
Appeal Decisions

Site visit made on 23 May 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2023

Appeal A Ref: APP/A4710/C/22/3300774

Appeal B Ref: APP/A4710/C/22/3300775

Land South of Farrar House, Haigh Lane, Salterhebble, Halifax HX3 9FN

- 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 C Turner (Appeal A) and Ms V Neill (Appeal B) against an enforcement notice issued by Calderdale Metropolitan Borough Council.
 - The enforcement notice was issued on 12 May 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 as (1) a landscape/builders merchants with small plant nursery and garden centre (including screen soils), (2) use for the importation and storage of waste, (3) use for storage of containers and (4) for a residential use.
 - The requirements of the notice are:
 - (i) Cease the use of the Land as a landscape/builders merchants with small plant nursery and garden centre (including screen soils)
 - (ii) Cease the use of the Land for the importation and storage of waste;
 - (iii) Cease the use of the Land for the storage of containers
 - (iv) Cease the use of the Land for a residential use
 - (v) Remove all waste materials being stored on the Land
 - (vi) Remove all the containers from the Land.
 - The period for compliance with the requirements is 3(three) months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) (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 as amended.
 - Appeal B is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. The enforcement notice is quashed.

Appeal B

2. The enforcement notice is quashed.

The Notice

3. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause

injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.

4. The breach of planning control relates to *'the material change of use of the Land to a mixed use as (1) a landscape/builders merchants with small plant nursery and garden centre (including screen soils), (2) use for the importation and storage of waste, (3) use for storage of containers and (4) for a residential use.'*
5. The 'Land' shown on plan EN1, that is attached to the notice, relates to a relatively large area. The evidence before me, and my observations at the site visit, indicate that this area of land contains woodland, two storage containers, one of which has been modified and in residential use, the other used for storage. In addition, a variety of waste and other materials are being stored on the land. It is understood that the appellant operates a waste removal business and uses some waste exemptions on site to accept reusable products to sell/donate alongside landscape material. Some waste timber is recovered for resale/reuse and soils are screened. The appellant has indicated his future plans are to operate a live/work business with small-scale sales of landscape and buildings supplies, topsoil, compost, sand and aggregates with a possible expansion into soft landscaping. Currently the only evidence of that landscape business is a soil screener on the site and a few trays of seed saplings.
6. The notice alleges that the mixed use includes use for storage of containers and a residential use. However, from the evidence available containers are not being stored on the site. A container has been brought onto the land for storage use, and in the case of the second container it has been modified for a residential use. In addition, it appears that since the notice was issued, the container which is in use for residential purposes has been extended to provide a shower room and toilet.
7. The Council consider that on reflection the alleged breach is not correct and that the container in use for residential purposes may be operational development. They have suggested that there would be no injustice to the appellant if the notice were to be corrected to allege: *'1. Without planning permission, the material change of use of the Land to a mixed use as (1) a landscape/builder's merchants with small plant nursery and garden centre (including screen soils), (2) use for the importation and storage of waste, (3) the siting of a container used for storage purposes; 2. Without planning permission, the erection on the Land of a building (container) in use for residential purposes.'*
8. In response the appellants have stated that the existing plants on the site are being grown for their own personal pleasure and although they may develop a small nursery in the future, the Land has not been in use as a garden centre or small plant nursery. In hindsight they claim an appeal on ground (b) should have been made. Moreover, the appellants consider that the Council's view on whether the containers are operational development, or a use of land, is inconsistent and that to correct the notice would result in injustice to them.
9. I am mindful that an appeal has not been made on ground (b) in relation to the alleged plant nursery and garden centre use. Nevertheless, the notice in so far as it relates to the containers on the site is unclear. I acknowledge that a correction from a material change of use to operational development would

have no impact, in this case, in relation to a potential ground (d) appeal. Nonetheless, if I corrected the notice by changing the alleged breach from a material change of use to a material change of use and operational development, whether that be in relation to one of the containers or both of them, there would be injustice caused to the appellants. This is because they would not have had the opportunity to respond to that correction in a ground (b) appeal.

10. Furthermore, the deemed planning application is derived from the alleged breach. Consequently, if the notice were to be corrected to include operational development, the appellant's submissions in relation to the ground (a) appeal may be different and he has not have had an opportunity to respond. On the other, my decision to quash the notice leaves open to the Council the option of issuing a further, corrected notice, under the provisions of section 171B (4) of the 1990 Act, should it wish to do so.

Conclusion

11. For the reasons given above I conclude that the notice is defective. It is not open to me to correct the notice in accordance with my powers under section 176(1)(a) of the 1990 Act since injustice would be caused were I to do so. Consequently, the notice is invalid, and I will quash the notice. In these circumstances, the Appeal A under grounds (a) (f) and (g) and Appeal B on grounds (f) and (g) as set out in section 174(2) of the 1990 Act do not fall to be considered.

Elizabeth Pleasant

INSPECTOR