



Appeal Decision

Inquiry held on 10 and 18 May 2022

Site visits made on 9 and 10 May 2022

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2022

Appeal Ref: APP/Z4718/C/20/3247920

Land lying to the west of Brook House Lane, Shelley, Huddersfield HD8 8LU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by G & R Estates Limited against an enforcement notice issued by Kirklees Metropolitan Council.
 - The enforcement notice was issued on 20 January 2020.
 - The breach of planning control as alleged in the notice is the material change of use from a greenfield site to the storage of aggregates, stone, waste and associated storage containers and the formation of hardstandings.
 - The requirements of the notice are 1. Cease the use of the site for storage including the storage of aggregates, stone, waste, and storage containers and remove all storage containers, stone and aggregates, waste and associated hardstanding; and 2. Return the land to its former condition that existed prior to the unauthorised use taking place.
 - The period for compliance with the first requirement is 60 days and with the second requirement is 120 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The enforcement notice is corrected by the deletion of 'a greenfield site' in the alleged breach of planning control in section 3 of the notice.
2. The enforcement notice is varied by:
 1. the deletion of 'and the formation of hardstandings' in the alleged breach of planning control in section 3 of the notice;
 2. the deletion of 'waste and associated hardstanding' in the first requirement in section 5 of the notice and the substitution instead of 'and waste'; and,
 3. the deletion of the second requirement and the period for compliance with that requirement in section 5 of the notice.
3. Subject to the correction and the variations the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

4. With regard to the alleged breach of planning control set out above, 'a greenfield site' is not a use of land. It was agreed at the Inquiry, without prejudice to either main party, that this phrase should be deleted. The enforcement notice has been corrected accordingly.

5. The Appellant has maintained, both in writing and at the Inquiry, that 'the formation of hardstandings', as referred to in the alleged breach of planning control, has not occurred. This is a matter for consideration under ground (b); that the breach of planning control alleged in the notice has not occurred as a matter of fact. A ground (b) appeal, though not made, will therefore be considered.

Background information

6. The enforcement land is roughly triangular and about 0.3 hectares. Between the land and Brook House Lane is a car park associated with Barncliffe Mill, which is on the opposite east side of the lane. Barncliffe Mill is in a mix of about 26 uses including commercial, leisure and employment uses. The Mill complex, the car park and the enforcement land are in the same ownership. Access to the land is from the car park and via a separate access to the north of the car park. To the south of the land is a residential property and to the north and west is agricultural land.

The breach of planning control

7. The Appellant claims that the breach of planning control does not reflect the uses that were occurring on the enforcement land on the date of issue of the notice. They maintain that 'the parking of vehicles' was also occurring and that the breach of planning control should be corrected accordingly. There are no photographs or other evidence to illustrate what was occurring on the land on 12 January 2020. The Appellant therefore relies on photographs, taken on the ground and from the air, on statutory declarations provided by Mr Lees, Mr Pogson and Mr Marsden, and on the aural evidence of Mr Lees at the Inquiry, in support of their claim.

8. Mr Easton, in his closing statement on behalf of the Appellant, stated that "...the Appellant does not claim that vehicle storage is immune from enforcement action but rather that parking has taken place. There is an important temporal difference between the two uses". Mr Pogson, in his declaration, mentions the storage of a digger and "...the storage of...plant..." on the land, but not at any time does he mention that the land has been used for the parking of vehicles. Similarly, Mr Marsden mentions the storage of plant and the storage of various construction vehicles but does not mention or refer to the parking of vehicles.

9. Mr Lees, a Director of the Appellant company and in his declaration, also mentions the storage of plant and machinery but does, with reference to two tenant companies that were involved in the repair, maintenance and conversion of motor vehicles, mention that "These tenants have utilised parts of the land for overspill parking and the storage of vehicles on an intermittent basis, for the duration of their tenancies". Wellhouse Leisure was a tenant between 1 June 2009 and 24 July 2011 and KG Auto Engineer Ltd became a tenant on 11 October 2012 and remains a tenant. So there is documentary evidence of the parking of vehicles on the land by one tenant company for about two years and by another tenant company since 2012, but the documentary evidence is that this parking was only intermittent.

10. The Appellant company purchased Barncliffe Mill and associated land in December 2007. Aerial photographs taken in 2009 and 2012 do not show any vehicles on the enforcement land. An indistinct aerial photograph of 2015 shows there to be one or two vehicles on the land, a clearer aerial photograph of 2016 shows there to be one wagon on the land, and an aerial photograph of 2018 shows there to be two cars on the land. A Streetview photograph of August 2016 shows a horsebox, a van and possibly three cars to be on the land. It is not known whether any of the vehicles on the land in any of the photographs were parked or stored.

11. The two tenant companies were parking and storing vehicles on the enforcement land but it is not known to what degree vehicles were either parked or stored. In any event, any parking of vehicles by these companies was only on an intermittent basis. Furthermore, there is photographic evidence of vehicles on the land on only four occasions since the Appellant company purchased Barncliffe Mill and it is not known whether the vehicles were parked or stored. There is no evidence of any regular or continuous parking of vehicles on the land at any time since 2007. Consequently, there is no justification for correcting the enforcement notice to include the parking of vehicles.

Reasons

The ground (b) appeal

12. The enforcement land was partially occupied, many years ago, by a building, and there is evidence that the remainder of the land was also used in association with that building and was, probably partially, hard surfaced, and also used for tipping. The land became overgrown but was scraped back in about 2018. The Council maintains that hardstandings were subsequently laid to facilitate the alleged change of use. The land was carefully inspected at a site visit and no evidence of any hardstandings were observed, only rock and other debris that was exposed when the land was scraped back. The formation of hardstandings has not, as a matter of fact, occurred, and the ground (b) appeal, to this extent, succeeds. The alleged breach of planning control has been varied by the deletion of 'and the formation of hardstandings' and the first requirement has been varied accordingly.

The ground (c) appeal

13. The main parties dispute whether Barncliffe Mill and associated land, including the enforcement land, is a single planning unit in a mixed use, the Appellant's case, or many planning units each in a single use, the Council's case. There is, however, one significant episode in the history of the estate that renders reaching a conclusion on this disputed matter unnecessary.

14. The buildings on the east side of Brook House Lane were, on the evidence of Mr Lees, probably derelict and vacant when the estate was purchased in 2007. "...Extensive work was undertaken..." to strip out and renovate buildings and "Various parts of the estate were demolished...". Materials removed "...were stored on the land..." until they were ready for re-use on other parts of the estate. The aerial photograph of 2009 was taken in June and it shows there to be an almost continuous line of shrubs and small trees at the edge of the land next to the car park. Some of these trees and shrubs have been removed over the years but some, particularly a clump opposite the entrance to the car park, remain in photographs up to and including that taken in 2018.

15. Mr Marsden claims to have used a continuous strip of land alongside the car park for storage; a plan attached to his declaration shows the extent of this strip. But he cannot have used all of the strip because some of the trees and shrubs would not have remained in photographs up to 2018. The Appellant's Agent has speculated about what else can be seen to be on the land, other than parked vehicles, in the aerial photographs. In the 2012 aerial photograph there is, possibly, some small deposits of material towards the north boundary and a small area in the south-east corner of the land has been levelled. In the 2015 aerial photograph two containers are on this levelled area and there is evidence, possibly, of further deposits of material towards the centre of the land.

16. The containers remain in the 2016 aerial photograph and it is likely by this time that material has been removed because the central area appears to have been scraped. But by 2018 this scraped area has become overgrown, again, and there is only evidence of small deposits of material in addition to the two containers in the south-east corner of the land. There is no evidence to conclusively show how much of the land has been used for storage, how often it has been used, and for how long on each occasion. Furthermore, given the extent of the enforcement land and on the balance of probability it must be concluded that storage use of the land was *de minimis* up until 2018, and that the land until then, for planning purposes, was vacant. The land has been used by one of the tenant companies for fly fishing demonstrations but it is not known how many times this occurred so this evidence is inconsequential and can be set aside.

17. Mr Pogson is a Director of Abacus Stone Sales Limited (Abacus) whose principle business is demolition and salvage. Abacus were involved with stripping out the mill buildings in 2008. Mr Pogson has declared that "Since 2018 the Company has occupied a large part of the (enforcement) land, initially by informal agreement and subsequently under the terms of a lease...". The lease is dated 1 July 2018 and is for a contractual term of three years. Mr Pogson has also declared that "When I went on to the land in 2018 I scraped off the top layer of vegetation". This is clear from the aerial photograph of 2019.

18. The land leased by Abacus is the majority of the enforcement land. Not included in the enforcement land but in the lease is an area to the north of the car park that has been used to create an independent access off Brook House Lane to the leased land. Material scraped off the leased land has been used to create bunds along the west and south boundaries of the leased land and there is no vehicular access between the leased land and the car park. Abacus use the leased land "...for the storage of containers, salvaged construction materials and plant and machinery". Many storage containers and significant quantities of construction material were seen at the site visits.

19. The main parties agree that *Burdle v SoSE [1972] 3 All ER 240* is the leading legal authority on the subject of the 'planning unit'. Mr Justice Bridge, in his judgement, set out some principles for establishing, in any case, what is the planning unit. Applying these principles it can only be concluded that the land leased by Abacus is a separate planning unit from any other single or multiple planning units at Barncliffe Mill. In this regard, it is occupation of land rather than ownership that is important, the land leased by Abacus is separate from the car park and has its own independent access, Abacus do not have any interest in any other land or business activities at Barncliffe Mill, and their use of the land is associated with their operations carried out away from Barncliffe Mill.

20. A majority part of the enforcement land, certainly by the date of issue of the enforcement notice, was in separate occupation to, and was functionally and physically separate from, any other land at Barncliffe Mill. The land leased by Abacus, being the majority of the enforcement land, is a separate planning unit and it matters not whether other land at Barncliffe Mill is a single planning unit or multiple planning units. It matters not, in fact, that the leased land is a separate planning unit because prior to 2018 the leased land was, as a matter of fact and degree, vacant, and planning permission is required for its change of use to the storage of aggregates, stone, waste and associated storage containers, which is not permitted development. The ground (c) appeal must therefore fail.

The ground (d) appeal

21. The Appellant maintains that the enforcement land was in use for the storage of aggregates, stone, waste and associated storage containers for the ten year period prior to the date of issue of the notice, and is therefore immune from enforcement action. Prior to 2018, as concluded above, the land was vacant. However, the principle matter considered in the ground (c) appeal is also relevant to the ground (d) appeal, because a new chapter in the planning history of the land commenced when the Abacus planning unit was created and the land became used for storage. There was a clear material change in the use of the land in 2018 and the new use commenced within the ten year period prior to the date of issue of the enforcement notice. The ground (d) appeal must also therefore fail.

The ground (a) appeal

22. The appeal site is in the Green Belt. The main issues in the ground (a) appeal are; first, whether the storage use of the land is inappropriate development in the Green Belt, and this requires an assessment of whether the use of the land harms the openness of the area and compromises the purposes of including land in the Green Belt; second, the effect of the use of the land on the character and appearance of the Green Belt; and third, if the use of the land is inappropriate development whether that harm, and any other harm, is clearly outweighed by other considerations such that very special circumstances exist in this case.

The first issue – inappropriate development

23. The breach of planning control is the material change in the use of the land. Paragraph 150 of the National Planning Policy Framework (NPPF) states that material changes in the use of land, amongst other forms of development, are not inappropriate development in the Green Belt if they preserve its openness and do not conflict with the purposes of including land in the Green Belt.

24. There are many metal containers, each about two metres high, on the land containing construction materials. There are also several mounds and piles of materials on the land, and the bunds to two boundaries of the Abacus land are about one metre high. The siting of storage containers, the storage of aggregates, stone and waste, and the introduction of bunds, on the land, which was previously flat, is undermining the spatial openness of the Green Belt.

25. A bund has been introduced along the east boundary of the land to separate the Abacus land from the car park. This bund is visible in views across the car park from Brook House Lane and this physical feature, and the storage that is being carried out on the land, interrupts the visual openness of the Green Belt.

26. One of the purposes of including land in the Green Belt, as set out in paragraph 138 of the NPPF, is to assist in safeguarding the countryside from encroachment. Brook House Lane rises to the north and there are clear views of Barncliffe Mill, the car park and the enforcement land from the road and from a public footpath that extends westwards from the road. Previously the land was naturally overgrown and, though it could not support agriculture due to its underlying condition, its green appearance and natural character will have been seen to be not dissimilar to agricultural land to the west and north. The land was, in its natural and overgrown state, part of the countryside.

27. Storage activities on the land have thoroughly altered its character and appearance. The land is currently untidy, almost wholly developed, and now an

extension of developed land to the east, on both sides of Brook House Lane. The change in the use of the land has not assisted in safeguarding from the countryside to the west of Barncliffe Mill from encroachment.

28. The material change of use of the enforcement land has harmed the spatial and visual openness of the Green Belt and has not safeguarded the countryside from encroachment, contrary to national planning policy. The storage use of the land is therefore inappropriate development in the Green Belt.

The character and appearance of the area

29. Barncliffe Mill and neighbouring development, in views from the north from Brook House Lane and the public footpath, is well contained and there are few open areas within the area of built development. This concentrated area of built development is surrounded by countryside and the appeal site was once part of this countryside and contributed to its undeveloped character and appearance. This former situation has changed. The appeal site is now wholly developed and has an untidy and unattractive appearance which is most apparent in views from the public footpath and Brook House Lane to the north. The storage use of the land has had a significant adverse effect on the character and appearance of the area, in conflict with policy LP24 of the Kirklees Local Plan which requires, amongst other things, that development at least respects the character of the landscape.

30. The introduction of perimeter landscaping, which could be required by condition, would take many years to become established and would not adequately screen the site in views from higher ground to the north. The imposition of such a condition would not alleviate the harm that is being caused by the storage use.

Other considerations

31. The storage use of the site by Abacus is wholly independent of any other businesses at Barncliffe Mill and there is no evidence to indicate that the use provides support for any of those businesses. In this regard there was nothing seen at either site visit to indicate that any of those businesses derive any benefit from the storage use of the site, which does not, therefore, in itself, support the local rural economy. No case has been made that the storage use requires a rural location and a better location for the provision of support for the supply of housing in Kirklees would be in the urban areas of the District where that housing is being built. Little weight is given to these factors and to the claimed environmental benefit of the use of the site for storing reclaimed building materials.

32. All other considerations mentioned in support of the appeal have been taken into account but they do not, either individually or collectively, clearly outweigh the harm by reason of inappropriateness and to the character and appearance of the area and very special circumstances do not therefore exist in this case.

Conclusion in the ground (a) appeal

33. The use of the appeal land for the storage of aggregates, stone, waste and associated storage containers is inappropriate development in the Green Belt and this use has had a significant adverse effect on the character and appearance of the area. The harm caused is not clearly outweighed by other considerations and very special circumstances do not exist. The ground (a) appeal thus fails.

The ground (f) appeal

34. At the Inquiry Mr Storey, for the Council, accepted that the second requirement of the enforcement notice is excessive and unnecessary. The ground (f) appeal succeeds and the notice has been varied accordingly.

The ground (g)

35. At the Inquiry Mr Easton, for the Appellant, accepted that the time period for compliance with the first requirement would be sufficient if the requirement to remove hardstandings is deleted. This requirement has been deleted so there is no need to vary the compliance period or to further consider the ground (g) appeal.

John Braithwaite

Inspector

