



Appeal Decision

Inquiry held on 17 October 2022

Site visit made on 17 October 2022

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/F2360/C/21/3272573

Hiltons Farm, 2 Jane Lane, Midge Hall, Leyland, Lancashire PR26 6TQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Trevor Day of T Day Solutions Ltd against an enforcement notice issued by South Ribble Borough Council.
- The notice was issued on 4 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land and buildings at Hiltons Farm, 2 Jane Lane, Midge Hall, Leyland, Lancashire PR26 6TQ, on the land outlined in red on the site plan attached to this notice (Plan 1), as follows:
 - i) Material change of use of land and buildings to a mixed use of agricultural and agricultural engineering, general engineering and fabrication of agricultural buildings and storage associated with that use.
 - ii) Unauthorised operational development consisting of two pole mounted floodlights erected on building 4 (Plan 2).
- The requirements of the notice are:
 - i) Permanently cease the use of the Land and Buildings for the use of agricultural engineering, general engineering and fabrication of agricultural buildings.
 - ii) Permanently cease the use of the Land and Buildings for storage purposes in connection with the agricultural engineering, general engineering and fabrication of agricultural buildings business.
 - iii) Permanently remove all equipment, materials and stock from the Land and Buildings used for or stored in connection with the agricultural engineering, general engineering and fabrication of agricultural buildings business.
 - iv) Permanently remove the polytunnel from the Land (Number 6 on Plan 2).
 - v) Permanently remove the pole mounted floodlights from building 4 shown on Plan 2.
 - vi) Remove the area of hardstanding and replace with topsoil, reseed with grass and return to a lawn area.
- The periods for compliance with the requirements are:
 - 1. In respect of i), ii), iv) and (v) above, within 6 months.
 - 2. In respect of iii) and vi) above, within 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice shall be corrected by:

The deletion of all the words in section 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL, and the substitution of the words 'Without planning permission:

- (i) A material change of use of land and buildings to a mixed use of residential, agricultural engineering, general engineering, fabrication of agricultural buildings and storage associated with that mixed use; and*

- (ii) *The unauthorised operational development consisting of two pole mounted floodlights erected on building 4 (Plan 2).'*

Subject to correction, the appeal is dismissed, and the enforcement notice is upheld.

Applications for costs

2. An application for costs was made by the Council against T Day Solutions Ltd. This application is the subject of a separate Decision.

Matters concerning the notice

3. As the site address and plan reference are already set out in section 2. THE LAND TO WHICH THE NOTICE RELATES, their repartition in section 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL is superfluous. The site address and plan reference shall be deleted from section 3.
4. There was discussion about the primary uses that make up the alleged mixed use. The appeal site includes the dwelling and its garden, therefore there is a residential element missing from the description.
5. The appellant confirmed that the only 'agricultural' activities taking place consist of the keeping of a small number of chickens and growing a small number of tomato plants and trees. The scale of these activities is such that they are most likely incidental to the residential occupation of the dwelling. As they are not a primary activity, 'agricultural' shall be deleted from the description of the mixed use.
6. The appellant's and the Council's cases are predicated on the relocation of the appellant's agricultural engineering, general engineering and fabrication of agricultural buildings business. The exclusion of 'agricultural' and insertion of 'residential' into the description of the activities constituting the mixed use will not therefore cause injustice. I shall proceed on the basis of the amended allegation.

Preliminary Matters

7. The inquiry sat for 2 days, and oral evidence was given under affirmation.
8. The appellant conceded at the inquiry that the matters alleged had occurred. The ground (b) appeal was therefore withdrawn.
9. It was agreed at the inquiry that the land and buildings edged red on Plan 2 attached to the notice would be referred to as 'the appeal site'. It was also agreed that the land and buildings edged with the thick black line on Plan 2 would be referred to as 'the farm'. I shall continue to use this terminology. When referring to the land and buildings as originally purchased by the appellant in 1991/1992, I shall refer to 'the entirety of Hiltons Farm'.
10. It was agreed at the inquiry that the appeal site does not form any part of the application site to which planning permission 07/2007/0800/COU ('the 2007 PP') relates. It was also agreed that the 2007 PP is the only planning permission that granted a mixed use of agricultural, agricultural engineering, general engineering, and fabrication of agricultural buildings.

The appeal on ground (c)

11. An appeal on this ground is that, if the matters alleged have occurred, they do not constitute a breach of planning control. It is for the appellant to show, on the balance of probability, that the matters alleged have the benefit of planning permission or do not constitute development. In this case, the appellant claims that the appeal site falls within the extent of the land granted planning permission, on 24 November 1999, under application reference 07/98/0699 ('the 1999 PP').
12. A mixed use is a sui generis use made up of specific component uses. A change of use from one mixed use of specific component uses to another mixed use of different component uses requires the benefit of planning permission.
13. The 1999 PP granted planning permission for a change of use from agricultural to a mixed use of agricultural, agricultural engineering and fabrication of agricultural buildings. Even if I were to set aside the residential activity taking place on the appeal site, the mixed use granted by the 1999 PP did not include 'general engineering'.
14. The appellant did not make any formal argument that the general engineering activity was incidental to the agricultural engineering or fabrication of agricultural buildings activities. However, earlier written correspondence from the appellant, pre-dating the 2007 PP and the notice, suggests that the appellant considers the general engineering element of the mixed-use to be so small scale as to be incidental to the agricultural engineering and fabrication of agricultural buildings activities. Whether the 1999 PP application site included the appeal site therefore requires consideration.
15. It is a matter of fact that the 1999 PP does not include a list of approved plans and that the Council does not retain any coloured plans pertaining to the 1999 PP within its records. However, the planning permission does state, in the particulars of decision, that '*permission has been granted...in accordance with the application and plans submitted...*'. It has been established by the courts that it is proper to look at the application as if it were incorporated into the decision, where reference is made to it in the decision, as is the case here.
16. Planning permission runs with the land. S7(1)(c)(i)¹ requires a planning application to be accompanied by a plan which identifies the land to which the application relates. Advice in the PPG², confirms that the application site should be edged with a red line on the location plan and all land necessary to carry out the proposed development, such as the access, should be included. Other land in the applicant's ownership, close to or adjoining the application site, should be edged with a blue line.
17. My attention was drawn to several plans and other documents that were argued to show or describe the extent of the land included within the redline application site applicable to the 1999 PP. It falls to me to determine, on the balance of probability, which of these plans and documents identify the approved extent of the land to which the 1999 PP relates.

¹ Town and Country Planning (Development Management Procedure)(England) Order 2015 (as amended)

² National Planning Practice Guide Paragraph: 024 Reference ID:14-024-20140306

18. The appellant claims that a snapshot of the Council's website map³ should be accepted as depicting the extent of the application site. The website map shows a single red line area encompassing the entirety of Hiltons Farm and also Hiltons Cottage, which is and has always been outside the appellant's control. Mr Bray also explained in his oral evidence that the red line on this website map was prepared by Council officers when the application was received. The website map does not therefore form part of the planning application submission. Nor does it, necessarily, provide an accurate representation of the application site as determined by the Council. The website map cannot therefore be relied upon to show the approved extent of the 1999 PP.
19. The appellant submitted the application which became the 1999 PP. The application form is dated 12 October 1998⁴. The Council wrote to the appellant on 5 November 1998⁵ requesting an amended site location plan, which shows the vehicular access up to the adopted highway included within the application site's red line. The Council's acknowledgement letter⁶ confirms the application was validated on 10 November 1998. It would therefore be reasonable to take any plans date stamped '10 November 1998' to be the original application plans. Plans contained at pages IL148, IL150 AND IL151 are date stamped 10 November 1998. Except for IL151, these plans include Hiltons Cottage and the entirety of Hiltons Farm within the red line application site.
20. The red line and information shown on the plan at IL151 correlates with the information contained in the appellant's correspondence dated 1 November 1998⁷. That correspondence details what each building and area of land were being used for at the time the application was made. The plan at IL151 shows the appeal site to be 'Grassed & Landscaped area', 'Garage & Stables' and 'Hiltons Farm (House)' and the farm to be 'Workshop & Storage', 'Cattle Barn', 'Straw Barn', 'Yard Area', 'Portacabin (washroom)', and 'Permanent Cattle Grazing Land'. The 'Garage & Stables' referred to no longer exist.
21. Correspondence from Mr Hoerty to the Council, dated 29 April 1999⁸, included a Supporting Statement⁹ for the application. The Supporting Statement, at paragraph 3.8, states how the appellant uses the land and buildings, *'the engineering and fabrication business operates out of one of the three steel portal framed agricultural buildings which has been adapted internally to form a workshop and storage areas for spare parts which are used for the fabrication and maintenance of agricultural machinery, implements and buildings'*. Paragraph 3.9 refers to a portable building used as an office and materials being stored on part of the existing concrete yard area, from time to time, *'as indicated on the attached plan'*. The Supporting Statement's attached plan is dated April 1999 (IL120) and the red line has been amended to exclude Hiltons Cottage. The application form (IL93), supporting statement (IL112) and its attached plan (IL120) are stamped 'APPROVED', but there is nothing to indicate when or where these stamps were added.
22. Documentation provided by the Council, contains a black and white copy of the appellant's site location plan incorporating the access received by the Council

³ IL26

⁴ IL93 & IL94

⁵ IL91

⁶ IL95

⁷ IL89

⁸ IL110

⁹ IL112 to IL119

on 10 November 1998 (IL377). We know, from the plan at IL147, that the thick black line surrounding the entirety of Hiltons Farm, Hiltons Cottage and the access should be red. The Council's copy of this plan is also stamped 'SUPERSEDED'. There can therefore be little doubt that this original site location plan was replaced with an amended plan at some point before the decision was issued. The Council has also provided a black and white copy of the April 1999 plan (IL375), although their copy has no 'APPROVED' stamp. We know that the thick black line on this plan should be red, having regard to the appellant's copy (IL120).

23. It is clear from correspondence provided by the appellant that discussions were still on-going with the Council regarding the acceptability of the mixed-use between April 1999 and November 1999¹⁰. Seeking to restrict or control the land and buildings within which the mixed-use activities could be carried out would have been a reasonable and logical step to take and would, most likely, have required an amended plan submission.
24. The Council has provided a black and white plan, date stamped 22 November 1999, which is also stamped 'AMENDED PLAN' and 'APPROVED' (IL173). As with the Council's other black and white copies, there is a thick black line outlining part of the land and buildings at the farm and the access. It has been shown that the thick black line on other plans corresponds with what was originally a red line. It is therefore reasonable to conclude that the thick black line on this plan also represents a red line. The thick black line on this plan excludes the appeal site, except the access track, and all of Hiltons Cottage. The date stamp on this plan is dated 2 days before the decision date. It therefore seems most likely that the thick black line on this plan (IL373) defines the extent of the land to which the 1999 PP applies.
25. Subsequent correspondence with the Council, such as Mr Hoerty's letter dated 17 February 2000, and application submissions, including 07/01/0729¹¹ and 07/2007/0800/COU¹², were accompanied by site location plans identifying the area of land outlined on the Council's plan date stamped 22 November 1999.
26. Furthermore, correspondence accompanying application 07/2007/0800/COU, confirms that *'the proposal will not involve any greater level of activity than already exists at the farm as the area and buildings currently being used for the approved use will not be extended or altered in any way and the type of activities being undertaken will be very similar'*¹³. It is therefore reasonable to conclude the red line plan submitted for the 07/2007/0800/COU application is the same as that approved under the terms of the 1999 PP.
27. Having regard to all the above, on the balance of probability, I find that the Council's plan dated 22 November 1999 and stamped 'AMENDED PLAN' and 'APPROVED' confirms the extent of the 1999 PP with a thick black line. This plan shows, except for the access, that all of the land and buildings making up the appeal site are outside the extent of the 1999 PP. The appeal site does not therefore have the benefit of planning permission for the corrected mixed use alleged or any other mixed use.

¹⁰ IL42

¹¹ for the replacement of two existing buildings with a replacement single building granted 4 July 2002

¹² for change of use to a mixed use of agricultural and agricultural engineering, general engineering and fabrication of agricultural buildings granted 7 February 2008

¹³ Mr Gary Hoerty's letter dated 3 August 2007

28. For the reasons given, the appeal on ground (c) fails.

The appeal on ground (d)

29. An appeal on this ground is that the matters alleged have achieved immunity from enforcement action due to the passage of time. The appellant needs to show, on the balance of probability, that the mixed use has taken place continuously for a period of at least 10 years, without significant interruption, and that the pole mounted floodlights have been erected for at least 4 years. The material dates are 4 March 2017 for the pole mounted flood lights and 4 March 2011 for the mixed use. Any continuous 10-year period starting on or before 4 March 2011 is relevant to the mixed-use.
30. The appellant had a lawful development certificate application dismissed on appeal¹⁴ prior to the issue of the notice. That appeal was dealt with by way of written representations and the Inspector found the appellant's own evidence not to be sufficiently precise about the location of activities nor the details of activities that have taken place. The appellant's written submissions in respect of the enforcement appeal are similar to those made in respect of the previous appeal.
31. The appellant conceded in his oral evidence that the pole mounted floodlights had only been erected '*18 months ago*'. In the absence of any documentary evidence to show when the pole mounted floodlights were erected, the appellant is best placed to know when this part of the development took place. The pole mounted floodlights were not therefore erected before the material date and they have not achieved immunity from enforcement action.
32. In his oral evidence, the appellant confirmed that in 2001 all engineering and agricultural fabrication took place on the farm, with all cutting, welding and building fabrication taking place in the workshop. This remained the case until 2017, when he moved the workshop from the farm into building 4 and extended the hard standing (area 5 on Plan 2 attached to the notice). However, he went on to claim that the appeal site has always been used for incidental storage and Building 4 has always been used for some engineering works.
33. In his oral evidence, Mr Schiller confirmed that he has no personal knowledge of the site during the relevant period. He opined that the material change of use of the appeal site did not occur until 2017, when the primary workshop was relocated.
34. Mr Green's relevant knowledge of the entirety of Hiltons Farm covers the period late 1998 to late 2010. His evidence relates to enforcement investigations into complaints that the appellant was operating outside of the 1999 PP. In his written evidence he confirms that he '*...could find no actionable planning breaches and it appeared that, apart from the occasional...de-minimus breach, that Mr Day was carrying out his business within the confines of the [1999 PP] and that no action was appropriate other than to remind Mr Day of the requirements of the [1999 PP]*'. I have already concluded that, except for the access track, the 1999 PP excluded the appeal site.
35. Mr Green also claims that '*...to some extent most of the land and buildings, except that which formed part of the house and immediate garden area,*

¹⁴ APP/F2360/X/19/3236315 for the mixed use of agricultural engineering, general engineering and fabrication of agricultural buildings – Dismissed 4 June 2020

appeared to be in use in connection with his business to some degree’.

Mr Green did not however provide details of any business activities he saw taking place on the appeal site, nor did he elaborate on what he meant by ‘to some degree’. At most therefore Mr Green’s evidence alludes to an ‘occasional...de minimus breach’ of land and buildings within the appeal site. This could not have amounted to some additional primary use of the appeal site or Mr Green would not have concluded that no enforcement action needed to be taken. Mr Green’s evidence does not encompass the relevant period, but does confirm that the appeal site was not used for the corrected matters alleged before late 2020.

36. Mr Coxhead gave his recollections of the use of the land and buildings based on his visits to the entirety of Hiltons Farm, which occurred 1 to 3 times per week. He would call at the house on arrival and remembers seeing all the buildings on the appeal site. Although he confirmed that he had no reason to go looking in any of those buildings. The exception being building 4, where he had seen a lathe in operation. He recalls the hardstanding¹⁵ always being covered with machinery. To his recollection, the business operations started in the buildings on the appeal site and then expanded down the farm. He has no recollection of the primary workshop being relocated from the farm on to the appeal site.
37. Mr Coxhead has limited personal knowledge of what activities were taking place within the land and buildings on the appeal site. Furthermore, his recollections relating to the development of the appellant’s business activities are contradicted by the appellant’s and Mr Green’s evidence, and the planning permissions relating to the entirety of Hiltons Farm. Mr Coxhead’s evidence is therefore imprecise and ambiguous.
38. At the time of the 1999 PP being made, the appellant’s plan (IL151) shows the appeal site to be a grassed and landscaped area. Buildings 2, 3, 4 and 6, and the hardstanding are not shown on this plan. Google Earth imagery shows buildings 3 and 4 to be present on the land by January 2000, a small area of hardstanding has been constructed on part of area 5 by January 2005, building 2 has been erected by April 2015, the hardstanding has been extended and the polytunnel has been erected by April 2017, and area 5 is shown covered with machinery, equipment, and materials by April 2020.
39. The plans and aerial imagery show that the land and buildings currently on the appeal site cannot always have been used in connection with the mixed-use as they have been provided at different times throughout the appellant’s ownership. While buildings 3 and 4 and a small section of hardstanding had been provided before the material date, buildings 2 and 6 and the extension of the hardstanding did not occur until after the material date. Furthermore, the aerial images show that outside storage did not occur to any significant degree until 2018.
40. Given the nature of the business activities, I do not doubt that, prior to 2017, the land and buildings may have been used occasionally to store materials associated with the business activities. Besides Mr Coxhead’s recollection of seeing a lathe in use, there is however no compelling evidence to show what, if any, engineering activities took place in building 4. While Mr Day claims that small engineering works took place in building 4, there is no evidence to show

¹⁵ Area 5 on Plan 2 attached to the notice

that such works were of a commercial nature and for some other personal purpose.

41. From the evidence before me, I find it more than likely that the alleged material change of use took place following the loss of the farm, when the appellant transferred all of his engineering business activities to the appeal site. The appellant has failed to provide precise and unambiguous evidence to show that, on the balance of probability, the mixed-use of the land and buildings has taken place continuously for any 10-year period starting on or before the material date.

42. For these reasons, the appeal on ground (d) fails.

The appeal on ground (f)

43. An appeal on this ground is that the steps required to be taken, or activities required to cease, exceed what is reasonably necessary to remedy the breach of planning control, or the injury to amenity, as the case may be. Mr Day confirmed in his oral evidence that the flood lights had already been removed. The appellant's remaining case on this ground is unclear and Mr Schiller could not provide clarity.

44. The purpose of the notice is to remedy the breach of planning control. While the wording of the allegation has been corrected, the steps to be taken to remedy the breach remain consistent. Furthermore, while the flood lights may have been removed, the step seeking their removal needs to remain in order to prevent their return.

45. The land and buildings, except for the polytunnel and hardstanding, can be returned to their previous lawful use. This would, in effect, allow Mr Day to retain his personal equipment, machinery and materials, provided they are used in some ancillary or incidental capacity to his residential occupation of the appeal site.

46. For the reasons given, the appeal on ground (f) fails.

Conclusion

47. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Andrew Foden of Counsel. He called:

Mr Gary Hoerty

Mr Trevor Day

Mr Robert Schiller

Mr Alan Green

Mr Paul Coxhead

FOR THE LOCAL PLANNING AUTHORITY:

Mr Paul Riley-Smith of Counsel. He called:

Mr Mark Bray

Mr Paul Neville

DOCUMENTS

ID1 Copy of the Council's Press Notice