The Planning Inspectorate

Appeals Decisions

Site visit made on 28 July 2022

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 August 2022

Appeal Ref: APP/N4720/C/22/3296819 and APP/N4720/C/22/3296820
Land at Ash Lane, Garforth, Leeds LS25 2HH

- The appeals are made by Martin Carthy and Carol Carthy under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 21/01489/UCU3) issued by Leeds City Council on 15 March 2022.
- The breach of planning control alleged in the notice is "the material change of use of vacant land to a Scaffolding and Builders' yard (Sui Generis use) and the siting *[of]* storage containers and a portable building used in association with the unauthorised use of the land as a Scaffolding and Builders' yard".
- The requirements of the notice are as follows: -

  "Step 1
  Cease the unauthorised use of the land for the operation of a Scaffolding and Builders' yard by removing all scaffolding poles, boards and racking, building materials, plant machinery and any other equipment and/or materials stored on the land.
  Step 2
  Remove from the land the portable cabin building and all storage containers.
  Step 3
  Remove any fences that may have been erected in order to facilitate the unauthorised use of the land and remove any redundant fence panels from the land.
  Step 4
  Ensure that any waste materials arising from the cessation of the unauthorised use are removed from the land."
- The period for compliance with these requirements is two months.
- The appeals are proceeding on the grounds set out in section 174(2)(d), (f) and (g).

Decision

1. The appeals are allowed and the enforcement notice is quashed.

Reasons for the decision

Ground (d)

2. Ground (d) in this instance calls upon the appellants to demonstrate on the balance of probabilities that the change of use alleged in the enforcement notice is immune from enforcement action, on the basis that at the date of the enforcement notice (15 March 2022) the use had subsisted for a ten-year period beginning with the date of the breach of planning control. There are therefore two critical questions -: (i) When did the change of use take place? (ii) Has the use continued throughout the ten-year period?

3. The appellants state that they bought the land in 2007 and that the area shown on the enforcement notice plan has been in continuous use as a builder's yard since 2009, storing building equipment including contractor's plant, skips, surplus building supplies, fencing, signs and barriers, loose roadstone, planings and scaffolding equipment. In support of this evidence, the appellants have submitted several statements made by independent persons with detailed knowledge of the use of the land and a number of dated aerial images sourced from Ordnance Survey and Google Earth for the period 2009 to 2020.

4. In response, the Council have submitted aerial images sourced from Google Earth and the Council's own database. These confirm the appellants' evidence apart from the two 2009 images from the database which are at odds with the appellants' 2009 Ordnance Survey image. The Council also point to the Business Rates records for the land, where the appellants indicated that 'stock or equipment' were 'placed in the premises' from 2014. The Council state that a scaffolding company started operating from the land in 2020, which the appellants accept to be correct.

5. I have considered the Council's evidence and the appellants' response to it in more detail in the following paragraphs 6 to 9 and reached conclusions on the balance of probabilities.

6. The appellants' Ordnance Survey image has endorsed on it the statement 'Ordnance Survey 2009-03-29' (only visible on the appeal copy by zooming in). I cannot find where any dates have been endorsed on the Council's database images as such. The only indication of their date is the handwritten endorsement '2009' written above each one. I attach more weight to the Ordnance Survey date; it appears to me to be incontrovertible compared to a handwritten endorsement, where there is more scope for inaccuracy; the Ordnance Survey image also accords with the statements made by the independent persons.

7. As to the Business Rates records, the appellants have explained that until 2014 they had not appreciated that Business Rates were levied on uses of land, as well as uses of buildings. It is not unusual in my experience to find that tax records do not tie in with planning timelines in appeals of this kind. Such inconsistencies are seldom found to be determinative since there can be many reasons why this occurs, including failures by responsible persons to supply information and register premises in a timely fashion.

8. The term "builder's yard" is not defined for town planning purposes. In my view, it refers to land used for the storage of material, equipment and plant for use in the construction industry. I would expect the items stored in a builder's yard to routinely include scaffolding equipment, since this is one of the most frequently used items needed by the construction industry. The evidence in this appeal indicates that such a use commenced in 2009, that scaffolding equipment was in fact included amongst the items stored and that this use continued throughout the ten-year period expiring in 2019, at which time the builder's yard became immune from enforcement action.

9. The term "Scaffolding and Builders' yard" used in the notice is not one I am familiar with. The evidence indicates that the appellants started to share the use of the builder's yard with a scaffolding company in 2020. I do not consider

that this amounted to a new use for planning purposes for two reasons. Firstly, the use for the storage of scaffolding is in my view part and parcel of the use of the land as a builder's yard that became immune from enforcement action in 2019. Secondly, a change in the identity of people using the builder's yard as such is not relevant for planning purposes.

10. For the above reasons, I have concluded that the appeals should succeed on ground (d). The enforcement notice has therefore been quashed.

Grounds (f) and (g)

11. Grounds (f) and (g) no longer fall to be considered following the success of the appeals on ground (d) and the quashing of the enforcement notice.

D.A.Hainsworth

INSPECTOR