
Appeal Decisions

Site Inspection on 18 May 2022

by Graham Self MA MSc FRTPI

Inspector appointed by the Secretary of State

Decision date: 4 July 2022

Appeal Reference: APP/X0360/C/21/3289003

Site at: The Coombes, Coombes Lane, Barkham, Berkshire RG2 9JQ

- The appeal is made by Mrs Candice Jules under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Wokingham Borough Council.
 - The council's reference is RFS/2021/086865.
 - The notice is dated 18 November 2021.
 - The breach of planning control alleged in the notice is: "Without planning permission the material change of use of the land for storage purposes".
 - The requirements of the notice are:
 - (i) Cease the use of the land for storage purposes.
 - (ii) Remove all stored items (except those legitimately required for forestry), including but not limited to building materials and residential items, from the land.
 - The period for compliance is one month.
 - The appeal was made on ground (c) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act has lapsed, as the prescribed fee has not been paid within the specified period.
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Appeal Reference: APP/X0360/C/21/3289004

Site at: The Coombes, Coombes Lane, Barkham, Berkshire RG2 9JQ

- The appeal is made by Mr Dean Jules. All other details the same as those listed above.
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Summary of Decisions: The appeals are dismissed.

Procedural Matters

1. These decisions have been delayed to allow time for written representations to be submitted after the site inspection.
 2. Two applications for awards of costs have been made, one for Wokingham Borough Council against the appellants, the other for the appellants against Wokingham Borough Council. These applications are the subjects of separate decisions.
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Wording of Allegation

3. The allegation in the enforcement notice appears to have two words inadvertently omitted. Normally, a notice alleging an unauthorised material change of use would specify the change with wording such as "...to use for...". The absence of those words from this notice has not been the subject of comment and has not caused any misunderstanding; nevertheless I consider it appropriate to make a correction. This amendment can be made using the powers available to me under Section 176 of the 1990 Act without causing injustice to any party.

Background

4. The enforcement action subject to these appeals follows previous enforcement and legal proceedings including court injunctions relating to adjacent land. Those proceedings involved the removal of a timber building, and that process has evidently led to enforcement action and later to these appeals. A building had evidently been constructed on the adjacent land during late 2018 and was occupied as a dwelling. An enforcement notice requiring (among other things) the removal of the building and resulting materials was subject to appeals, which were dismissed. Related proceedings included a High Court injunction and a contempt of court finding. The main part of a building was evidently later sold. An enforcement notice directed at items stored on the present appeal site was issued in September 2021 but later withdrawn due to issues relating to ownership of the land; then the notice subject to the present appeals was issued in November 2021.

Ground (c)

5. This ground of appeal is a claim that the matters alleged in the enforcement notice do not constitute a breach of planning control.
6. In pleading ground (c) only, the appellants evidently accept that the breach of planning control alleged in the notice has occurred: in other words, they accept that when the enforcement notice was issued a material change of use had occurred at the appeal site as alleged. Indeed the appellants' agent has emphasised that the appeals are limited to ground (c). There is no appeal on ground (b) of Section 174(2) of the Act (under which an appellant can claim that what is alleged in an enforcement notice has not occurred as a matter of fact).
7. The council's evidence includes photographs taken on various dates in 2021 and 2022 which show numerous varying items on the appeal site. The items in the earlier photographs include lengths of timber, metal ground spikes, steel poles, and a large bag of sand; evidence about later times refers to other items such as some furniture, concrete blocks, broken concrete, pallets, windows, steel wheels, bedsteads, a barbeque, tents, pallets, and a box with one of the appellant's names on. It appears that the quantity and nature of items on the land has changed over time.
8. The appellants (through their agent)¹ have disputed that the photographs refer to the appeal site. The photographs by themselves do not show distinguishing features to relate them to the appeal site; but from what I saw during my inspection I am satisfied that this evidence provides an indication of what was happening on the site when the photographs were taken. The photographs do not have a camera-produced date, but I have no reason to believe that false evidence of timing has been submitted.

¹ In this decision the appellants and their agent are treated as one body, so references to "the appellants" include their agent.

9. The appellants have stated that part of the process of dismantling and removing a building from the adjacent land involved "staging" dismantled materials or other items onto the appeal site before they were taken away. The appellants contend that this staging process has been only temporary, some items being on the land for less than a day or sometimes for a few days, so either has not caused a material change of use or has been within the 28 day allowance for "permitted development" under the Town and Country Planning (General Permitted Development) Order (the "GPDO").
10. The appellants have also confirmed that they "have indeed stacked all sorts of material on the access track" (obviously meaning the appeal site), though they say this has only been for "relatively short periods of time". The items on the appeal land at the time of my inspection included flooring planks, windows, cupboard doors, a stainless steel sink, a shower tray, a timber flooring frame, a glazed door, shelf supports, a wheelbarrow, some concrete rubble, MDF sheets and pallets. Some of the items were under a tarpaulin and certainly did not appear to be in transit. Although the appellants have tried to claim that they are not responsible for what is on the land, this contradicts their own evidence and from all I have seen and read I judge that the claim is not believable.
11. The claims made for the appellants about temporary use and the GPDO are misguided. The 28 day period in the GPDO refers to the *use of land*, not to the length of time any particular item might be placed or kept or stored on land. Some individual items may have been on the land for only a short period; but that does not alter the fact that the land was being used for open storage, and that use - what the appellants call a "staging" process - has been carried on for many months, certainly far more than 28 days.
12. Only a small proportion of the whole site as defined in the enforcement notice plan appears to have been involved, but I can see why the council considered it necessary to include a larger area, to prevent the need to take repeated enforcement action if items on the land were to be moved a short distance.
13. Part of the appellants' case is that if forestry items are placed on the land this does not mean that there has automatically been a breach of planning control. That comment misses the point - the great majority of items placed on the land have not been by any stretch of imagination "forestry items".
14. In a statement on their behalf dated 6 June 2022, the appellants say they understand that all of the materials arising from the removal of the building on the adjacent land "are no longer on site". This statement, submitted more than two weeks after my site inspection, should have contained only rebuttal comments, not new evidence. (I am making what I think is a reasonable assumption here that the words "on site" refer to the appeal site.) If the enforcement notice has been complied with after my inspection (as the appellants appear to be saying in the June 6 statement), that does not mean that the notice should be quashed.
15. I referred above to the scope of ground (c), and to the fact that ground (b) of Section 174(2) has not been pleaded. Some of the appellants' arguments might have been more suitably directed at ground (b) than ground (c); but to avoid any possible doubt I confirm here that if ground (b) had been pleaded it would have failed. It is plain from the evidence, including statements for the appellants, that what is alleged in the enforcement notice occurred as a matter of fact.
16. In summary, what is alleged to have occurred amounted to development for the purposes of planning law. Planning permission was not obtained and the

development constituted a breach of planning control. I conclude that the appeals on ground (c) do not succeed.

Other Matters

17. One of the contentions put forward for the appellants is that the enforcement notice was not properly served on all those who should have been served. In particular a Mr Thomas is mentioned as an alleged owner of part ("a large area") of the site. It is argued for the appellants that many of the items subject to the enforcement action are owned by Mr Thomas, and that he has not had an opportunity to appeal against the enforcement notice. The council state that research was undertaken to identify possible owners.
18. Even if there were to be an undiscovered owner or owners I have no good reason to believe that their interests have been prejudiced by any failure to serve. What is important is the appellants' role, and as noted above they have accepted that they have been responsible for placing items on the site.
19. There is no appeal on ground (e) of Section 174(2), under which it could have been claimed that the enforcement notice was not properly served on all those with an interest in the land. The council has made submissions referring to a possible hidden ground (e). The appellants' agent has stated that he is unclear about the meaning of the term "hidden ground (e) appeal", though he has also stated categorically that "there is no hidden ground (e) appeal". He has also stated that the absence of ground (e) does not prevent an inspector from considering whether service of a notice has been defective.
20. On this point it seems to me that the agent is either being deliberately obtuse or is trying to ride two horses at the same time. The term "hidden" (or "implied") ground of appeal can apply to any of the grounds specified under Section 174(2), and generally refers to a situation where a ground of appeal is not specifically pleaded when an appeal is lodged, yet arguments are put forward which appear to pursue such a ground.
21. In this instance, owners or occupiers of nearby plots may well have some access or other rights over the site, but there is no reason to think that the enforcement notice has adversely affected their interests. If for some reason circumstances were to arise where the council wanted to prosecute a person or body other than the appellants for failure to comply with the enforcement notice, such a prosecution might well not succeed if the person or body was unaware of the notice; but that does not mean that the notice should be quashed.
22. Some of the comments for the appellants are directed at the requirements of the notice, although there is no claim under ground (f) of Section 174(2) that the requirements exceed what is necessary to remedy the breach of control. The appellants have also sought to argue that the enforcement notice is defective in other ways, such that it is invalid or a nullity. In my judgment the notice meets the relevant legal tests: it tells recipients reasonably clearly what is alleged to have been done wrong and what is required to put matters right. That finding is not affected by the correction which I am making. The exclusion of items "legitimately required for forestry" is not precise but is capable of reasonable interpretation. This appears to have been an attempt by the council to recognise that forestry-related use might not come within the definition of development under planning law. Whether any real forestry management work is being carried out on the appellants' adjacent land, or could legitimately be carried out while complying with the various conservation-related restrictions which evidently apply, is a matter outside the scope of these appeals.

23. The appellants have contended that the council has sought to attack them personally rather than any breach of planning control, has been unduly aggressive in doing so, and has referred unnecessarily to past proceedings relating to the adjacent land. The council's written evidence referring to the planning-related history of the adjacent land provides background information relevant to the appeals. There is nothing excessively personal or aggressive about this material.
24. The appeal site is repeatedly described as an "access track" in some appeal documents. The council has referred to auction sale information depicting "a road/track.... running through the site" which the council say does not physically exist. The appellants have described the council's statement that the access track does not physically exist as "a bizarre suggestion".
25. This is a silly point of dispute, since the appellants' description of the site as an access track bears little relationship to actuality. Whatever may have been depicted in auction sales particulars does not reflect the situation on the ground at the time of my inspection. Much of the land edged red in the plan attached to the enforcement notice was covered by vegetation. There were some stakes or other means of marking some ownership boundaries in the area, but the site did not have the appearance of an access way of any sort; it was not physically laid out or obviously delineated as such on the ground, and much of it was covered by vegetation. Unless the appearance of the land and extent of vegetation cover has significantly changed since my inspection, hardly any normal person, whether or not delivered to the appeal site from the mythical Clapham omnibus, would perceive the site to be physically part of an "access track"; indeed, such a description is itself bizarre.
26. In reaching my decision I have had regard to written submissions by other parties including local residents or users of local footpaths, and the responding comments for the appellants. I have taken into account all the other matters raised on which I have not specifically commented; they do not outweigh the points discussed above.

Formal Decisions

Appeal Reference APP/X0360/C/21/3289003 (Appeal by Mrs Candice Jules)

27. I direct that the enforcement notice be corrected by inserting into the allegation after the word "land" the words "to use". Subject to that correction, I dismiss the appeal and uphold the notice as corrected.

Appeal Reference APP/X0360/C/21/3289004 (Appeal by Mr Dean Jules)

28. I direct that the enforcement notice be corrected in the same way as is set out above. Subject to that correction, I dismiss the appeal and uphold the notice as corrected.

G F Self

Inspector