



Appeal Decision

Site visit made on 18 July 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 August 2023

Appeal Ref: APP/C3240/C/22/3309620

The Woodlands Workshop, Wrens Nest Lane, Ketley, Telford TF1 5HL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Perry (Pez Concrete Ltd) against an enforcement notice issued by Telford and Wrekin Council.
- The notice, numbered ENF/2020/0686, was issued on 28 September 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from a mixed use of haulage yard, commercial garage, builders yard and the storage of plant/machinery, to a mixed use of the storage and distribution of aggregates in connection with concrete business, the siting of 2no concrete silos, the storage and hire of plant and machinery, the siting of a mobile home use for residential purposes and for ancillary security purposes, and residential use.
- The requirements of the notice are:
 1. Cease the use of the land for the storage and distribution of aggregates in connection with the concrete pumping business
 2. Permanently remove from the land all vehicles, aggregate, plant, materials and any other items associated with the concrete pumping business
 3. Permanently remove from the land the 2no concrete silos
 4. Permanently remove from the land the mobile home used for residential and ancillary security purposes.
- The period for compliance with the requirements is: three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the Enforcement Notice is corrected by:

In section 1 – The reference to the relevant section of the Act is extended to refer to section 171A(1) (a).

In section 3 – THE BREACH OF PLANNING CONTROL ALLEGED, the paragraph is deleted and replaced with: Without planning permission, the material change of use of the land from a mixed use of haulage yard, commercial garage, builders yard, the storage of plant/machinery and residential, to a mixed use of the storage and distribution of aggregates in connection with concrete business, the siting of 2no concrete silos, the storage and hire of plant and machinery, the siting of a mobile home used for residential purposes and for ancillary security purposes, and residential use.

In section 5 - WHAT YOU ARE REQUIRED TO DO, in steps (2), (3) and (4) the word 'Permanently' is removed.

The plan attached to the Notice is substituted with the plan attached to this Decision which shows a reduced site area.

2. The appeal is dismissed, and the enforcement notice is upheld with corrections.

Application for costs

3. An application for costs was made by Mr Jonathan Perry (Pez Concrete Ltd) against Telford and Wrekin Council. This application is the subject of a separate Decision.

The Notice

4. I have inserted the sub-paragraph reference of s171A(1) of the Town and Country Planning Act 1990 as amended (the Act) to clarify the nature of the alleged breach of planning controls. The development falls within the scope of sub-paragraph (a) - carrying out development without planning permission.
5. The reference in the Notice to the former mix of uses taking place on the planning unit omitted the residential use of a dwelling located on the Land. I have included it for reasons of precision.
6. The plan attached to the Notice includes a shared track leading up to the site. The track also serves several other properties in the vicinity. According to the appellant, this is not within his ownership, and it lies outside of the gated access into the site. Whilst the site uses rely upon it for access to the highway network, it does not form part of the relevant planning unit. As no ground (a) appeal is made its inclusion is unnecessary. Accordingly, I have substituted the Notice plan to reflect the planning unit where the alleged uses were taking place. As a reduction in the relevant site area, I find no injustice would be caused to any party as a consequence.
7. In section 5, the word 'Permanently' is superfluous. The requirements of the Notice remain in effect on the land regardless.

The appeal on ground (b)

8. The ground (b) appeal claims that the matter alleged in the Notice has not occurred. The burden of providing relevant facts in this appeal rests with the appellant, and the test of the evidence is the balance of probability. To succeed on ground (b) the appellant must prove that the use of the land identified in the notice had not changed to include a cement pumping business and the siting of a caravan for residential and security purposes.
9. There is no dispute between the main parties that the site was used in association with a concrete pumping business for some time prior to the end of 2021. A sworn statement provided by the appellant indicates that commercial use of the site in conjunction with the cement business ceased in December 2021. Whilst this is at odds with an earlier statement by the appellant suggesting that the use ceased in February 2022, it is qualified that commercial operations were relocated to a site elsewhere around that time.
10. However, the appellant subsequently confirmed that the use of the Land was 'winding-down' after this time and progressively being disassembled during 2022. This is consistent with photographs of the site taken by the Council, in April, June and on 14 September 2022. The images indicate that the storage of aggregates was reducing, and a remaining silo was removed. However, several vehicles associated with concrete mixing, pumping or delivery remained present on the site at that time.

11. I note the appellant's contention that these were vehicles being used in association with the construction of a new dwelling on the land. However, this conflicts with the statement made by the Council in its email to the appellant's representative, dated 20 September 2022. It states that no building operations were apparent on the site. Elsewhere, the appellant asserts that the vehicles were awaiting works and/or road tax before their removal from the site. However, there is little substantive evidence to support those claims.
12. Third-party evidence from various dates in October and November 2022, as provided by the Council, is not sufficiently clear to attract significant weight in the appeal.
13. Whilst I have little doubt that during 2022 deliveries of aggregate were taking place to a site at Horsehay such that the majority of the cement business activity was focussed elsewhere, the continued presence of several vehicles used in association with those business operations leads me to the conclusion that residual activities in association with that use remained on the appeal site. Accordingly, I find that it was more likely than not that the allegation of the site's use in association with the concrete business was taking place when the Notice was served, albeit at a more limited level than previously.
14. There is no dispute between the main parties that, at the time of service of the Notice, a caravan was present on the site. According to the appellant, this is occupied by his son on a residential basis and, alongside occupancy of the dwelling at Ray Bow, provides a degree of site security. As this is one of the alleged breaches specified in the Notice and there is little substantive evidence to indicate an alternative use when the Notice was served, I find the allegation in this regard has occurred.
15. For the above reasons, the appeal on ground (b) fails.

The appeal on ground (c)

16. The appeal on this ground is that the matters alleged in the Notice do not constitute a breach of planning controls. The appellant asserts that, at the relevant date, the occupier of the caravan was involved in the construction of a new dwelling on the site such that the siting of the caravan benefitted from provisions in the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GDPO) and the Caravan Sites and Control of Development Act 1960.
17. Class A of Part 5 of the GDPO permits the use of land as a caravan site in the circumstances set out in paragraphs 2 to 10 of Schedule 1 of the 1960 Act. Para.9 of Schedule 1 states: 'a site licence shall not be required for the use as a caravan site of land which forms part of, or adjoins, land on which building or engineering operations are being carried out (being operations for the carrying out of which permission under Part III of the Act of 1947 has, if required, been granted) if that use is for the accommodation of a person or persons employed in connection with the said operations'.
18. There is some disagreement between the main parties as to the status of planning permission Ref. TWC/2018/0814 for the 'demolition of existing workshop and erection of 3no. dwellings and 1no. garage' on the Land. The substantive evidence in this regard is limited such that I am unable to conclude with any certainty as to the status of that permission. Nevertheless, as there is

no dispute between the parties that the caravan has been stationed on the site for some time and the Council's photographs of 23 August 2021 show the caravan in place, this was at a time that the appellant accepts that the site was partly in use in conjunction with the concrete business. It also preceded any claimed start of the planning permission.

19. The GPDO does not grant retrospective planning permission and development is only permitted if it met all of the relevant conditions and limitations when it was implemented. It therefore cannot be that the earlier siting of the caravan for residential purposes could have met the requirement in Paragraph A.2. of Class A of Part 5 of the GPDO. Furthermore, the evidence provided by the appellant indicates that its primary purpose as residential accommodation was for a person involved in the operation of the concrete mixing business.
20. Moreover, even if it was in use on the relevant date for purposes incidental to other mixed uses taking place on the site, further to my finding on the ground (b) appeal, this was in conjunction with the unauthorised use of the site. This would conflict with Para.9 of Schedule 1 of the 1960 Act. Therefore, on the balance of probabilities, the siting of the caravan on the land for residential and security purposes does not benefit from the provisions of the GDPO. It is therefore also development requiring planning permission by virtue of s55 and s57 of the Act.
21. Accordingly, the ground (c) appeal fails as the mix of uses taking place on the site is deemed to have materially changed without planning permission.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

R Hitchcock

INSPECTOR



Plan

This is the plan referred to in my decision dated: 02 August 2023

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**Land at: The Woodlands Workshop, Wrens Nest Lane, Ketley, Telford
TF1 5HL**

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Scale: not to scale

