



Appeal Decision

Site visit made on 15 November 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/D3125/C/22/3302328

Home Farm, Barnard Gate, Witney, Oxfordshire OX29 6XE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr J Webb against an enforcement notice issued by West Oxfordshire District Council.
 - The notice, numbered 2022/15, was issued on 30 May 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the change of use of land from agriculture/horsiculture to a mixed use of agriculture/horsiculture and the storage and repair of vehicles and mobile homes, not ancillary to the agricultural/horsiculture use of the land.
 - The requirements of the notice are to: 1. Permanently cease the repair of all non-agricultural/horsiculturall (sic) related vehicles and mobile homes on the land. 2. Permanently cease the storage of all non-agricultural/horsiculturall (sic) related vehicles and mobile homes on the land.
 - The period for compliance with the requirements is: 4 (four) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (e), (g) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. It is directed that the enforcement notice is:
 - Corrected by the deletion of “not ancillary to the agricultural/horsiculture use of the land” in section 3.
2. Subject to this correction, the enforcement notice is upheld and the appeal is dismissed.

Matters concerning the notice

3. The words “not ancillary to the agricultural/horsiculture use of the land” in section 3 of the notice are superfluous. I am satisfied that I can delete this part of the allegation using my powers under s176(1)(a) of the Act without causing injustice to either party.

The appeal on ground (e)

4. This ground of appeal is that copies of the notice were not served as required by s172 of the Act. Section 172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the local planning authority, is materially affected.

5. The onus is on the appellant to prove their case. The appellant submits that post to the appeal site is, by arrangement with the Post Office, collected from the Whitney Sorting Office. They say that it was only by chance that one of the residents on the site alerted them to the fact that there was mail waiting for them from the council and thus they were able to ask the council to send the correspondence to an address where they were convalescing just in time to enable an appeal to be submitted.
6. Section 329 of the Act sets out the legal framework for the service of a notice. Amongst its terms, sub-section (1)(c) states this can be done "by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address. Under section 176(5) of the Act, where it would otherwise be a ground for determining an appeal under s174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
7. For its part, the council sent the notice to the appellant's residential address and allowed 39 days in which to appeal, this being substantially more than the minimum 28 days required by s172(3) of the Act. Furthermore, the appellant states that they received the notice on 26 June 2022. The appeal was subsequently submitted to the Planning Inspectorate on 3 July 2022, 5 days before the date on which the notice would be effective.
8. From the evidence before me, it appears that the council served the notice correctly but even if it did not, the appellant has submitted their appeal against the notice within the timeframe and has had an opportunity to argue their case fully during the appeal proceedings. It cannot, therefore, be said that the appellant has suffered any substantial prejudice.
9. Therefore, for the reasons given above, I conclude that the appeal on ground (e) should fail.

The appeal on ground (d)

10. In an appeal on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control. Under s171B(3), the requisite period is 10 years.
11. Home Farm totals some 5 hectares with part of the land benefitting from planning permission for the siting of 6 caravans for accommodation of gypsy or traveller families. The appeal site which forms part of Home Farm is centrally sited at the end of a long driveway and is adjacent to the land where the caravans are sited. The site previously formed part of the original farmyard with buildings such as piggeries. Since the removal of the farm buildings, its use had been for general storage and farm equipment and vehicles. Now it is used to store and repair mobile homes and vehicles.
12. The appellant claims that to subsidise their building work and provide further income, they purchased some second hand mobile homes to recondition on-site. This is said to have begun in December 2011. Since then, the appellant has bought other mobile homes and vehicles which have been renovated on-

site and then sold. These activities are said to have existed 'in varying degrees of scale' for over 10 years prior to the notice.

13. The appellant considers that the operations are ancillary to their residential use of the adjoining site, describing how the level of activity has ebbed and flowed over the period of use. This is said to be due, in part, to the nature of their way of life, which has taken them away from Home Farm from time to time. Nevertheless, the appellant states that they have never abandoned what they consider to be their right to use 'the yard' as ancillary work and storage space, for which the planning policy, as quoted by the appellant, allows in relation to sites occupied by gypsies. However, while the policy requires local planning authorities, when formulating development plans, to consider the possibility of including traveller sites suitable for mixed residential and business uses, it does not confer any such rights. But in any case, the planning merits of the use are not relevant to an appeal on ground (d).
14. At my site visit, I saw that most of the land, except for the most northern section which was 'waist-deep' in vegetation, was taken up by trucks, vans, cars and trailers, static and touring caravans all in various states of repair. The site was also littered with debris, burnt out fire-pits and items of a domestic nature. The notice alleges that the primary use of the land is for the storage and repair of vehicles and mobile homes. From what I saw on site and from the evidence provided, I have no reason to disagree. While a low level of use may be consistent with the ancillary argument, the current level of use is such that it cannot be considered ancillary to the residential use of the adjoining land. The appeal site is physically separate and distinct, and occupied for different and unrelated purposes. As a matter of fact and degree, I consider that the appeal site is a separate planning unit that has been formed by its use for the storage and repair of vehicles and mobile homes.
15. For a material change of use of the land to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. From the aerial images provided by the council, it is clear to see that the use of the site has indeed 'ebbed and flowed' over the years. There are images from 2004-2005 which show an empty agricultural field. In 2009, the images display a degree of activity on the land with what appears to be caravans and vehicles. However, an aerial image dated 2014-2015, shows the site almost completely devoid of vehicles and any other items that may have previously been on site. As part of their submissions, the appellant contests the date of the aerial image noting that it has no copyright date and suggests that due to the quality of the photograph it is an 'earlier vintage'. However, they have not produced any evidence to support their contention and I have no reason to doubt its authenticity.
16. The aerial image dated 2019 displays a significant change in activity. Approximately half of the appeal site is cluttered with vehicles, possible caravans and other items which are unidentifiable in the photograph. This appears to align with the appellant's acknowledgment regarding an influx of 20 caravans that were brought on to the site for repair around 2018/19. This, together with what I observed on site, plainly demonstrates a significant difference in the character of the land from its previous use for agriculture/horsiculture. Accordingly, there has been a material change of use of the land which is the subject of the notice.

17. Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed (s171B(1) of the Act). The immunity period is also 4 years for a breach of planning control consisting of the change of use of any building to use as a single dwelling house (s171B(2)). For all other breaches, including a material change of use to a mixed use, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach of planning control (s171B(3)).
18. The notice was issued on 30 May 2022 for a change of use of land from agriculture/horsicultural [sic] to a mixed use of agriculture/horsicultural [sic] and the storage and repair of vehicles and mobile homes. Accordingly, under section 171B(3) of the Act, for the appellant to succeed on ground (d), the onus is on the appellant to show that the change of use had occurred no later than 30 May 2012 and that the alleged use had continued without material interruption for a period of 10 years during which the council could have taken enforcement action at any time. In this case, that has not been done. From the evidence before me, there was a period when the site was substantially clear of vehicles and mobile homes and when enforcement action could not be taken. That is a break in continuity which would mean that the clock for immunity would start again.
19. Accordingly, the appeal on ground (d) fails.

The appeal on ground (g)

20. An appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed to comply with the notice. The appellant considers 4 months is totally unrealistic due to the logistics involved in organising the removal of non-agricultural/horsecultural related vehicles and mobile homes from the land. Moreover, due to the appellant convalescing, a period of 12 months would be needed to comply with the notice. The council disagrees and considers that the use could cease in a day and the site could be cleared in 4 months with assistance from others.
21. While I appreciate the appellant is elderly and may well suffer from bouts of bad health, I am not persuaded that their need to convalesce would be particularly troublesome when arranging for the site to be cleared. I also accept that the period for compliance will be during the time of year when weather conditions may be disruptive. However, I am not persuaded that 4 months would be an insufficient time in which to comply with the notice.
22. The appeal on ground (g) fails.

S A Hanson

INSPECTOR