



Appeal Decisions

Site visit made on 14 February 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2023

Appeal Refs: Appeal A APP/M1595/C/21/3278463 & Appeal B 3278464 Land at Collingwood Farm, Brentwood Road, Essex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Daniel James O'Nion (Appeal A) and Mrs A Andrews (Appeal B) against an enforcement notice issued by Thurrock Borough Council.
- The notice was issued on 7 June 2021.
- The breach of planning control as alleged in the notice is without planning permission
 - (i) The change of use of open land to B8 storage within the Metropolitan Green Belt
 - (ii) The change of use of the land to B8 Storage use on land at Collingwood Farm, Orsett, Essex (shown on the Site Plan attached outline in red).
- The requirements of the notice are to:
 - (i) The cessation of unauthorised B8 storage use of the land.
 - (ii) Remove all containers from the land (land shown on the attached plan outlined in red and hatched in green)
 - (iii) Remove from the land, any hard-standings, materials and equipment associated with the storage containers resulting from steps (i) and (ii) from the land(land shown on the attached plan outlined in red)
 - (iv) Reinstate the land to its lawful use allowing re-seeding and return to open land and its natural state undertaken.
- The period for compliance with the requirements is: 6 months after this notice takes effect, being 7th January 2022
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (d), (e), (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.
- Appeal B is proceeding on the grounds set out in section 174(2)(d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decisions

1. The enforcement notice is quashed.

Matters concerning the notice

2. The appeal site comprises part of a former quarry, which is accessed via a generally single track road. The entrance to the overall site is gated, with another set of gates (the second set of gates) roughly halfway through the site. The front part of the site, nearest the entrance, comprises lorries, trailers and other vehicles, a portacabin and a caravan. The back part of the site, beyond the second set of gates, comprises a significant number of storage containers and a number of compounds with various items, including plant and equipment. A portacabin is also located in this part of the site, which was identified as a 'Training Centre'.
3. The Council advise that large vehicles were first present at the site in 2013 and over the subsequent time, lorries and containers appear to have been present. At the time of the notice, the site is stated as hosting 50 containers. While the

- number of containers present in the site is disputed, it is agreed that storage containers have been located within the site.
4. While a storage use would require vehicles to transport the containers, most of the lorries which I saw at the site are unlikely to be used in this way. Some of the vehicles comprised only the trailers of lorries and appeared stored at the site, whereas others comprised the entire lorry and appeared parked. Looking at the aerial photographs provided by the Council, a similar situation appears to have occurred previously, with some lorries appearing complete with their cabs and others just comprising trailers.
 5. The Council has provided brief details of the planning history of the site, including enforcement. There are a number of references to 'Lorry Park' in the enforcement history of the site. I raised matters concerning the notice with the parties. The appellants advise that some lorries are parked and empty, some are being used for storage and one of the lorries is connected to the use of the containers and moves most of the shipping containers from the site to the port and vice versa. This is consistent with what I saw on site.
 6. It seems likely to me from the evidence before me and from my observations on site that the first section of the site is used for the parking of lorries and storage. Although the parking of vehicles may be ancillary to a storage use, I consider the parking of lorries is unlikely to be ancillary in this case as there did not appear to be any substantive external storage of items within the site. Storage was taking place either within the containers or within the lorries. I therefore consider the allegation should refer to the parking of lorries. I have wide powers of correction, subject to there being no injustice to either party and shall go on to consider whether the notice can be corrected.
 7. I saw that there is a caravan within the site, which appears to be present in aerial photographs going back to 2013. A letter dated 24 May 2016 from the Council to Mrs Andrews makes reference to the stationing of a mobile home, however, it does not indicate what the use of the mobile home was. I was unable to access the caravan during my visit, nevertheless, I was able to peer through the windows and see that it was being used in some way.
 8. I also saw that there are two portacabins at the site, the first one is near the entrance to the site and appears visible on aerial photographs provided by the Council going back to 2013. Business Rates documentation going back to 2013 indicate that a portable building was present within the site. The second is located behind the storage area and is not evident on the aerial photographs.
 9. It seems unlikely that the second portacabin was present on site when the enforcement notice was issued, however, from the evidence provided, I consider it highly likely that the portacabin near the entrance was present at the time the notice was issued. The portacabin is of sufficient size to be of significance in terms of its visual impact and is likely to have remained in place for sufficient time to have the quality of permanence. Thus, I consider that given its size and permanence, as a matter of fact and degree, the portacabin is a building for the purposes of the Act.
 10. The notice does not allege operational development, nevertheless, it is a well established principle that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the material change of use, the notice may require that the ancillary works are removed in

order that the site is restored to its previous condition and the breach remedied.

11. As pointed out by the appellants, there is no requirement to remove the lorries, nor is there any requirement to remove the portacabin or caravan. Although requirement (iii) requires the removal of materials and equipment, it is only materials and equipment associated with the storage containers which would need to be removed. From the evidence provided, it appears that the storage and parking of lorries is not in association with the storage of the containers. In my view, this would not include the lorries, portacabin or caravan.
12. Section 173(11) states that where an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and all the requirements of the notice have been complied with, then so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of buildings or works, or as the case may be, the carrying out of the activities.
13. It is clear from the evidence that the Council is concerned with the presence of lorries within the site. Indeed, the Council advise that 'if the site were not used for the purpose that is the subject of this appeal, there is no basis to conclude that the site would need to be accessed by lorries, trailers or other vehicles'. I have considered whether it would be possible to correct the notice to include a requirement to require the removal of the lorries, portacabin and caravan, however, this would make the notice more onerous to comply with and would therefore cause injustice to the appellants.
14. Given the above, I consider the enforcement notice is invalid beyond correction and should be quashed.

Conclusion

15. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the steps required for compliance. It is not open to me to correct the errors 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.
16. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (d), (f) and (g) 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.

M Savage

INSPECTOR