



Appeal Decision

Site visit made on 5 January 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2023

Appeal Ref: APP/P0240/C/21/3287338

Land adjacent to Fairground Site, Mill Lane, Biggleswade, Bedfordshire, SG18 8AZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr James Harris against an enforcement notice issued by Central Bedfordshire Council.
 - The notice was issued on 22 October 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use from agricultural land to the mixed use of storage of fairground equipment, motor vehicles, trailers, caravans, miscellaneous storage of various fairground paraphernalia and the siting of caravans for residential use and general industrial use.
 - The requirements of the notice are to:
 - i) Cease the use of the land for the storage of fairground equipment, motor vehicles, trailers, caravans and miscellaneous fairground paraphernalia and the siting of caravans for residential use and general industrial use and return the Land to agricultural use.
 - ii) Remove from the Land all items associated with the use of the Land for the storage of fairground equipment, motor vehicles, trailers, caravans and miscellaneous fairground paraphernalia.
 - iii) Remove from the Land all caravans associated with the residential use and general industrial use.
 - iv) Restore the Land to its former condition.
 - The period for compliance with the requirements is: 12 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (b), (d) 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. It is directed that the enforcement notice is corrected by:
 - By the deletion of the plan attached to the notice and its substitution with the plan annexed to this decision;
 - In section 2 (The land to which the notice relates), deletion of the words "edged in red on the Plan A attached" and their substitution with "hatched on the plan attached";
 - In section 3 (The matters which appear to constitute the breach of planning control), deletion of the words "and general industrial use"; and
 - In section 5 (What you are required to do), in both subsections (i) and (iii), deletion of the words "and general industrial use".

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

Applications for costs

3. An application for costs was made by Mr James Harris against Central Bedfordshire Council. This application is the subject of a separate Decision.

Preliminary Matters

4. The appeal site is a parcel of land close to but within the rural surroundings of the built-up part of Biggleswade, accessed via Mill Lane. It is to the west of a ditch, which separates it from another travelling showpeople's site on the other side of that ditch. That adjoining site is not within the land outlined on the notice plan or subject to its requirements.
5. The notice plan includes a fenced off compound and there is no dispute between the main parties that it is owned and occupied by Anglian Water Services Ltd and used as a sewage pumping station. I will return to consider any implications of this within the appeal under ground (b) where I also consider the nature of the use and extent of the planning unit.

The Appeal on ground (b)

6. To succeed on ground (b), it is incumbent on the appellant to demonstrate that the matters which are stated in the allegation have not occurred, as a matter of fact. However, I also have a duty, where I can do so without causing injustice to the appellant or the Council, to get a notice in order where there are defects, errors or misdescriptions. My powers in that regard derive from s176(1)(a) of the Act. I will deal with various aspects of that within this ground of appeal as this is closely related to the matters pleaded by the appellant.
7. There is no dispute that the site was previously used for agriculture until the introduction of fairground equipment, motor vehicles, trailers, caravans and miscellaneous fairground paraphernalia as well as the siting of caravans for residential use. There is however a clear error in the extent of the land outlined in red on the notice at least, as I refer to above, due to the fenced off sewage pumping station compound which is not part of the use of the site as alleged. The extent of the appellant's landownership is clear from the submitted Land Registry title plan and it doesn't include the fenced off pumping station. This discrepancy was the subject of correspondence between the main parties prior to the appeal process. Reducing the extent of land shown on the plan to exclude the pumping station would not cause injustice to either the appellant or the Council. I can therefore undertake that correction by substituting a revised plan.
8. The Council did not submit an appeal statement, have not commented on the appellant's statement or evidence and so the information supporting their case is limited to the officer's report and attachments that led to the notice being issued. This includes some written descriptions of what has been seen by officers, some undated photographs as well as maps and aerial images. On the other hand, the appellant has provided a statutory declaration which details their involvement and activity on the site including dated photographs and aerial images. The appellant has also provided written, signed letters from others with a knowledge of the site. These documents have been available for public comment. They have also been available to Biggleswade Town Council

which did respond but which did not question the appellant's evidence about the nature of the use or time it has been active. I therefore have no direct evidence to dispute the appellant's version of events.

9. The appellant has described the use as being a "showman's yard comprising a mixed storage and residential use." Furthermore, they explain that the land has been used for the storage of fairground equipment that is not required during the show season. Outside of the show season they say that the land has been used for the storage of fairground equipment, vehicles and caravans and for the stationing of caravans which travelling showpeople who worked for or with them have occupied for residential purposes. In addition, the land is used to check and maintain the fairground equipment but the appellant explicitly disputes that any general industrial use has taken place across any of the land. Their descriptions seem to me to be typical of the nature of a mixed use showperson's yard with a mix of residential caravans along with the storage, maintenance and repair of fairground rides, vehicles and equipment.
10. The photographs appended to the appellant's statement corroborate what the main sworn statement describes as do the other signed letters. I have no evidence from the Council to directly show that any general industrial use is taking place such as maintenance of machinery unrelated to the showperson's site. The Council's officer report is not clear about how the conclusion was reached that there were general industrial activities beyond ancillary repairs to showperson's equipment. With respect to the mix of uses, on the balance of probabilities, I consider that reducing the scope of the allegation to remove 'general industrial use' is appropriate. Reducing the scope of the alleged use would not cause injustice to either main party and so is a correction that I can make under s176(1)(a). Consequent corrections would also be required within the requirements at section 5 of the notice.
11. The written and photographic evidence indicates that the physical extent of the mixed use has not regularly if at all extended to the well-defined grassed area along western and northern parts of the site, surrounding on those sides the central area where the use has actively taking place. The Council refer to the lack of separation within the site but they do refer to the land being mainly overgrown with weeds which I have taken to mean the land around the northern and western parts of the site defined on the notice plan. That area is overgrown and whilst I have no reason to dispute that it could be used for agriculture, the evidence does not point to any current active agricultural use. Agriculture is not part of the mix of uses alleged. The appellant suggests that the material change of use should exclude that overgrown area and a plan is provided within their statement which defines by hatching an area where they say the use is taking place and which their statements refer to as "the reduced land". The reduced land accords accurately with the extent of where I saw, at the time of my site visit, mixed use taking place. By contrast, there was no obvious sign of any active use of the overgrown area.
12. This raises the matter of whether the notice plan is correct to include all of the site in the appellant's ownership. This therefore requires consideration of what the planning unit is for the mixed use. The planning unit is a concept not defined in legislation but which has evolved as a means to determine the most appropriate physical area against which to assess the materiality of a change of use. The Council within their officer report referred to the leading case that

deals with this, that being *Burdle and Williams*¹. It was held there that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes with the concept of physical and functional separation being key to the judgement.

13. The central reduced area is not enclosed by any particular solid boundary along the northern and western side but the overgrown area is defined clearly by the nature of the dense weeds and long grass as well as the irregular surface which, when I walked around its margins is in my view a substantial impediment to the use spreading further out. The historic photographs show vegetation in a similar position in the background behind the vehicles and equipment.
14. Whilst the appellant owns the whole site, the mixed use does not as a matter of fact and degree extend into the whole area. As such, I consider that the planning unit within which the mixed use is taking place is enclosed by the drainage ditch to the east, the pumping station enclosure as well as the footpath and lane to the south, with the other sides in effect being enclosed by the rough ground with dense grass and weeds. The reduced area is a smaller part of the site owned by the appellant which clearly functions separately from what appears to be a more inert use of the land within the original boundary defined on the notice plan. As with other elements of this ground of appeal I consider that reducing the scope of the notice to refer just to the reduced area that has been occupied by the mixed-use activities can be undertaken without causing injustice to the main parties who have had discussions about this matter prior to this stage of the appeal. It does not result in any potentially new arguments by either party.
15. To sum up, I consider that the allegation is not correctly made and should also relate to a smaller area than that shown on the notice plan. However, the notice can be corrected to remove reference to general industrial use and to the reduced the area within which the mixed use is taking place.
16. The appeal on ground (b) therefore succeeds and those corrections to the notice can be undertaken without causing injustice to the Council or the appellant.

The Appeal on ground (d)

17. This ground of appeal is that at the time the notice was issued, it was too late to take enforcement action. By reason of S171B(3) of the Act, for a material change of use of land, no enforcement action could have been taken after the end of the period of 10 years beginning with the date of the breach. The onus in these matters is upon the appellant to demonstrate that the use has been continuous for 10 years, so would need to have commenced at the latest by 22 October 2011. The relevant test is on the balance of probabilities.
18. The appellant and the Council both refer to an aerial image from 2009. This shows the access through to land adjoining the pumping station and the partial discolouration and possible wear on the surface of part of the site which is now used for the mixed use. The remainder of the field appears on the image to be otherwise covered in vegetation with a rough textured surface consistent with

¹ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

how it looks now. Sometime in that year, no specific date is quoted, the Council refers in their officer report to a site visit by an officer and that the land was overgrown but with gravel beneath. On the 25 June 2009 they refer to the refusal of a Certificate of Lawful Development but no detail is given about the extent of any land that was being considered at that time. Furthermore, the material date for this appeal is significantly later than that date.

19. The appellant's version of the 2009 aerial image is annotated with an indication that there was a caravan and a lorry cab on site at that time. According to their statutory declaration, they had purchased the site in 2008 and this is corroborated by the Land Registry title document. They say that at the time of the 2009 aerial image in June 2009, the blue lorry was being stored whilst it was being repaired and the caravan was also being stored.
20. The first photograph appended to the appellant's statutory declaration is printed with a date of 5 October 2009 and shows a touring caravan close to the entrance of the site, a blue lorry cab behind it and also some fairground equipment in situ. The extent of hard or gravel surfacing distinguishing the site from the surrounding high grass is not as extensive as it is at the present time. However, this corroborates the appellant's view that the land may have at this time been used in part for storing fairground equipment and related vehicles. They also say that at this time a caravan was occupied by a member of staff who 'wintered' on the site between October 2009 and March 2010. A signed letter from a current occupant of the site states that they have 'wintered' on the site from 2009 and the 7 subsequent years. They had moved away in 2013 but returned in 2015, becoming a permanent resident since 2020 as there were no fairs during the Covid-19 pandemic.
21. According to a further signed letter, the writer has stored their simulator attractions, lorry, catering unit and touring caravan on the appeal site from 2010 to September 2018 whilst resident at the appellants nearby site to the east. After that, the writer and their family became residents of the appeal site having moved their park-home there where they live permanently, albeit also attending shows and events elsewhere for days or weeks at a time. They also continue to store equipment and vehicles related to their occupation as travelling showpeople on the site.
22. A further signatory to a letter explains that they have been storing funfair equipment at the site since the winter of 2010 and living there at the end of the show season from 2016 to 2019, then residing permanently at the site in 2020 again due to the pandemic. Another letter is written by somebody who has assisted on the site with maintenance of equipment and vehicles as well as living there over winter from 2011 to 2014.
23. Further photographic appendices to the appellant's sworn declaration indicate that the site had, by 1 October 2011 extended further into the field, containing around 4 touring caravans and a large trailer and other smaller equipment. A little later in November 2011, 4 large lorries, a trailer and a touring caravan are seen on the site on a photograph which is taken from a position further into the site than the earlier ones.
24. Although some of the testimony has not been provided in the form of sworn declarations, there is a strong body of evidence that indicates unambiguously that a use of a similar nature to what I saw, had started to operate from the site between 2009 and 2010. The Council has provided no significant evidence

to dispute what the appellant has put forward to directly question that their version of events is less than probable.

25. Although the use involved a smaller area initially, by the time of the material date the extent of the use appears to have aligned approximately to the 'reduced area' which I have considered in the appeal on ground (b). That area appears to have been used consistently for those purposes since then.
26. I consider therefore on the balance of probabilities that the use as alleged has taken place for more than 10 years prior to the issuing of the enforcement notice. The appeal on ground (d) succeeds.

Conclusion

27. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice and the plan attached to the notice are incorrect. The appeal succeeds on ground (b) to that extent. On the balance of probabilities, the appeal on ground (d) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (a) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Andy Harwood

INSPECTOR