
Appeal Decisions

Site visit made on 11 October 2022

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Appeal A Ref: APP/V3500/C/21/3272482

Appeal B Ref: APP/V3500/C/21/3272483

Land at The Cottage, The Street, St James South Elmham, Suffolk, IP19 OHL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr David Mark Pipe and Appeal B is made by Mr Paul Stephen Pipe against an enforcement notice issued by Suffolk County Council.
- The enforcement notice was issued on 8 March 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised change of use from the permitted established mixed use of residential/agriculture/'builders' yard, and as a base for a plant hire operation and use as a 'haulage yard', (as allowed at appeal 5th November 1997 and cross hatched on the attached plan), to a mixed residential/agriculture/industrial (B2)/sui generis use including a waste transfer station, with the sorting and processing of inert waste and storage of waste, comprising of wood, building and demolition waste.
- The requirements of the notice are to: Stop using the land for the importation, storage, sorting and processing of waste and remove from the site all waste including any processed materials and materials spread onto the land.
- The periods for compliance with the requirement are: Two days after the Notice comes into effect to stop using the land for the importation and processing of inert waste and twenty eight days after the Notice comes into effect to remove from the area marked on the site plan all waste including any spread onto the land.
- Appeal A is proceeding on the grounds set out in section 174(2)(c), (d), (f), (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.
- Appeal B is proceeding on the grounds set out in section 174(2)(c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended. 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.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld as corrected and varied.

Procedural Matters

1. On 8 March 2021 Suffolk County Council (SCC) issued two enforcement notices, one in respect of Land at The Cottage and a second in relation to Land at Laurel Farm, The Street, St James South Elmham. The appellants own both sites. The two appeals regarding Laurel Farm are the subject of separate Decisions¹.

¹ Appeal Refs APP/V3500/C/21/3272484 and APP/V3500/C/21/3272485

2. The matters alleged to constitute a breach of planning control (as corrected) fall within the description at 10(b) of Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The alleged matters have been screened of the Secretary of State's own volition. By a notice dated 6 January 2023 the Secretary of State directed that the alleged development would not be Environmental Impact Assessment development.

The Land and the Enforcement Notice

3. The Land is a roughly rectangular area of 0.7 hectares located to the south of The Street and west of Church Lane. A cottage is sited on the westernmost part of the land, with buildings to the side. Adjacent is a yard where there is a Nissan hut. At the time of the site visit there were various containers, old vehicles and stored materials including piles of waste materials. To the far side of a bund was an unkempt, grassy area with some random storage.
4. In July 1996 an enforcement notice concerning the Land was issued by Waveney District Council. An appeal against the notice by Mr D Pipe was dismissed and the notice upheld as corrected and varied by a decision dated 5 November 1997². The alleged breach of planning control was corrected to state "Without planning permission, change of use of the land cross-hatched on the plan attached to this decision letter, from a mixed use as a builders' yard and as a base for a plant hire operation with ancillary haulage activity, to a mixed use as a builders' yard, and as a base for a plant hire operation and use as a haulage yard." The plan attached to the notice was replaced by a plan that excluded those areas which the evidence showed had not been used for commercial purposes during the relevant period. As a result the corrected notice only concerned the much smaller cross-hatched area, the area found to have been actually used for commercial activity. The requirements were varied whereby the use of the land as a haulage yard had to cease and all associated vehicles, equipment and materials had to be removed from the land.
5. The Land identified by the notice issued by SCC is more extensive than the cross-hatched area. In view of the planning history outlined above a haulage yard is incorrectly identified as one of the primary components of the mixed uses. I intend to correct the description to allege "Without planning permission, the unauthorised material change of use of the land from a mixed use of residential, agriculture, builders' yard and base for a plant hire operation with ancillary haulage activity to a mixed use of residential, agriculture, builders' yard, a base for a plant hire operation with ancillary haulage activity and a waste transfer facility for the importation, sorting, processing and storage of waste."
6. The revised wording would address a misdescription of the alleged breach in so far as the stated former use would be based on the conclusions and outcome of the 1997 appeal decision. The wording of the requirements will be corrected to ensure consistency in the notice. SCC and the appellants were invited to make representations and I am satisfied that the corrections may be made without causing injustice to either party.
7. In light of consideration of proposed corrections to the enforcement notice at Laurel Farm, SCC also suggested an addition to the alleged breach, namely "the formation of hardstanding as part and parcel of the material change of

² Appeal decision dated 5 November 1997 ref T/APP/C/96/T3535/644044

use". No corresponding wording was provided to amend the requirements. The notice issued for The Cottage did not specifically state 'hardstanding' in either the matters appearing to constitute the breach or the requirements, whereas the notice for Laurel Farm did. I have concern that to introduce the word now would cause injustice to the appellants and the original wording 'materials spread onto the land' will be retained.

Reasons

Grounds of appeal

8. Appeals A and B have been made on grounds (c), (d), (f), (g). In the appeals on grounds (c) and (d) the onus is on the appellants to prove their case on the balance of probabilities. In the statement of case the appellants reviewed their grounds of appeal and concluded the issues for grounds (c), (d) and (f) are essentially the same. Their revised case is that the notice fails to distinguish between the various types of material and would require the removal of material which could be lawfully stored on site. I will deal with a potential 'hidden' ground (b) appeal, that a waste transfer facility use has not occurred as a matter of fact, as part of the ground (c) appeals.
9. The appellant confirmed at the statement of case stage that they had decided not to continue with the ground (a) appeal and the related deemed planning application at The Cottage in light of the ground (a)/deemed planning application at Laurel Farm. In effect the appellant is no longer presenting a case or seeking planning permission for the development at The Cottage as described in the corrected allegation. Accordingly, I will not consider the ground (a) appeal further and will treat it as withdrawn.

Ground (c)

10. To succeed on this ground the appellants have to show on the balance of probability that the alleged material change of use does not constitute a breach of planning control, whether because no development has occurred or because the development has been authorised by a grant of planning permission. The appellants have brought forward very little evidence to support their case.
11. The meaning of development in section 55 of the 1990 Act includes the making of any material change in the use of any buildings or other land. For a material change of use 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.
12. The substantial evidence of SCC, including photographs and records of site visits, investigations into complaints and involvement of the Environment Agency, all indicate substantial quantities of waste materials were deposited and stored on the land prior to the issue of the notice in March 2021.
13. In November 2017, following complaints and subsequent investigations, the Environment Agency issued 'a cease and desist' letter in respect of the storing and treating of wastes found to be taking place on the site. Subsequently the waste operations resumed on the land, more particularly in 2020. The photographic evidence shows large piles of waste materials and the moving of waste by plant and equipment. The appearance of the land changed considerably. Operational activities would have changed too, resulting in different environmental issues relating to noise and vehicle movements. The

representations of the local MP and nearby residents, including their photographic evidence, also describe a very considerable increase in the volumes of waste delivered to and stored on the land within this timescale.

14. The waste related activities were confirmed on the appeal site visit. Large amounts of waste materials were present, particularly along the northern boundary and to the east of the Nissan hut.
15. The volumes of waste materials on site have far exceeded what reasonably could be ancillary to a small builders' yard and plant hire operation. A waste transfer facility was established as a primary use on the land as a matter of fact and the character of the land use considerably changed. A material change to a new mixed use took place. This development would require planning permission and none has been granted, whether as a result of an application made to the local planning authority or by a development order.
16. I conclude that the alleged development amounts to a breach of planning control and the appeals on ground (c) fail.

Ground (d)

17. To be successful the appellants have to show on the balance of probability that the unauthorised mixed use has become immune from enforcement action by the passage of time. The time limit for taking enforcement action against the material change of use of the land is a period of ten years beginning with the date of the breach. Therefore the issue is whether the material change of use occurred before 8 March 2011 and the use continued substantially uninterrupted for a period of ten years thereafter.
18. Initially the appellants' very brief grounds of appeal associated the waste on the site to the building contractor's business and haulage business, which were stated to have operated for over 20 years. Such points are more appropriate to an appeal on ground (b), that there is no waste transfer facility on the land, or an appeal on ground (c), that the waste transfer facility does not amount to a primary use and there has not been a breach of planning control. The appellants' case has now moved on and the proposed supporting documentation did not materialise at the statement of case stage.
19. Moreover, as a result of the appeal decision on the 1996 enforcement notice the use of the land as a haulage yard was required to cease and failure to comply would be an offence. The enforcement notice remains in force in relation to the land until the notice is withdrawn.
20. The appellants have produced no substantive evidence to support a ground (d) case. In contrast the evidence of SCC demonstrates that from 1999 the site was largely clear of waste materials until the occurrence of the events in 2017, as outlined above in respect of the ground (c) appeals. The statement of case and supporting documentation submitted by SCC details the subsequent restart and concentration of waste related activities on the site.
21. I conclude that the mixed use involving a waste transfer facility has not become immune from enforcement action by the passage of time. The appeals on ground (d) do not succeed.

Ground (f)

22. The issue is whether the requirements of the notice are excessive.
23. The notice will be varied to require (a) the mixed use to cease, and (b) the removal from the land of all materials, plant, equipment and waste associated with the waste transfer facility. These requirements follow on and are consistent with the corrections to the wording of the description of the matters alleged to be the breach of planning control.
24. The removal of waste will become directly linked to the waste transfer facility, addressing the matter raised by the appellants. The appeals on ground (f) succeed to this extent.

Ground (g)

25. The issue is whether the periods for compliance are reasonable.
26. The appellants requested 6 months to clear the land. The reason given is to allow time to agree which materials would have to be removed and to ensure re-usable building materials and other waste outside the scope of the notice is retained.
27. The length of a compliance period should take into account what actions need to be taken to carry out the remedial steps. The appellants have not identified any specific constraints associated with site conditions or external factors. I expect certain arrangements would need to be put in place, both in terms of the operational business and to clear the land of waste materials. On the other side of the balance the unauthorised development causes serious harm to residential amenity and the quality of the village environment, which indicate that the period should be as short as reasonably possible.
28. My conclusion is that the compliance period should be extended to fourteen days to cease the use and to two months for compliance with step 2 regarding removal of materials and plant, equipment and waste associated with the waste transfer facility. To this limited extent the appeals on ground (g) succeed.

DECISIONS

Appeal A Ref: APP/V3500/C/21/3272482 and Appeal B Ref: APP/V3500/C/21/3272483

29. It is directed that the enforcement notice is corrected in section 3 by the deletion of the wording under the heading The Matters Which Appear To Constitute The Breach Of Planning Control and the substitution of: Without planning permission, the unauthorised material change of use of the land from a mixed use of residential, agriculture, builders' yard and base for a plant hire operation with ancillary haulage activity to a mixed use of residential, agriculture, builders' yard, a base for a plant hire operation with ancillary haulage activity and a waste transfer facility for the importation, sorting, processing and storage of waste.
30. It is directed that the enforcement notice is varied:
 - In section 5 What You Are Required To Do by the deletion of the wording of paragraph 5.1 and the substitution of: "Cease the use of the land for a

mixed use of residential, agriculture, builders' yard, a base for a plant hire operation with ancillary haulage activity and a waste transfer facility for the importation, sorting, processing and storage of waste." and by the addition of a new paragraph 5.2 "Remove from the land all materials, plant, equipment and waste, including any processed materials and materials spread onto the land, associated with the waste transfer facility."

- In section 6 Time for Compliance by deleting the words in paragraph 6.1 and the substitution of "In respect of paragraph 5.1 above, fourteen days after the date on which this notice takes effect." and by deleting the words in paragraph 6.2 and the substitution of the words "In respect of paragraph 5.2 above, two months after the date on which this notice takes effect."
 - The deletion of the plan referred to in paragraph 6.2.
31. Subject to the correction and variations, the appeals are dismissed and the enforcement notice is upheld.

Diane Lewis

Inspector