



Appeal Decision

Site visit made on 18 October 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH DECEMBER 2022

Appeal Ref: APP/X0415/C/21/3278328

Land at Rowan Tree Farm, Blackwell Hall Lane, Ley Hill, Buckinghamshire HP5 1UN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr J Fitzgerald of Fenton Civil Engineers Ltd against an enforcement notice issued by Buckinghamshire Council.
 - The notice was issued on 24 May 2021.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of the land from agriculture to a builder's yard and storage (Use Class Sui Generis) and incidental operational development facilitating the unauthorised change of use, comprising the laying of hardstanding and the stationing of storage containers.
 - The requirements of the notice are: 1. Cease the unauthorised use of the land for storage/a builder's yard; and 2. Rip up and remove the hardstanding and; 3. Remove the storage containers from the land; and 4. Remove from the land all paraphernalia that has been brought onto the land in connection with the unauthorised material change of use; and 5. Remove from the land all debris and materials resulting from compliance with the steps above.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. The appeal site encompasses an extensive area of land. Within the site is a substantial area of concrete surfaced yard, as well as a group of modern farm buildings. A number of metal storage containers have been stationed in the yard, inside of which are kept items of mechanical equipment and tools. Several items of plant, including mini-diggers, dumper trucks and tractors are also kept in the yard, along with a fuel tank and other equipment and construction materials, including quantities of blocks and pipes. The above is all associated with a firm of civil engineering contractors. Additionally, smaller quantities of similar materials and equipment are being kept around the farm buildings. A suite of prefabricated buildings, which I am given to understand are used by the firm as administrative offices, are stationed adjacent to the yard. A log cabin used for residential purposes is located to one side of the yard. To the east of the farm buildings and log cabin is an agricultural field. The log cabin, its garden and the field are also part of the site.

3. The notice alleges that there has been a material change in the use of the site from agriculture to use as a builder's yard and storage. Although no ground (b) appeal was made, the appellant sought to argue that the unauthorised use that had in fact occurred at the site primarily involved the storage of materials and specialist mechanical equipment, which they considered fell within Class B8 of the UCO¹. However, given that as set out above there are additional uses taking place alongside the use alleged in the notice, i.e., uses for residential and agricultural purposes, the site is clearly in more than one primary use.
4. The range of activities being undertaken at the site by the civil engineering contractors' firm in all probability includes the storing of plant, equipment and materials associated with the undertaking of off-site engineering works and grounds maintenance. Alongside the storing of the plant and equipment and its movement to and from the site, routine preparatory tasks such as the cleaning and refuelling of such items are likely to be taking place. Also occurring are likely to be day-to-day administrative functions, for example tendering for and programming work, as well as the supervising and remunerating of staff. This reflects the range of activities that might normally be associated with an operating base, or a depot-type use. Even if this had been the sole use occurring at the site, it is of a materially different character to the use as a builder's yard described in the notice or compared with a use for storage and distribution purposes within Class B8. Therefore, in my view, based on the available information and as a matter of fact and degree, the site might more accurately be described as being in a mixed use as a civil engineering contractor's depot and use for residential and agricultural purposes.
5. When a mixed use is enforced against all the components of that use are required to be specified in the allegation, even if it is considered expedient that only one component should cease. Relevant case law confirms that where a site is in a single mixed use, it is not open to the Council to decouple elements of it. The use of that site is the single mixed use with all its component activities². Consequently, the allegation in the notice is incorrect.
6. At s176(1)(a), the Act provides for correcting any defect, error or misdescription in the notice provided there is no injustice to either the appellant or the Council. I sought the views of the main parties on whether the notice was capable of correction. The Council argued that applying the tests set out in established case law³, the residential use was in a separate planning unit and the notice was therefore capable of correction by the simple expedient of excluding the log cabin and its notional curtilage from the area of land affected by the notice.
7. Nevertheless, on the basis of my own observations the parts of the site that are in residential use cannot be so clearly defined; other land within the site is highly likely to be in use for purposes associated with the residential use, in addition to that shown on the Council's substitute plan. This includes an area of the land to the north of the log cabin, as well as the access, parking and turning areas. Some of this land is also highly likely to be in use for purposes associated with the depot activity. Additionally, as I understand it the residential use is not unrelated in terms of function to the depot use, having

¹ Town and Country Planning (Use Classes) Order 1987(as amended).

² *R (oao) East Sussex CC v SSCLG & Robins & Robins* [2009] EWHC 3841 (Admin).

³ *Burdle and Williams v SSE and New Forest DC* [1972] WLR 1207.

regard to the role of the occupiers in ensuring site security. Consequently, on the basis of the evidence before me there is likely to be no part of the site that is physically as well as functionally separate from the rest. There is an interrelationship between the residential use and the other components of the use taking place on the site. To my mind, this more accurately reflects a single planning unit in a mixed use, rather than separate planning units.

8. In reaching the above finding I have had regard to the appeal decision referred to by the Council, where the sharing of a single point of access and a parking area were found to be factors that did not affect the overall conclusion that there were separate planning units⁴. Even so, unlike the circumstances in that appeal I am not convinced that the uses are taking place independently of each other on different, clearly defined parts of the site. Consequently, I am not persuaded that the Council's substitute plan accurately reflects the extent of the land within the site used for residential purposes. Moreover, as the precise boundaries of the residential use are not clearly distinguishable from the other uses, the substitute plan still includes land in a mixed use. Therefore, I cannot be sure that correcting the notice by using the Council's substitute plan or a similar plan would accurately reflect the extent of the relevant planning unit. Furthermore, in the absence of agreement between the main parties about the precise nature of the mixed use, any correction of the notice to reflect the components of that use would be in uncertain terms and may not address the use the Council believe to be taking place.
9. Widening the scope of the notice by adding requirements (in respect of the residential use for example) would cause injustice to the appellant, as they would be in a worse position than had they not appealed in the first place and simply complied with the notice. Similar considerations apply in this respect to the prefabricated office buildings, which I understand are part and parcel of the depot use but do not currently require removal in the notice. Additionally, the planning merits of the deemed application arising from the ground (a) appeal would have to be assessed on the basis of the mixed use with the component uses rather than the single use in the notice as issued. The appellant might well have advanced a more expansive case in their ground (a) appeal and also in their ground (f) and (g) appeals, had the mixed use been accurately described in the notice as issued. Potentially, they might also have appealed on additional grounds.
10. Alternatively, specifying the components of the mixed use in the allegation where there are no corresponding steps requiring those activities to cease, as is the case in respect of the residential component in this instance, would have consequences in terms of granting an unconditional planning permission, having regard to the effect of s173(11) of the Act. This would clearly put the Council at a disadvantage compared to the situation in the event that the notice was to be upheld with the description of the breach as issued. Therefore, depending on the outcome of the appeal there would potentially be injustice caused to the appellant or the Council if the notice were to be corrected.
11. Accordingly, I find that the notice is incapable of correction.

⁴ Appeal Ref: APP/R5510/C/17/3184266.

Conclusion

12. 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 were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (a), (f) and (g) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Stephen Hawkins

INSPECTOR