



Appeal Decision

Site visit made on 12 December 2022

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2023

Appeal Ref: APP/T2405/C/22/3294562

The Mill, Croft Hill Road, Huncote, Leicestershire, LE9 3GR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Alastair Brooks against an enforcement notice issued by Blaby District Council.
 - The notice was issued on 11 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission: - The material change of use of the Land to a mixed use of Class E(g)(ii) (the research and development of products and processes) and Class B8 (Storage).
 - The requirements of the notice are: i. cease the use of the land for the mixed use of Class E(g)(ii) (the research and development of products and processes) and Class B8 (storage); ii. remove from the land all storage containers and all associated articles used in connection with the mixed use of Class E(g)(ii) (the research and development of products and processes) and Class B8 (storage); iii. Remove the existing hardstanding (approximate area edged green) and reinstate as grassland to existing adjacent land levels.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in sections 174(2)(a), (b), (d), (f) & (g) of the Town and Country Planning Act 1990 as amended.
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Decision

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

- i) Replacing the alleged breach with "Without planning permission, the erection of buildings for the research and development of products and processes (Class E(g)(ii) use) and the formation of an associated hardstanding";
- ii) Replacing "ten years" with "four years" in part 4.

Subject to these corrections, the appeal is allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mr Alastair Brooks against the Council. This application is the subject of a separate Decision.

The appeal on ground (b)

3. There are two main strands to the appellant's case on this ground:- i. that the development carried out comprises operational development and ii. that the use is in any event mis-described.
4. The veracity of the appellant's statutory declaration of March 2021 appears to be unchallenged by the Council. In this declaration, he describes how, in 2015,

he moved two existing stables from an existing concrete pad on the appeal site to a position to the north of the pad. In or around February 2016 he formed a single workshop from 3 large, steel shipping containers, sited on the concrete pad and linked in a 'H' formation. They were intended to be permanent and were fitted out with an electricity supply, heating, lighting, windows, an air conditioning system and glazed and shuttered windows. At about the same time, he formed a stoned hardstanding to the west of the container workshop and, later in 2016, he placed a further steel container on part of the hardstanding. The above features have remained in place ever since.

5. The containers provide a workshop for the testing and repair of electronic roadside equipment, as part of a contract with the Highways Agency. The items of equipment are kept on the hardstanding whilst awaiting testing or repair.
6. Turning first to the nature of the development, on the particular facts of the case in hand, it is my view that the Council's application of the principles established in cases such as *Murfitt*¹ and *Kestrel*², is misplaced here. In *Murfitt*, Waller LJ pointed to a case where *"... something is done that, on the whole, would be obvious - that, on the whole, would be permanent by the mere fact that it is done and, therefore, something that should be dealt with within a period of four years .."*. In *Kestrel*, Lindblom LJ recognised the two main prongs of the statutory scheme (i.e. a material change of use and operational development) and made it clear that *"... the principle acknowledged and applied in Murfitt does not embrace operational development of a nature and scale exceeding that which is truly integral to a material change of use as the alleged breach of planning control"*. Both cases point to the need to focus on the true nature of the breach – whether it is primarily a material change of use or operational development.
7. As a matter of fact and degree, the substantial size, permanence and physical attachment (to each other and to the ground) of the container units leave me in little doubt that they should properly be regarded as operational development (i.e. buildings); they have resulted in a physical change to the characteristics of the land. The buildings were not erected as ancillary to the testing and repair use, they were erected for the express purpose of carrying out that use; the use could not take place in the absence of the buildings. The concrete hardstanding was already in place in conjunction with the original siting of the stabling. The extension to the hardstanding is clearly an engineering operation, also amounting to operational development. However, it was carried out within the planning unit associated with the building.
8. Furthermore, the development was not in any way concealed. It shares an access with another nearby dwelling, Mill House, and is sited adjacent to a public footpath. I agree with the appellant that the alleged breach should have been described as operational development and the time specified in the notice for taking action should have referred to four years.
9. Turning to the description of the use, there is little dispute that the appellant's business falls within Class E(g)(ii) of the Town and Country Planning (Use Classes) Order 1987 [UCO], as amended in 2020. However, the appellant challenges the Council's allegation of a mixed use, including B8 (storage). My

¹ *Murfitt v SSE & Another* [1980] P & CR 254

² *Kestrel Hydro v SSCLG and Spelthorne BC* [2016] EWCA Civ 784

own reading of the representations and observations of the use of the site align with those of the previous Inspector who visited the site in 2021 in determining appeal ref: APP/T2405/C/20/3263914 who wrote: *"Although I saw that various items were being stored within the site, from the evidence before me and from my inspection of the site, these appear to be in connection with the research and development activities rather than a primary storage use."* The items are predominantly electronic signs awaiting testing and repair and, to my mind, the extent of the storage is not disproportionate to the primary purpose of the appellant's business.

10. The Council refers back to the appellant's own description of the use as a mix of B1 (as it was prior to the 2020 UCO amendment) and B8 in his 2018 planning application, ref: 18/0714/FUL. However, that matter was subsequently addressed and clarified by the Inspector in 2021, as I indicate above.
11. To my mind, the development should more properly be described as the erection of buildings and the formation of a hardstanding for research and development of products and processes. I find it appropriate to correct the notice, having the view that there would be no injustice to the parties, given that all the issues relevant to this matter appear to have been raised and commented on by the parties. The appeal on ground (b) succeeds to this limited extent.

The appeal on ground (d)

12. As a result of my conclusion on ground (b), the appropriate period to consider, as set out in S.171B(1) of The Act, is four years prior to the issue of the notice. The Council issued an enforcement notice for essentially the same development on 30 October 2020, which was quashed on appeal (see para.9 above). Whilst the site was then somewhat larger, it included the present appeal site. Therefore, as the Council took, or purported to take, enforcement action, it is not prevented from issuing a second notice in respect of the same breach under the terms of S171B(4)(b). Accordingly, the relevant date is 30 October 2016, rather than four years prior to the date of the current notice.
13. The appellant's statement in his statutory declaration of March 2021 that the work was carried out in or around February 2016 is not disputed by the Council. The aerial photograph of 20 April 2016 showing the present development in place is unchallenged. In its statement of case, the Council does not dispute that the development had taken place by 1 June 2016, more than four years before the relevant date.
14. In conclusion, the appeal on ground (d) succeeds and the enforcement notice will be quashed.

The appeal on grounds (a), (f) and (g) and the deemed application

15. Because of my conclusion above, there is no need for me to go on to consider the remaining grounds of appeal and the deemed application.

B S Rogers

INSPECTOR