



Appeal Decision

Site visit made on 31 January 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 May 2023

Appeal Ref: APP/Y3615/C/21/3267984

Land on the West side of Horsley Road, Ockham also known as Brick Kiln Farm & Brick Kiln Copse, Old Lane, Cobham, KT11 1NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Dennis Read (Hawksview Investments Limited) against an enforcement notice issued by Guildford Borough Council.
 - The notice, numbered EN/20/00332, was issued on 18 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the land from a nil use to the use of the land for residential purposes through the stationing of caravans, the position of which is approximately marked with a "X" on the attached Plan B.
 - The requirements of the notice are to:
 - i) Cease the residential use of the Land.
 - ii) Permanently remove from the Land the caravans, toilet block and all paraphernalia brought onto the land to facilitate the residential use.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (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. The enforcement notice is quashed.

Applications for costs

2. An application for costs was made by Guildford Borough Council against the appellant. That application is the subject of a separate decision.

Reasons

3. The breach of planning control as alleged in the notice is a material change of use of the land from a nil use to the use of the land for residential purposes through the stationing of caravans, the position of which is approximately marked with a "X" on attached Plan B. However, the land to which the enforcement notice relates encompasses a much wider area, edged red on Plan A attached to it.
4. I saw only one caravan at the time of my site visit but that doesn't mean there wasn't another in place when the enforcement notice was issued. It is positioned alongside a hardstanding, to the north of an agricultural type building which the Council state is used for car repairs and by a carpenter. The appellant states that it is used for Class B8 storage.

5. A portacabin is positioned in front of that building and a number of storage containers are located within its general environs, along with various paraphernalia and parked cars. The wider, cleared area is used for recycling purposes where the appellant states imported green waste is composted and blended with imported excavated waste to produce manufactured topsoil. Crushing is also undertaken, to produce aggregate. At the time of my site visit I saw that the area accommodated various items of plant, commercial scale skips and HGV vehicles, commensurate with such a use, within an expanse of bare land interspersed with piles of materials.
6. That recycling use was evidently active at time the enforcement notice was issued as both parties refer to another enforcement notice which was issued on 25 September 2020 by Surrey County Council alleging:

Without planning permission, and within the Metropolitan Green Belt, a material change of use of land to a mixed use comprising a soil and aggregate treatment facility involving the importation, deposit, storage and processing (sorting, separation, screening, crushing) of inert waste and non-hazardous waste material for recovery and sale as soil, soil substitute, hardcore, and recycled aggregate; the parking of vehicles and storage of plant and machinery, and the siting of waste containers associated with the recovery and sale of soil, soil substitute, hardcore, and recycled aggregate; the siting of concrete blocks, a timber sentry post, a large green structure for office and welfare purposes with related green concrete base and protective rail and block barrier and associated operational development comprising the creation of soil bunds; and the erection of two metal gates all to facilitate the recovery and sale of soil, soil substitute, hardcore, and recycled aggregate, all within the area hatched black on the Plan.

7. An appeal against that enforcement notice was dismissed on 4 August 2022¹. As a result, there's another enforcement notice in effect which requires cessation of the soil and aggregate treatment facility use, with various compliance periods running until the autumn. I therefore offered the parties opportunity to comment on that decision if they felt it to have a bearing on their case. The appellant confirmed that he had no comments to add. No response was received from the Council.
8. All of the uses referred to above fall within the land to which the enforcement notice relates, within which I am unable to identify a separate residential planning unit. Therefore, when the notice was issued the land was in mixed use comprising, as a minimum, residential use through the stationing of caravan(s) and for a soil and aggregate treatment facility. There are also the additional uses within the agricultural building for which there is no agreed position.
9. In the circumstances, the allegation should refer to all primary components of the mixed use, even if only one is required to cease. Case law² has established that where there is a mixed use it is not open to the Council to decouple elements of it; the use is a single mixed use with all its component activities.
10. Nevertheless, it is open to me to correct the enforcement notice under the powers transferred to me by s176(1) of the 1990 Act, if I am satisfied that doing so will cause no injustice to the appellant or the Council.

¹ Appeal Ref: APP/B3600/C/20/3262645

² *R (oao) East Sussex CC v SSCLG* [2009] EWHC 3841 (Admin)

11. In this case, if I were to correct the allegation to include the use for soil and aggregate treatment facility and all of the other matters alleged in the other enforcement notice, unconditional planning permission could be granted for the same under s173(11) of the 1990 Act³. Clearly that course of action would cause injustice to the Council.
12. Correcting the allegation in that way and adding requirements to cease the soil and aggregate treatment facility use and the other aspects described in the other notice would overcome that problem and may not result in injustice to the appellant, as the other notice already requires cessation of the same.
13. However, the other notice is complex with numerous requirements and periods for compliance. Unless I varied the appeal enforcement notice to mirror the requirements of that other notice, there could be injustice to either party. Moreover, doing so would result in a wholesale re-drafting of the notice before me. In that context I am mindful that the Parish Council has made representation to the appeal and a notice corrected in the manner explained would be significantly different from that which people were invited to comment on. Furthermore, as the period of compliance with the other notice is ongoing, I am unaware of any requirements which may or may not have been complied with.
14. There is also the additional complication relating to the use(s) of the agricultural style building, with the parties referring to differing activities. In that regard, I do not have the necessary information to correct the notice with an appropriate degree of precision.
15. Although the Courts interpret the power to correct notices very widely, for the reasons explained, it is likely that injustice would be caused if I were to make the significant corrections necessary.

Conclusion

16. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control.
17. It is not open to me to correct the error 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.
18. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (d) and (g) 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 does not fall to be considered.

Richard S Jones

INSPECTOR

³ S173 of the 1990 Act provides that where an enforcement notice in respect of any breach of planning control could have required 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 s73A in respect of development consisting of the carrying out of the activities.