and the avoidance of doubt the shed is shown in the attached photograph marked EN05.
 - 3.3 Without planning permission, a change of use of the Land from a former Quarry to land used for the placing and storage of, including but not limited to, a horse trailer, shipping container, cement mixer, water tank, motor bike, builder's materials, tyres and other miscellaneous items. For the purposes of identification and the avoidance of doubt the horse trailer, shipping container, cement mixer, water tank, motorbike, builder's materials, tyres and other miscellaneous items are shown in attached photographs marked EN02, EN03, EN04, EN05 and EN06.
 - 3.4 The changes in use of the land identifies in detail at 3.1 to 3.3 inclusive above for residential and storage purposes are together referred to hereinafter as the Change of Use.
 - The requirements of the notice are to:
 - 5.1 Cease using the Land for the occupation of a touring caravan for residential purposes.
 - 5.2 Remove the touring caravans and the associated timber building (shown in the attached photograph marked EN02, EN03 and EN04) from the Land.
 - 5.3 Remove the horse trailer (shown in the attached photograph marked EN06) from the Land.
 - 5.4 Remove the shipping container (shown in attached photograph marked EN03) from the Land.
 - 5.5 Remove the cement mixer, water tanks, motor bike, builders' materials, tyres and all other miscellaneous items stored there (shown in the attached photograph marked EN02, EN03, EN04 and EN05) from the Land.
 - The periods for compliance with the requirements are:
 - 6.1 In respect of paragraphs 5.1, 5.2, 5.3, 5.4 and 5.5, within 6 months from when this notice takes effect.
 - 6.2 In respect of paragraph 5.6 within one month of the compliance with paragraph 6.1.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The enforcement notice is quashed.

Preliminary Matters

2. The Council did not include a date of issue on the enforcement notice. The enforcement notice was accompanied by a covering letter, dated 23 June 2021, which comprised the same reference number as the enforcement notice and provides details of the effective date of the notice, as well as the date upon which an appeal must be made by. The Council has also provided photographic evidence to show that a copy of the enforcement notice was erected at the site on 23 June 2021.
3. As confirmed in *Beg & Others v Luton BC* [2017] EWHC 3435 (Admin), [2018] JPL 703, nullity should be confined to those cases where the failure to comply with the statutory requirements in section 173 is apparent on the face of the enforcement notice itself. The appellant has appealed under ground (a). There do not appear to be any other interested persons and so the failure to identify an issue date is unlikely to have prejudiced anyone. While the notice lacks a date of issue, since it can be gleaned from other evidence, the appeal can be progressed.
4. The Council makes reference in its evidence to works to an access, which have been carried out. However, the access does not form part of the allegation or the requirements, nor is it within the red line boundary of the enforcement plan. I sought clarification from the Council as to whether the enforcement notice and accompanying plan is correct. The Council advise that the access road was commenced early June 2017 and as such, it considers the operational development carried out would have been immune from enforcement action on the date the notice was served. The works to the access are not before me and so do not form part of my consideration of this appeal.

Matters concerning the notice

5. The appeal site comprises part of a former quarry, which is accessed off Oven Hill Road. Views into the quarry are possible from Oven Hill Road and the shipping container, timber building and touring caravan could be seen clearly from the public domain. The site itself is generally open, with no delineation between the different parts of the site.

The allegation

6. The notice alleges residential use and storage use. The appellant does not dispute that the alleged uses are taking place within the site. However, given the lack of delineation across the site, it appears to me that the site is in mixed residential and storage use. Where there is a mixed use, it is not open to the local planning authority to decouple elements of it, the use is a single mixed use with all its component activities. I have wide powers of correction, subject to no injustice being caused. I shall go on to consider whether the allegation can be corrected.
7. The breach alleges 'without planning permission, the material change of use of the land from a former Quarry to land used for the stationing and occupation of two touring caravans with associated timber building for residential purposes'. The allegation refers to a material change of use, rather than operational

development and states that the change of use has occurred within the last ten years. Section 171B of the Act sets out time limits for taking enforcement action.

8. Case law has established three primary factors in determining what is a building: size, permanence and physical attachment, none of which is necessarily decisive. The timber building is a substantial structure and, whilst it may rest under its own weight, given its size, I consider it highly likely that it would remain in place, rather than being moved about the site.
9. The timber structure is of sufficient size to be of significance in terms of its visual impact and is likely to remain in place for sufficient time to have the quality of permanence. Thus, I consider that given its size and permanence, as a matter of fact and degree, the timber building is a building for the purposes of the Act.
10. While ten years is the correct immunity period for the change of use, section 171B(1) states that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations... no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
11. I have considered whether it would be possible to correct the notice. One option is to delete the reference to the timber building in the allegation, while allowing the requirements of the notice to require removal of the structure. However, although the construction of the building clearly facilitates the unauthorised use, the building which has been erected in this case is a substantial structure which represents obvious and permanent operational development. I therefore consider that the building should be considered under the four year period, rather than treated as operational development which serves an ancillary purpose.
12. Alternatively, it would be possible to correct the notice to refer to 4 years in relation to the operational development. However, it is not clear from the evidence how long the timber building has been *in situ* and the appellant does not comment on this through the appeal. Although it would have been open to the appellant to appeal under ground (d) when lodging the appeal, given the wording of the notice, they may have been unaware of this as an option. I am therefore concerned that correcting the notice in this way could deprive the appellant of the opportunity of making an appeal under ground (d).
13. The allegation in paragraph 3.3 alleges 'a change of use of the Land from a former Quarry to land used for the placing and storage of, including but not limited to,...'. The inclusion of the words 'including but not limited to' lacks precision and introduces uncertainty as to what exactly it is the notice is attacking. I consider it would be possible to delete the words 'including but not limited to' without causing injustice to either party.

The requirements

14. Section 173(11) of the Act states that where (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then so far as the

notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

15. Requirement 5.1 requires the appellant to cease using the Land for the occupation of a touring caravan for residential purposes. However, it is written in the singular, meaning that if the appellant ceases the residential use of one of the touring caravans, they have complied with the notice. Although the notice requires the removal of the touring caravans (plural), since the siting of a caravan constitutes a use of land, it would be possible to remove them, thereby complying with the notice and bring a caravan back to site.
16. Planning permission would be granted for the residential use of a touring caravan, by virtue of section 173(11). Furthermore, were I to amend the allegation to refer to a mixed use, planning permission would be granted for the residential use of the wider site. While correcting the notice to require the appellant to cease the residential use of the site would appear relatively straight forward, it would make the notice more onerous to comply with and so would cause injustice to the appellant.
17. The notice also alleges a change of use of the Land from a former Quarry to land used for the placing and storage of, including but not limited to, a horse trailer, shipping container, cement mixer, water tank, motor bike, builders materials, tyres and other miscellaneous items. While requirements 5.4, 5.5 and 5.6 require the aforementioned items to be removed from the land, it does not require the storage use to cease. Given the wording of the notice, this would result in planning permission being granted for a storage use once the appellant had complied with the requirements. Introducing a requirement to require the storage use to cease would make the notice more onerous to comply with and so would also cause injustice to the appellant.
18. It is clear from the notice that the Council is not seeking to under enforce. The Council confirms in the reasons for issuing the notice that the purpose is to remedy the breach by restoring the land to its condition before the breach took place. Thus, for the reasons given above, I consider that the notice is invalid beyond correction, and should be quashed.

Conclusion

19. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
20. In these circumstances, the appeal on the ground set out in section 174(2)(a) of 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 does not fall to be considered.

M Savage

INSPECTOR