



Appeal Decision

Site visit made on 4 November 2022

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

an Inspector appointed by the Secretary of State

Decision date: 14 November 2022

Appeal Ref: APP/H1033/C/22/3303476

Land at the former Birch Vale Quarry, Oven Hill Road, Birch Vale SK22 1BY

- 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 Jonathan Dennis Roberts against an enforcement notice issued by High Peak Borough Council.
- The enforcement notice was issued on 9 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from a former disused quarry to a mixed use for residential and storage. The items stored, some of which are also used for, or in association with, residential occupation, include two touring caravans, horse trailer, shipping container, cement mixer, water tank, motor bike, car wheels, wooden shed, miscellaneous items associated with the residential use, such as gas bottles and barbeque for example, and miscellaneous builders' materials and builders' equipment.
- The requirements of the notice are:
 1. Remove the items listed at 3.1 from the Land, and
 2. Cease use of the Land for residential and storage purposes.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the 1990 Act as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. 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 'legal' grounds of appeal is the balance of probabilities. 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.
2. The appellant's case is that the unauthorised development has gained immunity from enforcement action due to the passage of time. The time limits for taking enforcement action are set out in Section 171B of the 1990 Act – (1) where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. (2) In respect of the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. (3) In respect of any other breach of planning control no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

3. It is argued that the land is used for a building occupied as a single dwelling and Section 171B(2) applies. However, the appellant explains that he has resided in the building since its completion in May 2018. This is corroborated by a letter from an interested person dated 5 July 2022, although the Council's photographs suggest the building was completed sometime later that year. It is correct that s171B(2) concerns the change of use of any building to use as single dwellinghouse. However, if a building is erected unlawfully and used as a dwellinghouse from the outset, meaning no change of use occurs as such, s171B(3) applies and the time limit for enforcement action against the use is then ten years. The building itself may become immune from enforcement action after four years, but I note the timber building is subject to a separate notice alleging operational development.
4. Moreover, the allegation concerns a single mixed use "residential and storage". The relevant time period applicable to the unauthorised change of use is ten years under s171B(3), any other breach of planning control.
5. For the avoidance of doubt, the enforcement notice alleging the erection of a timber building (Ref HPE/2019/00016) issued on 9 June 2022 is not before me and the matters do not form part of this appeal.

The ground (d) appeal

6. In order to succeed on ground (d), the appellant must show, on the balance of probabilities, that the matters alleged in the enforcement notice, that is, the whole of the mixed use, have occurred for a continuous period of ten years or more, prior to the issue of the notice, such that it is too late for the Council to take enforcement action.
7. It has not been argued that the matters alleged have not occurred as a matter of fact. I saw evidence of the alleged mixed use during my site visit, along with the other items listed in the allegation. Therefore, what I must decide is when the material change of use to a mixed use comprising residential and storage first took place.
8. The appellant says that the land has been used for the storage of containers since 1994 and in their present position since 1995. A letter from Derbyshire County Council "Shipping Containers at Birch Vale", dated 15 March 1995, has been provided. This concerns the siting of three shipping containers on the land and references an enforcement notice. Another letter from the County Council to the Planning Inspectorate, dated 11 November 1994, concerns an appeal made by the current appellant. The letter states "the appellant says the three large containers which have been placed on the land are used in connection with the mining operations". I am also provided with a copy of an enforcement notice issued by High Peak Borough Council, on 17 May 1993, alleging the change of use for the storage of containers.
9. It is likely, therefore, that containers have been sited on the land since 1993. However, it may be that those containers were used in connection with the previous use of the land as opposed to the current storage use. In any event, as explained above, I must consider when the alleged mixed use of storage and residential first occurred.
10. According to the appellant's own evidence, and that of the Council, the material change of use to a mixed use took place during 2018 when the timber building

was completed and occupied for residential purposes. This introduced a second primary use onto the land, which would have had a significant difference in the character of activities to what had gone on previously.

11. I note the presence of a touring caravan on the land since 2017, which may have been occupied for residential purposes before the timber building was erected. Even if continuous residential use of the caravan, since it was first sited, were to be shown by the appellant, it would not result in immunity from enforcement action due to the insufficient timescales.
12. I conclude on this issue that the appellant has not shown on the balance of probabilities that the matters alleged in the enforcement notice have occurred for a continuous period of ten years or more, prior to the issue of the notice, such that it is too late for the Council to take enforcement action. The appeal on ground (d) fails, therefore.

Conclusion

13. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

14. The appeal is dismissed and the enforcement notice is upheld.

Debbie Moore

Inspector