Appeal Decision

Inquiry Held on 24 January 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 07 February 2023

Appeal Ref: APP/J1535/C/21/3287180
Gladwyns Farm, Hamlet Hill, Roydon, Harlow CM19 5JY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Antony Ashall against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 19 October 2021.
- The breach of planning control as alleged in the notice is without Planning Permission: A change of use of the land to storage & distribution of Non-Agricultural equipment and materials (a B8 Storage & Distribution) Use.
- The requirements of the notice are to:
  a) Cease the use of the land for the storage and/or distribution of non-agricultural equipment, machinery and materials.
  b) Remove all non-agricultural vehicles and parts of vehicles from the land.
  c) Remove all gantries and non-agricultural machinery from the land.
  d) Remove all building and construction equipment and materials from the land.
  e) Remove all mechanical lifting equipment from the land.
  f) Remove all buildings and structures from the land shown hatched in Location Plan B other than those shown as labelled a, b, c and d.
  g) Remove all resulting debris from the land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended (the Act).

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by Epping Forest District Council against Mr Antony Ashall. This application is the subject of a separate Decision.

Procedural Matter

3. I did not consider it necessary to conduct a site inspection to determine the appeal. Before coming to that decision, I consulted with the main parties at the inquiry and took into account their views. Neither requested that a site inspection take place for the purposes of the Inquiries Procedure Rules[1].

Main Issue

4. The main issue in the appeal is whether or not, at the date the notice was issued, the time for enforcement action had expired ('the ground (d) appeal').

[1] The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002; Rule 19(2)(b)

Reasons

5. Section 171B(3) of the Act provides that, in the case of the breach of planning control constituted by the material change of use alleged in the notice, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.

6. Therefore, as the notice was issued on 19 October 2021, the burden of proof is upon the appellant to demonstrate on the balance of probabilities that the alleged use had occurred continuously since at least 19 October 2011. Were I satisfied of that, to the required standard of proof, the appeal must succeed.

7. The appellant purchased land at Gladwyns Farm in 2005 and, pursuant to a planning permission, demolished the existing dwelling and erected a new dwelling facing onto Hamlet Hill. Aerial photography dated December 2009 shows a track on the land running from Hamlet Hill, down the side of the dwelling, towards the rear of the land where it seems that there was open storage of materials as well as 2 or 3 smaller structures. The track appears to be substantially hard-surfaced to a point just beyond the dwelling, somewhat short of what I can reasonably describe as 'the rear storage area'.

8. Subsequently, pursuant to another planning approval in 2010[2], the appellant erected a steel frame clad building in the rear storage area. This can be seen in later aerial photographs, such as those said to be taken in 2013 and 2018, together with other structures and open storage. It can also be seen in the photographs that the track has been hard-surfaced all the way down to a similarly hard-surfaced yard near far the corner of the land around which the permissioned building and other structures are located.

9. In essence, the appellant's case is that the alleged material change of use of the appeal site to B8 Class Use[3] occurred in 2007 and has been continuous to date. His oral testimony to that effect (given under affirmation to tell the truth at the inquiry), and written affidavits, have been complemented by various invoices and some other documents.

10. Firstly, given what I have set out as my observations upon the aerial photography, I do not accept the appellant's assertion that the access road to site was built in 2007 to facilitate B8 use by allowing larger vehicles to access the site. If that was indeed its purpose as stated, then I place significant weight on the fact that it was not substantially hard-surfaced all the way to the rear storage area until some years later.

11. Secondly, and very significantly, it is very clear to me from the post-event correspondence following Mr Cullen's site visit in 2014 that the storage taking place up to and including that time was associated with the dwelling on the land at Gladwyns Farm – owned and occupied by the appellant - and did not constitute storage as a primary B8 use of land.

    Indeed, the appellant said as much in his letter to the Council sent by email on 27 August 2014:

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[2] EPF/0247/10

[3] The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Use Class B8 as 'Use for storage or as a distribution centre'.

"*As you can see from your visit we are in the process of clearing the site of redundant equipment that I have accumulated over the last 8 years since I have lived at Gladwyns farm. Some of this equipment was used during the building of the property and some is redundant plant that I will be using to fence off etc my property*."

And, without mentioning at all any storage of commercial equipment and materials related to the food and beverage industry (as per his affidavit statement reproduced below), he states:

"*We do not carry out any business at our premises*…"

12. These statements within the letter (adduced as part of the appellant's own submissions) are not only fatal to the appellant's case, but they are wholly incompatible with the contents of the sworn affidavit (18 February 2021) which says:

"*The land and buildings have been used continuously for the storage of commercial equipment and materials related to the food and beverage industry and which are stored wholly in connection with my business Speedrite International Ltd, for non-agricultural use, since May 2007 through to the current day* [my emphasis]*"*

It is well-established case law[4] (mentioned in the appellant's case submissions) that the appellant's version of events should be supported by evidence which is sufficiently precise and unambiguous. This direct conflict between key pieces of the appellant's evidence renders it ambiguous when taken as a whole. It is not therefore sufficiently precise and unambiguous in demonstrating continuous use throughout the relevant period to the required standard of proof.

The conflict is not explained away by the appellant's letter of 'clarification' dated 6 July 2021 some years later following the Council's refusal of a Lawful Development Certificate (Ref EPF/0478/21 CLD): it is clear from the affidavit and live evidence he gave at the inquiry that the appellant connected his storage of commercial equipment and materials on the site with carrying out a business on the land, and I have no good reason to find he misunderstood – as a self-stated businessman of some years – what was being asked of him by Mr Cullen in 2014. Indeed, it is clear from Mr Cullen's email of 2 September 2014 in reply to the appellant's letter that his clear understanding of the site visit was that he was told the site was for domestic use with a floristry hobby – consistent with the content of the appellant's 27 August 2014 letter.

13. The appellant argues that Mr Cullen must have found a material change of use of land on his site visit because he required the appellant to remove stored items – however, the evidence does not support that assertion. Mr Cullen clearly did not require anything on the site visit as his email referred to an initial assessment "that everything was ok". The email he sent in response to the appellant's letter after the site visit simply advised the appellant to contact him in due course so as to confirm what would be remaining on site (following the self-initiated "process of clearing the site" referred to by the appellant). He did not require works to remedy an identified breach of planning control, and the fact that he did not apparently contact the appellant further or conduct a further site visit indicates he did not consider that one was taking place.

[4] Gabbitas v SSE & Newham LBC [1985] JPL 630

14. Mr Gordon's May 2015 site visit only partially assists my decision. He gave evidence that he only looked into one small building (used by the appellant's wife for the floristry hobby subject to the earlier communications) and did not look into others. Apart from viewing inside that one building, he did not enter the land beyond the access track and yard, and told the inquiry that during those movements he could not see land to the other side of the yard to the east (Area C in the appellant's affidavit drawing). He did not revisit the site. The fact that he did not do so was explained by his evidence at the inquiry: there was nothing he saw that alarmed him as to a breach of planning control. Notwithstanding therefore that he did not inspect the whole site, his observations and conclusions are consistent in that respect with Mr Cullen's.

15. Notwithstanding what the appellant has said about the lack of need to keep older documents for accountancy and taxation purposes, the invoices submitted are sparse and separated in some cases by large gaps in time. Notably there is a substantial gap between the Gammonds Transport Limited invoice in 2010 and the Octain Limited Invoice in 2015 (followed by the WB Services UK Ltd invoice a while later). Further, none of these documents refer to storage upon the land but simply deliveries made. I therefore give them limited weight, as I do the 2014 documents surrounding the Tesco wind turbine removal contract which provides no evidence of its storage upon the land (whole or part). Significantly, of course, this is the same year in which Mr Cullen visited the site and in which the appellant confirmed verbally and in writing that there was no carrying on of a business and that stored items were associated with the building and fencing-off of his property. The invoices from 2018 are more persuasive of a material change of use taking place with "storage of tanks and associated plant" made explicit for the first time in the Camden Town Brewing Company invoice dated 30 December 2018 (marked by another substantial gap in time following the earlier invoices). However, this does not demonstrate continuous use over the required period.

16. Therefore, for all of the above reasons, the appellant has not demonstrated with precise and unambiguous evidence to the standard of the balance of probabilities that at the time the notice was issued the B8 use constituting the breach of planning control had occurred continuously for a period of at least 10 years. Accordingly, at the time the notice was issued, the time for enforcement action had not expired.

Conclusion

17. For the reasons given above I consider that the appeal should not succeed.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Mr Joe Henry

He called

Mr Antony Ashall
Mr Joe Henry

FOR THE LOCAL PLANNING AUTHORITY: Mr Mark Davies

He called

Mr James Gordon

INTERESTED PERSONS: None