
Appeal Decisions

Site visit made on 13 July 2022

by Sandra Prail MBE, M.B.A., LLB (Hons), Solicitor (non practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 September 2022

Appeal A Ref: APP/Z3825/C/21 /3272802

Mayfield Nursery, West Chiltington, Broadford Bridge, Billingshurst, West Sussex, RH14 9EA

- Appeal A is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Horsham District Council (Ref EN/20/0231).
- Appeal A is made by Mrs Andrea Perry-Mason.
- The notice was issued on 12 March 2021.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of part of a building from agriculture to ancillary domestic use and storage in association with the main dwellinghouse at Mayfield Nursery as shown in the approximate positions hatched blue on the plan attached to the notice.
- The requirements of the Notice are (i) cease the use of the building for ancillary domestic use and domestic storage use in association with Mayfield Nursery (as shown in the areas hatched blue on the plan attached to the notice) and (ii) remove from the building all residential paraphernalia, domestic storage and non-agricultural items from the building (in the areas hatched blue on the plan attached to the notice).
- The period for compliance with the requirements is 3 months for step (i) and 4 months for step (ii).
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of decision: the appeal is allowed and the enforcement notice is quashed.

Appeal B Ref: APP/Z3825/C/21 /3272803

Mayfield Nursery, West Chiltington, Broadford Bridge, Billingshurst, West Sussex RH14 9EA

- Appeal B is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Horsham District Council (Ref. EN/20/0266).
- The appeal is made by Mrs Andrea Perry-Mason.
- The notice was issued on 12 March 2021.
- The breach of planning control as alleged in the notice is without planning permission the erection of an ancillary building used in association with the main dwellinghouse at Mayfield Nursery (in the approximate position outlined in orange on the plan attached to the notice) (the Unauthorised Operational Development) and the change of use of part of the land from agricultural use to residential use by extension to the residential curtilage of the land (in the approximate position shown edged red on the plan attached to the notice) (the Unauthorised Change of Use).
- The requirements of the Notice are (i) cease the use of the building for ancillary domestic use (shown outlined in orange on the plan attached to the notice), (ii) remove

from the land the building (as shown in the area marked orange on the plan attached to the notice) and any associated hardstanding from the area outlined in orange and edged red on the plan attached to the notice), (iii) remove from the land all material resulting from the removal of the building, (iv) cease the use of that part of the land (as shown edged red on the attached plan) for residential use as an extension to the residential curtilage, (v) remove from the land any non-agricultural residential paraphernalia in the area shown edged red on the plan attached to the notice and (vi) restore the land to its former condition, including defining the original curtilage with a fixed boundary in the location shown hatched blue on the plan attached to the notice.

- The period for compliance with the requirements is steps (1) and (iv) 4 months, steps (ii) and (v) 6 months and steps (iii) and (vi) 7 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended.

Summary of decision: the appeal is dismissed and the enforcement notice is upheld

Appeal C Ref: APP/Z3825/C/21/3272804

Mayfield Nursery West Chiltington Broadford Bridge Billingshurst West Sussex RH14 9EA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Horsham District Council (Ref. EN/20/0230).
- The appeal is made by Mrs Andrea Perry-Mason.
- The notice was issued on 12 March 2021.
- The breach of planning control as alleged in the notice is without planning permission the erection of a building being used for commercial purposes in relation to vehicle repair and spraying of vehicles in the approximate location hatched blue on the plan attached to the notice.
- The requirements of the Notice are (1) cease the use of the building for the repair and spraying of vehicles and any other uses, (2) remove from the land the building (as shown blue on the plan attached to the notice in its approximate location) and its hardstanding base, (3) remove from the land all material resulting from the removal of the building and its hardstanding base and (4) restore the land to its former condition.
- The period for compliance with the requirements is for step (1) 3 months and for steps (2), (3) and (4) 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of decision: the appeal is dismissed and the enforcement notice is upheld with correction

Appeal A

Appeal on ground (b)

1. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The onus of proof falls upon the Appellant and the test of evidence is the balance of probability.
2. The appeal site sits to the north of the dwellinghouse known as Mayfield House. It is located outside the built up area boundary of West Chiltington. The site and wider area was formerly a nursery.

3. The building the subject of Appeal A is a former glass house. It has three bays which have been clad in green steel sheeting and one bay which remains a glass house. Bays 1 and 3 are the subject of the appeal. I saw at my site visit that bay 1 is being use as a home workshop and for the storage of wood and household items. Bay 3 is set out as a recreational area including games area, bar/kitchen, seating area and storage. Bay 2 which is not the subject of this appeal remains in agricultural use.
4. The alleged breach of planning control is the change of use of parts of the building (known as bays 1 and 3) from agriculture to ancillary domestic use and domestic storage in association with the main dwelling house at Mayfield Nursery. There is no dispute that the authorised use of the land is agriculture.
5. The Appellant says that a change of use in parts of the building took place over six years ago. She describes family personal belongings as being stored there for some time. She provides no evidence to dispute that the alleged change of use has occurred as a matter of fact.
6. On the evidence before me I conclude that the change of use alleged has occurred as a matter of fact and this ground of appeal therefore does not succeed.
7. The Appellant says that there have been no exterior changes and that the internal change of use does not affect anyone. These points are more pertinent to a ground (c) appeal and I shall consider them accordingly.

Hidden ground (c) appeal

8. This ground of appeal is that the matters alleged do not constitute a breach of planning control. The onus falls on the Appellant and the test of evidence is the balance of probability.
9. A breach of planning control comprises the carrying out of development without planning permission. The meaning of development is set out in section 55 of the 1990 Act, as amended, and includes the making of any material change in the use of any buildings or other land. Section 55 (2) of the Act clarifies that the carrying out of works which do not materially affect the external appearance of a building shall not be taken to involve development of the land. This is a judgement to be made on the facts of each case.
10. There is no dispute that there has been a change in use of part of the building from agriculture to ancillary domestic use and domestic storage incidental to residential use of the dwellinghouse. But the meaning of development is the making of a material change in the use of any buildings or other land. It is established law that a material change of use requires a material change in the definable character of the use of the land. In assessing whether a change of use is materially different from a previous use the character, type and nature of the alleged use should be evaluated.
11. There is no dispute that the authorised use of the land the subject of this appeal (and the relevant planning unit) is agricultural. It has formerly been used as a glasshouse in connection with a nursery.
12. I am not satisfied on the evidence before me that the alleged change of use has manifested itself in a change in the character of the land. It has not

intensified to a level that it can reasonably be described as a material change of use. The use does not materially affect the external appearance of the building and does not manifest itself in a change in the rural character of the land.

13. For the reasons given I conclude that the matters alleged in the notice do not constitute a breach of planning control. The appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. It follows that the appeal on ground (a) does not fall to be considered.

Formal Decision APP/Z3825/C/21 /3272802

14. Appeal A is allowed and the enforcement notice is quashed.

Appeal B

Appeal on ground (b)

15. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The onus of proof falls upon the Appellant and the test of evidence is the balance of probability.
16. I saw at my site visit that the building the subject of this appeal is relatively large and is split into two rooms with one room used as an astronomy hobby room and the other for general recreation. The building has a viewing platform on the roof accessed by an external staircase. It can reasonably be described as a summerhouse for uses incidental to a dwellinghouse.
17. As a matter of fact a building exists and is being used as a summerhouse. The area around the building (edged red on the plan attached to the notice) is being used for recreational purposes. The alleged breach of planning control exists as a matter of fact and this ground of appeal does not succeed.
18. On the evidence before me I conclude that the breach of planning control alleged has occurred as a matter of fact and this ground of appeal therefore does not succeed.

Appeal on ground (a) and deemed application

19. The main issues in the determination of this appeal are (i) the suitability of the site for accommodation ancillary to the dwellinghouse and (ii) the effect of the development on the character and appearance of the area.
20. This ground of appeal considers the planning merits of the development and whether planning permission should be granted on the deemed application under ground (a).

Principle of development

21. Policy 28 of the Horsham District Planning Framework (the HDPF) states that ancillary accommodation will be supported if the development can be accommodated appropriately within the curtilage of the existing dwelling and other specified criteria are met, including a need to demonstrate that the size of any new outbuilding should have regard to the dwelling they serve and should be grouped with the house. The Council argues that in this case the

summerhouse falls outside the residential curtilage of Mayfield House and is therefore not acceptable in principle and contrary to policy.

22. 'Curtilage' is not a term of land use nor does it necessarily equate to the planning unit. It is not defined in planning legislation but caselaw has established relevant criteria to be applied on a case by case basis. Relevant criteria include the physical layout of the building and structure, ownership past and present and use or function, past and present. Essentially, the curtilage of a building is confined to an area around a building, having an intimate association with that building, serving that building in some necessary or useful way and usually (though not necessarily) forming one enclosure with the building. It is a matter of fact and degree.
23. The grounds surrounding the dwellinghouse include various derelict glass houses from the former use of the site as a nursery. The summerhouse is some distance from the dwellinghouse in an area of the grounds that has historically been used for a nursery. Indeed, the structure itself has the frame of a derelict glasshouse. I note the fencing that has been erected around the summerhouse but this does not appear to be an historic feature and the summerhouse is in use for purposes incidental to the enjoyment of the dwellinghouse and is in the same ownership. Whilst I acknowledge that the size of the plot is not dissimilar to the gardens of some neighbouring residential properties the character of the land surrounding the summerhouse with the various derelict and re-purposed glass houses is markedly different from the more formal garden land near the dwellinghouse. The distance between the summerhouse and dwellinghouse contribute to them being visibly distinct and separate.
24. While no one factor is determinative on balance taking all relevant factors into account the summerhouse as a matter of fact and degree does not have the sort of intimate association with the house that is required for it to be part of the house's curtilage. It is therefore not supported in principle by policy 28 of the HDPF which concerns accommodation within the curtilage of an existing dwelling.

Character and appearance

25. The structure has been created from a former glass house frame. A wooden summerhouse has been erected underneath part of the original roofline structure. The building has a viewing platform on the roof accessed by an external staircase.
26. The area is characterised by similar size plots some of which are residential. It is not readily visible from the road or neighbouring properties. But it is a large dominant structure that encroaches on land formerly used for agriculture and creates sporadic development. It is not grouped with other outbuildings and it visually extends the residential character and appearance of the main dwelling into a rural setting. Its scale and bulk dominate its setting.
27. For the reasons given above I conclude that the scale and bulk of the development is such that it causes undue harm to the character and appearance of the area, contrary to relevant policies in the development plan (including policy 26 of the GDPF) that seek to ensure that development respects its setting.

Other matters

28. The Appellant refers to other sites and development permitted elsewhere. I do not have the details of these sites. I have determined this appeal on its own merits.
29. The Appellant raised concerns about Council process including use of photographs. These are not matters within my remit to consider.

Conclusion

30. I have taken into account the social, economic and environmental benefits of the development. I recognise that the development has used recycled materials and that it benefits the owners to improve their recreational facilities. I have also noted the distress described by the Appellant. But the benefits are modest and do not outweigh the identified harm to the character and appearance of the area on a site not supported for such development in the development plan.
31. I have also taken into account that since the issue of the notice Natural England has issued a position statement concerning applications for development within the Sussex North Water Supply Zone (the Supply Zone). The Council say that in the absence of a Water Neutrality Strategy for the area the proposal is likely to result in a greater level of water abstraction and should not be approved. But there is no evidence before me that the kitchen/bar area is connected to a water supply. It therefore has limited weight in my decision and does not alter my conclusions on the main issues.
32. The rights of the Appellant and family members under the Human Rights Act must be taken into account. Interference with the way the Appellant uses the property must be proportionate taking into account the conflicting considerations of private and public interest. I have balanced the private and public benefits in determining this appeal. I have concluded that the benefits do not outweigh the identified harm. There is no ground (g) appeal before me but I consider the periods for compliance strike an appropriate balance so as not to violate individual rights.
33. I have considered whether conditions could overcome the harm. I have taken into account the Planning Practice Guidance but no conditions could overcome the identified harm. There are no material considerations that warrant determining this appeal other than in accordance with the development plan.
34. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision APP/Z3825/C/21 /3272803

35. Appeal B is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

Appeal on ground (a) and the deemed planning application

Preliminary Matter

36. Paragraph 5 .1 of the notice states that a requirement of the notice is to cease the use of the building for the repair and spraying of vehicles and any other uses. The requirements of a notice must be clear and precise. The phrase 'or any other uses' is vague and uncertain. I shall if appropriate correct the notice to align its requirements with the description of the breach of planning control – namely commercial purposes in relation to vehicle repair and spraying of vehicles. This will not cause injustice to either party.

Main Issues

37. The main issues in the determination of this appeal are (1) the suitability of the site for commercial development and (2) the effect of the development on (i) the character and appearance of the area and (ii) the living conditions of occupiers of the host dwelling and neighbouring residential properties with particular regard to noise and odour.
38. The appeal site sits outside the built up area boundary. It is located off West Chiltington Lane. It is accessed through land that used to form part of a plant nursery/small holding. The entrance also provides access to a single dwellinghouse known as Mayfield House. The building the subject of this appeal is located to the south of Mayfield House. Next to it is an almost identical building used by for lawnmower repair and the Council say that this building is immune from enforcement action. To the south west of the buildings is a large field used as a Christmas tree plantation.
39. The building the subject of this appeal is being used as a workshop for vehicle repairs and spraying. Three cars were being worked on inside the building at the time of my visit and 6 were parked nearby awaiting their turn.
40. The development plan (including the Horsham District Planning Framework (the HDPF) mirrors the National Planning Policy Framework (the Framework) in seeking to ensure that development respects its setting. I have also taken into account the West Chiltington Draft Neighbourhood Plan but as it is at the early stages of preparation it attracts limited weight.

Suitability of the site for development

41. Policy 26 of the HDSF provides that outside built up areas the rural character and undeveloped nature of the countryside will be protected against inappropriate development and shall meet specified criteria. Proposals must be essential to a countryside location and meet one of four listed criteria. The use of the site for commercial purposes in relation to vehicle repair and spraying of vehicles is not essential to its countryside location.
42. Policy 10 of the HDPF supports sustainable rural economic development where amongst other things it contributes to diverse and sustainable farming enterprises. Whilst I recognise that the business provides local employment it is not a farming enterprise. The principle of commercial development on this site is not supported by development plan policy.

Character and appearance

43. Development plan policies seek to ensure that development respects the design and landscape character of its setting. For example, Policy 10 of the HDPF encourages sustainable rural economic development where, amongst other things, it maintains the quality and character of the area.
44. The building the subject of this appeal was a former glass house. It is clad in green steel sheeting. It has no windows but doors either end.
45. The building is not readily visible from any public land. It is similar in appearance to its neighbouring structure used for lawn mower repairs. I do not find the building to be incongruous in its setting. There are various derelict glass houses in a state of disrepair nearby. It is not readily visible and does not dominate its setting. The building is agricultural in appearance and does not cause undue harm to the rural character and appearance of the area. It is not contrary to development plan policy or the Framework by reason of its design and appearance.

Living conditions

46. Development plan policy, including policy 33 of the HDPF, seeks to ensure that development does not cause harm to the amenity of neighbouring properties.
47. The area is predominantly rural with residential development and sporadic commercial activity in the vicinity. The building is located approximately 55 metres from Mayfield House. The Appellant says that the normal hours of operation are weekdays 8.30 – 17.00 (or often 9.00 – 16.30). There is no noise data before me. The Appellant explains that the business operating from the appeal site moved to the site from nearby and has been an established local business for many years.
48. In gauging the scale of the vehicle repair use and its associated activities at the site I have had regard to the representations received from interested parties. I note that neighbour representations might have coincided with or been affected by lockdown and that being confined to their homes might have increased sensitivity to noise and vehicle movements. Neighbours describe traffic which includes customer drop off and collection, vehicle parts delivery, paint delivery, third party dent specialists and alloy wheel repairers visiting, flat bed lorries and transporters delivering wrecked cars and road testing of serviced and repaired vehicles. I have also taken into account that West Chilton Lane can be a busy road and that the reasonable expectation of local residents should be for a higher level of noise than might be legitimately expected in a quiet residential area. I also note that there is no evidence of statutory nuisance.
49. I must assess the use not on what I witnessed or what the parties or neighbours describe but the effects that are likely to be felt by granting planning permission for the use as enforced against. Granting planning permission on the deemed application would realistically provide the Appellant with a considerable degree of latitude as to the scope of the activity and the manner in which such a use in this rural location could be run. The potential for noise and odour is high. I have therefore carefully considered whether the imposition of conditions could adequately mitigate the potential for harm.

50. The nature of vehicle repairs is akin to a sui generis use. I consider that the numbers of vehicles at the site could be controlled by condition as could the hours of operation. There is however no evidence before me as to whether or not the odour and noise could be adequately mitigated. Indeed the Council's environmental department say that odour could potentially be managed through a filtration system but that noise may be more difficult to manage. Whilst I have no reason to doubt that the Appellant is willing to seek to reduce the impact there is no evidence before me as to what odour and noise mitigation might be possible. I therefore cannot be certain that such potential harm can be avoided. In these circumstances it is not reasonable for planning permission to be granted on the deemed application.

Conclusion

51. I have concluded that the principle of commercial development in this location is not supported by the development plan. Whilst I have not found harm to the character and appearance of the area I have found harm to the living conditions of occupiers of nearby residential properties by virtue of its use which I cannot be certain is capable of being controlled by condition. The absence of harm to character and appearance does not outweigh the identified harm.
52. I have balanced the identified harm against the social, environmental and economic benefits of the development. The development provides employment for 5 local people (and income for their households) and services for local people but I am not satisfied that an alternative site cannot be found where these benefits could be achieved without the identified harm. I also acknowledge that the building has been created from salvaged materials from the former nursery structures. But these benefits are modest and do not outweigh the identified harm. There is no justification to determine this appeal other than in accordance with the development plan.
53. The Appellant draws to my attention other development in the locality, including fracking equipment and other vehicle related businesses, but none alters my conclusions in this case. She also refers to photographs being used by the Council without consent but this is not a ground of appeal that falls within my remit to consider.
54. I have also taken into account that since the issue of the notice Natural England has issued a position statement concerning applications for development within the Sussex North Water Supply Zone (the Supply Zone). The Council say that in the absence of a Water Neutrality Strategy for the area the proposal is likely to result in a greater level of water abstraction and should not be approved. I agree that there is no certainty that the proposal which includes car washing would not adversely effect the integrity of the area. This is a factor that I have taken into account and further weighs against a grant of permission at this time.
55. For the reasons given above I conclude that planning permission should not be granted on the deemed application.

Ground (f) appeal

56. This ground of appeal is that the requirements of the notice exceed what is necessary to fulfil the purpose of the notice. Section 173(4) provides that the purpose of a notice shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case as the requirements of the notice are to restore the land to its condition before the breach took place and therefore its primary purpose is to remedy the breach. No lesser steps than those set out in the notice would achieve that purpose.
57. The Appellant argues that the breach could be remedied by the issue of a certificate of lawful development. But there is no such application before me and no argument by way of a ground (c) appeal to suggest that the development is lawful.
58. The purpose of an enforcement notice is not punitive. I have therefore considered whether there is an obvious alternative remedy that removes the injury to amenity with less cost and disruption to the Appellant. I have considered the planning merits of the development in the ground (a) appeal and determined that a grant of planning permission is not appropriate under the deemed application. It would be unreasonable to under-enforce and permit the retention of a building when the purpose of that building is to enable an unauthorised use that causes undue harm. There are no lesser steps before me and it is not for me to speculate as to an alternative scheme.
59. I conclude that the steps required by the notice are not excessive and I shall uphold the enforcement notice accordingly.

Conclusion

60. For the reasons given above I conclude that the appeal should not succeed, I shall uphold the enforcement notice with correction and refuse to grant planning permission on the deemed application.

Formal Decision

APP/Z3825/C/21/3272804

61. It is directed that the enforcement notice be corrected by deletion of paragraph 5.1 and in its place substitute '5.1 Cease the use of the building for commercial purposes in relation to vehicle repair and spraying of vehicles'. Subject to this correction Appeal C is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Sandra Prail

INSPECTOR