

Appeal Decisions

Site Inspection on 27 May 2022

by Graham Self MA MSc FRTPI

Inspector appointed by the Secretary of State

Decision date: 21 June 2022

Appeal A: Reference: APP/Y3940/X/22/3292467 Site at The Stoneyard, Potley Lane, Corsham SN13 9RX

- The appeal is made by Mr O Healy, Oscar Windebank Ltd (see "Procedural Matters" below), under Section 195 of the Town and Country Planning Act 1990 as amended against the refusal by Wiltshire Council to grant a certificate of lawfulness.
- The application (Reference No. 21/02142/CLE) dated 1 March 2021 was refused on 25 January 2022.
- The application was made under Section 191 of the Town and Country Planning Act 1990 as amended.
- The application sought a certificate of lawfulness for: "Use of land for storage (Class B8); use of existing building for light industrial use (Class E(g)(iii) and siting of 3no. portable storage shelters".

Summary of Decision: The appeal fails.

Appeal B: Reference: APP/Y3940/C/22/3296901 Site at The Stoneyard, Potley Lane, Corsham SN13 9RX

- The appeal is made by Oscar Windebank Timber Limited under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Wiltshire Council.
- The council's reference is 21/00066/ENF.
- The notice is dated 23 March 2022.
- The breach of planning control alleged in the notice is: "Without planning permission, operational development comprising the erection of three white-coloured buildings shown in the approximate areas of land annotated with blue circles on the attached plan entitled *Location Plan* and shown in the attached document entitled *Notice Photographs*".
- The requirements of the notice are: "Demolish in full the three buildings and remove all resulting materials from the land".
- The period for compliance is six months.
- The appeal is proceeding on grounds (c) and (g) as set out in Section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act has lapsed.

Summary of Decision: The appeal fails.

Procedural Matters

1. The appeal against the enforcement notice was made some time after the appeal relating to the certificate of lawfulness, and the submission of the statements for the enforcement appeal had not been fully completed by the time of my site inspection. I am dealing with both appeals in this decision notice, which has been delayed to allow for completion of the normal document exchanges.
2. The applicant named on the application form for a certificate of lawfulness was Oscar Windebank Limited. In the appeal form (as recorded in the summary details above), the appellant was specified as Mr O Healy. Mr Healy is also named as the appellant by the appellant's agent, although the agent states he is instructed by Oscar Windebank Limited. The right of appeal in this type of case is held by the original applicant, as is stated in a note on the appeal form. I have therefore considered whether there was ever a valid appeal.
3. On balance, I have decided to treat the appeal as having been made not by Mr Healy but by Oscar Windebank Ltd, since at least the company's name appeared on the appeal form (on the second line of the box on the form asking for the identity of the appellant), and it would be reasonable to assume that Mr Healy was acting as agent for the appellant company, converting Mr Marc Willis of Willis & Co (Town Planning Ltd) into sub-agent.
4. The appeal against the enforcement notice is made by a different company (Oscar Windebank Timber Limited).

Reasons

Certificate of Lawfulness

5. The appeal site is a roughly triangular-shaped area of land reached by an access way off Valley Road. At the time of my inspection, there were about 18 shipping containers on the land. Almost all of them were locked and no key was available so I could not see inside them, except for one which was being cleaned and was empty. Two containers which had a tent-like structure above them were located just outside the red line marking the site boundary on the plan attached to the enforcement notice but appeared to have their access from within the site.
6. Three things (I use this word as a neutral descriptive term here) were positioned near the eastern boundary of the site, one in the north-east corner and two in the south-east corner. These things consisted of white fabric material supported by metal hoop-shaped frames fixed to the ground with metal pinions. Two of these things were about 18 metres by 9.2 metres in lateral dimensions; the other was about 14 metres by 9.2 metres.
7. Two detached buildings in the northern and central parts of the site were locked and I could not gain entry. At the rear of one of these buildings (the one which I understand is occupied by a Mr Lynes) was a toilet with external door. A larger building next to the eastern boundary occupied by Acorn Joinery appeared to be used as a carpentry workshop and related office. An adjoining building was closed at the time of my inspection but appeared from signs to be a sales office with trade counter.
8. The basis of the appellant's case as set out in the application is that the use described in the application began within the last 10 years (ie the 10 years before the application date) as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission within this period.

9. One factor which affects this appeal is the definition of the planning unit. The various premises which occupy the appeal site (referred to as "the yard" in statements) share the access and outside areas, and workers at different businesses apparently have shared access to the toilet behind one of the buildings. Taking these factors into account, I consider that the appeal site should be regarded as a single planning unit, which has apparently been in varied mixed use occupied by different businesses for some years.
10. Part of the appellant's argument is that the buildings occupied by Acorn Joinery and by Mr Lynes can be regarded as separate planning units, and that the rest of the yard remains as a single planning unit with the benefit of a 2017 planning permission for Class B8 (storage and distribution) use. The statement for the appellant states: "The inspector is invited to accept that the main parties are now agreed that the use of the land for storage use is lawful".
11. There are four significant flaws in the appellant's case. First, the application does not seek a certificate of lawfulness for storage use (that is to say, storage use alone), and storage is only one component of a multiplicity of activities and uses within the planning unit. Second, scant evidence has been supplied about some of these activities including what one of the buildings is used for, and little evidence about Mr Lynes' use of another building. From what I saw the overall use of the site appears to include sales, though I do not have information to judge the scale of this component.
12. Third, several key points are not supported by any real evidence. One example is the date when the use of the yard for stone-cutting stopped. The statement by an agent (or sub-agent, as mentioned above) says: "I am advised that the last masons left the yard about ten years ago". That statement is second-hand, unattributed, and imprecise as to a date or even a year.
13. Fourth, the part of the application referring to "the siting of three portable storage shelters" is unsatisfactory because it appears to claim that the presence of the "storage shelters" is a use of land, and this does not describe what has actually occurred. The reasons for my finding on this point are explained in my assessment of the enforcement appeal below.
14. It seems to me that at the relevant time when the certificate application was made, the planning unit (ie the appeal site) was in mixed or composite use, and that this use did not fall within any of the classes of the Use Classes Order. There also appears to have been a material change or material changes of use during the ten year period starting from 1 March 2011, so the use of the site as described in the application had not been carried on for long enough to become lawful. Nor is the mixed use lawful by virtue of a planning permission covering the planning unit, despite the existence of various past planning permissions.
15. An alternative way of looking at the history is described for the appellant in paragraph 10 of the appeal statement. It is argued that when (evidently in June 2018) Acorn Joinery took the lease on the building this firm now occupies, a new planning unit was established and there was a change of use of that unit from Class B8 to Class B1, which change was permitted (for a floor area not exceeding 500 square metres) under the Town and Country Planning (General Permitted Development) Order. But that analysis treats the building occupied by Acorn as an island. Because the access and pedestrian and vehicle circulation areas overlap or are shared between the various activities and occupiers of the whole appeal site, the mixture of uses overlaps.

16. If the site were to be treated as separate planning units, changes of planning unit have occurred within the ten year period leading up to March 2021, and those changes have prevented the continuity necessary to create lawfulness for the uses described in the certificate application.
17. I also have doubts about the classification for planning purposes of what is described on the appellant's behalf as the timber yard business. A planning permission was granted in 2017 for use for storage purposes within Class B8 of the Use Classes Order. Although an element of sales would normally be covered by this class, the presence of a trade counter suggests that sales may be a significant element of the use.
18. A further factor weighing against the appellant is that for the reasons explained below, what is described in the certificate application as the "siting" of "portable storage shelters" is not what has happened on this land. Such "siting" is not a component of a mixed use as described in the application - it involved operational development carried out without planning permission.
19. At the very least, in this type of case the onus of proof is on the appellant, and on the balance of probability I judge that this requirement has not been met. I conclude that the council's decision to refuse the grant of a certificate was justified.

Enforcement Appeal - Ground (c)

20. Under ground (c) of Section 174(2) it is claimed that what is alleged in the enforcement notice does not constitute a breach of planning control. The appeal concerns the three things mentioned in paragraph 6 above. These have been described for the appellant as "portable storage structures which have been erected". That description in itself is revealing, since if something is portable it would normally be more appropriate to say that it had been placed on the land, not "erected"; and the term "structure" also implies something which is constructed. (I exclude such possibilities as off-site construction here, since that clearly does not apply in this instance.)
21. Be that as it may, in my judgment these items were indeed erected and they are structures. The process of erection evidently involved assembling the metal frames, fixing them to the ground using L-shaped metal plates and pinions driven into the ground, and covering with plastic sheeting. I judge that the process of erection amounted to operational development for the purposes of planning law. I make this judgment taking into account the substantial size of the structures as recorded above, their degree of permanence (evidently they have not been moved since their first erection and there is no intention to move them around), and the fact that they are fixed to the ground. These items also have what has been referred to in other cases as a significance in the planning context, because of their scale and visual impact. I consider that those factors offset other factors such as the absence of flooring, internal partitions and service connections.
22. The erection of these structures might not have required the services of a builder or, for planning law purposes, would not have been an operation normally undertaken by a person carrying on business as a builder; and assembling the frames and fixing them to the ground may well not have required engineering skills. So the operation may not have been a building or engineering operation. Even if that were so, I find that the process of erection would have been an "other operation" under the Act.

23. In making my assessment I have had regard to the various court judgments referred to by both sides. I am aware of the differences between these structures and the marquee in the *Skerritts* case,¹ and I have noted the comments for the appellant about the *Save Woolley Valley* judgment.² I have also noted the suggestion that the appellant could assemble sheds and store them on the site as part of the joinery business. This appears to be an argument that the structures enforced against are merely being stored on the land; if so, that argument is far-fetched and has no merit.
24. I conclude that the erection of what has been described for the appellant as "storage structures" involved operational development requiring planning permission. No such permission was obtained. Therefore the development constituted a breach of planning control and the appeal on ground (c) does not succeed.

Enforcement Appeal - Ground (g)

25. This ground is a claim that the period for compliance specified in the enforcement notice is too short.
26. In my view the 6-month compliance period is generous. Bearing in mind that according to the appellant, the work needed to remove the disputed structures should take less than "a day or two", the 6 month period allows ample additional time for the business to make alternative arrangements. I do not see any good reason to extend the compliance period, so ground (g) of this appeal fails.

Conclusions and Formal Decisions

Appeal Reference APP/Y3940/X/22/3292467

27. For the reasons given above I conclude that the council's refusal to grant a certificate of lawfulness in respect of "Use of land for storage (Class B8); use of existing building for light industrial use (Class E(g)(iii) and siting of 3no. portable storage shelters" was well-founded.
28. I therefore dismiss the appeal.

Appeal Reference APP/Y3940/C/22/3296901

29. I dismiss the appeal and uphold the enforcement notice.

G F Self

Inspector

¹ *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions* [2000].

² *R (oao Save Woolley Valley Action Group Ltd) v Bath & North-East Somerset Council & SSETR* [2012].