



Appeal Decision

Site visit made on 15 March 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 28th April 2022

Appeal Ref: APP/K0235/C/21/3281871

Land known as land at New Road Farm, 8A Bedford Road, Cople, MK44 3TP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by the Executor to The Estate of C Corbett Deceased against an enforcement notice issued by Bedford Borough Council.
 - The notice, numbered 20/00286/UNAUTU, was issued on 4 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a mixed use (sui generis) as agriculture with a telecommunications mast and a haulage yard with ancillary uses as specified in Certificate of Lawfulness 04/01004/LDE (Appendix 1) to a different mixed use (sui generis) incorporating: agriculture with a telecommunications mast; car and motorbike repairs, modifications and sales; scaffolding depot; parking of heavy goods vehicles (HGVs); storage in shipping containers and open storage; parking of cars, vans, motorhome(s) and other non-agricultural vehicles; storage of caravan(s), horse box(es), non-agricultural trailers, gas and oil tanks, vehicle parts.
 - The requirements of the notice are to:
 - i) Cease the use of land for non-agricultural purposes except in relation to the telecommunications mast authorised by 01/0618/TEL.
 - ii) Remove from the land all non-agricultural vehicles and items including but not limited to all cars, vans, HGV tractor units, HGV trailers, motorhomes, all other non-agricultural vehicles, caravans, non-agricultural trailers, shipping containers, mobile site office, gas and oil tanks, vehicle parts and scaffolding parts.
 - iii) Remove from the land the lighting pole and external lighting erected between shipping containers on the southern part of the site.
 - The periods for compliance with the requirements are 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (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 is corrected by:
 - the deletion of requirement (i) and its substitution with the words 'Cease the mixed use of the Land for agriculture with a telecommunications mast; car and motorbike repairs, modifications and sales; scaffolding depot; parking of heavy goods vehicles (HGVs); storage in shipping containers and open storage; parking of cars, vans, motorhome(s) and other non-agricultural vehicles; storage of caravan(s), horse box(es), non-agricultural trailers, gas and oil tanks, vehicle parts',
 - the deletion of requirement (ii) and its substitution with the words 'Remove from the Land all vehicles and items associated with the mixed use of the Land for agriculture with a telecommunications mast; car and motorbike repairs, modifications and sales; scaffolding depot; parking of heavy goods vehicles (HGVs); storage in shipping containers and open

storage; parking of cars, vans, motorhome(s) and other non-agricultural vehicles; storage of caravan(s), horse box(es), non-agricultural trailers, gas and oil tanks, vehicle parts', and

- the deletion of requirement (iii).
2. It is further directed that the enforcement notice is varied by the deletion of 3 months and the substitution of 6 months as the period for compliance.
 3. Subject to the corrections and variations, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters/The Notice

The planning unit

4. The Council alleges that an unauthorised change of use has occurred relating to the mixed use of the land identified on the plan which accompanies the notice. It does not allege that any new planning units have been formed through the subdivision of the land. Neither does the appellant argue that the site identified in the notice is anything other than a single planning unit.
5. In March 2005 the Council issued a Certificate of Lawful Use or Development (LDC). It established that the use of part of the appeal site as a haulage yard was lawful and was not liable for enforcement action. The LDC refers to an area of land being excluded from the certificate which, on the basis other evidence before me, is the site of a telecommunications mast.
6. The plan which is attached to the notice relates to a larger area of land than that to which the LDC relates and includes the site of the telecommunications mast.
7. The Council served a Planning Contravention Notice (PCN) shortly before it issued the notice. The appellant provided two responses to the PCN, the first dated 15 July 2021 and the second 26 July 2021. Both responses were accompanied by a plan. The second plan is more detailed therefore I shall rely on it as an accurate representation of the distribution of uses on the site shortly before the notice was served on 4 August 2021.
8. The PCN responses set out that the site is in the ownership of the appellant with a workshop and telecommunications mast being the subject of tenancies. The remainder of the site is not the subject of any formal tenancy arrangements and the users of it, including users of the containers, are mainly invoiced on a monthly basis. Therefore, it is reasonable to conclude that the site owner is able to exercise a fair degree of control over the site uses and occupiers.
9. There is a single point of access to the site, there are communal parking areas and facilities and there are no defined boundaries within the site.
10. Drawing these strands together the site appears to have been in use as a single planning unit when the notice was issued.

The requirements of the notice

11. The allegation set out in the notice is that the use of the site i.e. the single planning unit has changed from one mixed use to a different mixed use. The

requirements of the notice should derive directly from the allegation but in this case, they do not as there is no reference to the mixed use. I have sought comments from the parties in relation to varying the requirements of the notice as follows:

- Requirement (i) – amendment of this requirement to read 'Cease the mixed use of the Land'
 - Requirement (ii) – amendment of this requirement to relate to vehicles and items associated with the mixed use of the Land
12. The Council refers to the lack of reference to the telecommunications mast in the amendment to requirement (i) and the effect of changing requirement (ii) on its ability to take enforcement action with regard to differentiating between non-agricultural buildings and vehicles and items associated with the agricultural use of the land.
13. The appellant raises concern about whether the changes to the requirements would leave open to question what precisely the single authorised use is, and which vehicles are associated with it.
14. There is no dispute between the parties that the telecommunications mast was erected lawfully and that it benefits from consent. Consequently, it is not necessary for it to be referred to specifically in the requirements to allow for its retention following cessation of the unauthorised mixed use.
15. Both parties have raised questions about the enforceability of the requirements of the notice if the changes which I have suggested are made. The Council has set out in the notice what it considers to be the previous mixed use of the site and the current mixed use of the site. It is the latter which must cease to meet requirement (i). It is for the appellant to determine which vehicles and items are associated with the current mixed use and to remove them to meet requirement (ii).
16. In my view the amended requirements pass the tests of being precise, clear, and reasonable in relation to the actions necessary to ensure compliance with the notice. However, in response to the concerns of both parties I shall retain the reference to the detailed mix of uses which are set out in the allegation in the requirements as corrected.
17. In respect of the appellant's concerns regarding what is the 'single authorised use' that could continue were the notice to be upheld. The Council has set out in the notice what the previous use of the site was and, on the basis that this remains the lawful use, the use of the site could revert to that previous use. The lawfulness of the previous use is a matter between the appellant and the Council and not a point which I am required to make a determination on.
18. I also asked the Council to confirm whether it regards the lighting pole and external lighting which is referred to in requirement (iii) as facilitating the mixed use of the Land or as operational development in its own right. The Council confirmed that it regarded these features as operational development in their own right. On this basis, as the lighting pole and external lighting are not referred to in the allegation, they should not form part of the requirements and I shall correct the notice accordingly. No injustice would arise as a result of this correction to either party.

19. I shall make the corrections to the notice in respect of requirements (i) and (ii) and remove requirement (iii) and determine the appeal on the basis of the notice as corrected.

Ground (c)

20. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal, and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.
21. Ground (c) relates to the development as it occurred at the time when the notice was served. In this case the alleged breach is the change of use of a single planning unit from one form of mixed use to another and the notice lists the uses which were being carried out on the site at the time when the notice was issued.
22. The appellant argues that the LDC authorises specified non-agricultural uses for part of the yard and the workshop building with its associated forecourt. He says that changes have been made in the way that the site is being used and that the mixed use which is now taking place on the site is akin to the uses which were specified in the LDC to such a degree that a change of use has not occurred.
23. However, I have found that the appeal site comprises a single planning unit and the breach is the MCU to a mixed use across a wider area than is covered by the LDC. To that extent the appellant cannot rely on the LDC to show that the site as a whole can lawfully be used in the way described by the notice.
24. Furthermore, the appellant needs to show that the mixed use of the site was lawful at the time when the notice was served. The appellant says that he has scaled back the activities on the site since the notice was issued. The changes which have been made to bring the use of parts of the site in line with the LDC have been instigated since the notice was served. Notwithstanding the degree to which part of the site may now be being used in accordance with the LDC, an appeal under ground (c) relates to the development at the time of the notice being issued not a subsequent altered development which the appellant is seeking to demonstrate.
25. The appellant also says that a scaffolding company which is currently occupying the site is in the process of moving off. But, at the site visit it was confirmed that the scaffolding company still occupied part of the site. The scaffolding business occupies land outside that part of the site covered by the LDC. Thus, it cannot benefit from any lawful use rights established by the LDC. The appellant accepts that the scaffolding firm has not been on site for 10 years, consequently even if it were a separate planning unit it would not be lawful by virtue of time. As it stands the scaffolding use is part of the mixed use and its limited duration results in the mixed use not having been established for 10 years.
26. The appellant argues that HGV parking within the yard which is at the front of the site, and the use of the workshop and its associated area for the repair and maintenance of vehicles does not constitute a change of use in the context of the LDC.

27. The LDC relates to a primary use of part of the site i.e. as a haulage yard, with incidental uses such as HGV parking, a workshop and offices, storage of vehicle parts, car parking and washing of vehicles. The LDC makes it clear that the Council did not regard the HGV parking, workshop, car parking etc as separate or independent from the use as a haulage yard.
28. The LDC does not establish the lawfulness of the use of parts of the site for parking of HGVs or the use of the workshop independently of the haulage yard use. Even if it did so it remains the case that the LDC does not cover all of the land to which the notice relates.
29. The appellant has not demonstrated that what has been alleged has been found to be lawful as a result of an extant LDC which covers the site and relates to the mixed use which was taking place when the notice was served. Furthermore, the scaffolding firm's use which is included in the description of the alleged mixed use has been on site for less than 10 years.
30. For the reasons set out above, the appellant has failed to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control. Therefore, the appeal under ground (c) fails.

Ground (d)

31. An appeal on ground (d) is on the basis 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. This is also a legal ground of appeal, and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.
32. This ground of appeal accepts that at some stage there has been a breach of planning control, but that it is immune from enforcement action, having subsisted for a ten-year period in the case of change of use to a mixed use as described in the notice.
33. The appellant has to demonstrate that the change of use to a mixed use occurred more than ten years before the notice was issued. However, by his own admission the scaffolding firm has not been in operation for that length of time. It follows that the mixed use of the site which includes the scaffolding firm has not been shown to have occurred for the relevant period.
34. The appellant's approach of seeking to establish that parts of the site, for instance the workshop, have been in use for in excess of 10 years also does not address the use of the site as a whole.
35. For the reasons set out above the appeal under ground (d) fails.

Ground (f)

36. In this case the appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters.
37. The appellant argues that the requirement to revert the use of the site to a wholly agricultural use is unreasonable. However, the notice, as originally

phrased and as corrected does not require him to do that. The requirement is to cease the use of the land for its current mixed use.

38. The appellant considers that the containers which occupy the site are not operational development and only their use is unlawful. For that reason, he argues that the requirement to remove the containers is excessive and that they could be retained and used for agricultural purposes.
39. During my site visit I was shown that only one of the containers was in use in connection with the agricultural element of the mixed use. There is no evidence before me that the other containers on the site, of which there are a significant number, including two stacked containers, would all be utilised in connection with any lawful use of the site. I find that the containers facilitate the use of the land for storage and on that basis the requirement for their removal is not excessive.
40. The appellant considers that a lesser and more targeted approach to the requirements would address the allegation, through allowing commercial activity to continue at an appropriate level in terms of highway and amenity impact.
41. There is no appeal under ground (a), therefore the merits of the development or parts of the development and any harmful impacts are not before me. It is not appropriate for the appellant to introduce arguments on the merits under ground (f).
42. It has not been shown that the requirements exceed what is necessary to remedy the breach of planning control. For this reason, the appeal fails on ground (f).

Ground (g)

43. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of three months is too short because it allows insufficient time for businesses on the site to relocate and because he says the uses have been ongoing on site for some time with the Council's knowledge. He considers that a compliance period of 12 months would be more appropriate.
44. The Council argues that if the compliance period is extended then this should be for no more than 6 months given the ongoing impacts of the use. The Council also says that the appeal would have provided the opportunity for the users of the site to consider relocation options. However, the appellant and consequently the users of the site are entitled to assume success on any ground.
45. There is limited information before me to demonstrate that it would take 12 months for suitable alternative accommodation to be found and businesses/users of the site to relocate. However, in view of the number of users of the site, notwithstanding the lack of formal tenancy agreements, I shall extend the compliance period to 6 months. This should also provide the Council with the opportunity to consider and determine an application which the appellant says has been submitted to regularise the use of the site.

46. A longer compliance period than 6 months would also undermine the effectiveness of taking enforcement action and lead to ongoing harmful effects being experienced by local residents.
47. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Sarah Dyer

Inspector

