



Appeal Decisions

Site visit made on 5 August 2022

by Debbie Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 September 2022

Appeal A: APP/A0665/C/22/3299455

Tile Farm, Wicker Lane, Guilden Sutton, Chester CH3 7EL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Katherine Arden against an enforcement notice issued by Cheshire West & Chester Council.
- The enforcement notice was issued on 27 April 2022.
- The breach of planning control as alleged in the notice is without planning permission, a material change of use of the Land from agricultural use to a mixed use of agriculture and MX Motorcross/Quad bike use and Clay Pigeon Shooting use.
- The requirements of the notice are to cease the use of MX Motorcross use, Quad Biking use and Clay Pigeon Shooting use of the Land.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (g) of the 1990 Act as amended.

Summary of Decision: The Enforcement Notice is quashed.

Appeal B: APP/A0665/X/22/3295583

Tile Farm, Wicker Lane, Guilden Sutton, Chester CH3 7EL

- The appeal is made under section 195 of the 1990 Act as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development.
- The appeal is made by Katherine Arden against the decision of Cheshire West & Chester Council.
- The application Ref 21/03973/LDC, dated 23 September 2021, was refused by notice dated 4 March 2022.
- The application was made under section 191(1)(a) of the 1990 Act as amended.
- The use for which a certificate of lawful use or development is sought is a mixed use for agriculture and quads/off-road bikes.

Summary of Decision: The appeal is dismissed.

Appeal A: APP/A0665/C/22/3299455

Reasons

1. The land identified in the enforcement notice, outlined in red on the attached plan, includes Tile Farm and its agricultural land which extends to some 250 acres, grain/straw stores, a haulage operation with associated vehicle parking, a workshop serving the haulage and farm operations, livery stables, paddocks/land for the keeping and exercising horses, feed and tack rooms, two manèges, the farmhouse in residential use with weighbridge office and an additional residential annexe, quad biking/motocross, clay pigeon shooting, a further office serving all activities, a shared parking area and access.

2. These uses take place within the same unit of occupation and it is not apparent that any of the uses are physically and functionally separate. They operate within the same planning unit. As such, the land is in a mixed use of agriculture, a haulage operation with associated vehicle parking, residential, livery stables and the keeping/exercising of horses, quad bike/motocross and clay pigeon shooting. However, the notice does not describe all of the components of the mixed use taking place on the site. The allegation should refer to all the components even if only one is required to cease. This is because, where there is a mixed use, it is not open to the Council to decouple elements of it; the use is a single mixed use with all its component activities. Even if the additional components are lawful, the notice should be corrected, if possible, to describe the mixed use properly.
3. The Council and the appellant agree that the additional uses, other than the disputed clay pigeon shooting, quad biking and off-road biking, are lawful. Relevant evidence and background material has been provided in a Statement of Common Ground. The main parties agree that the allegation should be corrected, as described, and I am asked to use my powers under Section 176(1) of the 1990 Act.
4. There is a further discrepancy in that the plan attached to the notice seems to include land outside of the appellant's ownership. The main parties have asked me to substitute a different plan, which corresponds with that submitted as part of the application for a lawful development certificate.
5. The Courts interpret the power to correct notices very widely, subject to the test of injustice. Nonetheless, the power to correct or vary is discretionary. Despite their assurances, I consider that correcting the allegation as required would lead to injustice to both parties. Introducing several new uses into the allegation would considerably change the nature and effect of the notice, especially given the nature of the uses in question. This would have implications for the grounds of appeal. For example, any changes in the overall mix of uses, including any intensification, within 10 years of issue of the notice could affect ground (d). Also, the appellant says that the uses fluctuate and mix across the site. I am not satisfied that I have the necessary information to correct the notice with an appropriate degree of precision.
6. Further, there are a number of people who have commented on the enforcement appeal including the Parish Council. The corrected allegation would be significantly different from that which people were invited to comment on. Therefore, I consider that making such changes to the allegation would cause a loss of natural justice and this is a reason not to exercise my discretion to correct the notice in any event.

Conclusion

7. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused to the main parties were I to do so. Even if I had the power to correct the notice, the implications for interested parties mean I should not exercise that discretion. The enforcement notice is invalid and will be quashed. In these circumstances, the appeals on the grounds set out in section 174(2)(c), (d) and (g) of the 1990 Act as amended do not fall to be considered.

Appeal A: Formal Decision

8. The enforcement notice is quashed.

Appeal B: APP/A0665/X/22/3295583

Preliminary Matters

9. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
10. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

Background and Main Issue

11. Section 191(2) of the 1990 Act provides that uses and operations are lawful at any time if (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired). Time limits are set out in Section 171B. The relevant time limit for a change of use is (3) the end of the period of 10 years beginning with the date of the breach.
12. The application sought to confirm the lawfulness of a mixed use of the land for agriculture and quads/off-road bikes. Therefore, I must consider whether the appellant has shown, on the balance of probabilities, that a change of use of the land to a mixed use of agriculture and quads/off-road bikes occurred 10 or more years prior to the date of the application, and took place for a continuous period thereafter, such that it is now too late for the Council to take enforcement action.
13. Although the concept of a material change of use is not defined in statute, the basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of activities from what has gone on previously, as a matter of fact and degree. The area of assessment is the planning unit as a whole, which is not in dispute. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

14. The Council and the appellant have submitted a Statement of Common Ground, which sets out the background and history to the site. As part of the matters agreed, I am asked to change the description of the LDC to - "mixed use of land at Tile Farm for agriculture, haulage operation with associated vehicle parking, residential, livery stables and the keeping/exercising of horses, quad bike/motocross and clay pigeon shooting." It is agreed that the LDC should reflect the full range of activities taking place on the land, albeit the dispute

between the parties concerns the quad bike/motocross and clay pigeon shooting, as the other uses are considered to be lawful.

15. Section 191(4) of the 1990 Act allows the local planning authority to modify the description of the existing use, operation or other matter. An Inspector may exercise this power on appeal and is indeed obliged to issue an LDC for any use or development that is shown to be lawful on the facts and evidence, rather than refuse a certificate on the basis of some error or misunderstanding in the application form. However, the power given under s191(4) is discretionary and I do not consider it empowers the grant of an LDC for something totally different to what is applied for.
16. Moreover, the Planning Practice Guidance states that where an LDC is granted for one use on a 'planning unit' which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over subsequent intensification of the certified use. Even having regard to the Statement of Common Ground, I am not satisfied that I would be able to issue a certificate with the necessary degree of precision because the information relating to the nature and extent of the uses is limited.
17. Nonetheless, I am still obliged to determine the appeal against the refusal of the LDC for "a mixed use for agriculture and quads/off-road bikes". However, it is now accepted that what is taking place on the land is a composite or mixed use, comprising several different activities, which are a different mixed use to that applied for. As such, the LDC appeal cannot succeed because it sought a different single mixed use to that which is agreed to be in operation.
18. I appreciate that Section 193(4) provides that an LDC may be issued under s191 for the whole or part of the land specified in the application; and, where the application specifies two or more uses, operations or other matters, for all of them or one or more of them. Even if I were to use this discretion and consider the quad bike/off road bike use alone, my concerns would remain. This is because the use functions as part of a mixed use. That is one of two or more primary uses existing within the same planning unit. One is not incidental to the other, although there may be incidental uses associated with each primary use. The uses and areas of use expand and fluctuate, and this limits the nature and intensity of the activities. I am not satisfied that I could issue an LDC for the quad bike/off-road bike use alone as the certificate would not reflect the true nature of the existing mixed use.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "a mixed use for agriculture and quads/off-road bikes" was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B: Formal Decision

20. The appeal is dismissed.

Debbie Moore Inspector