



Appeal Decision

Site visit made on 15 August 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2023

Appeal Ref: APP/J1525/C/22/3292155

Evergreen Garden Supplies, Mott Street, Waltham Abbey E4 7RW

- 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 Evergreen Garden Supplies against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice was issued on 20 December 2021.
 - The breach of planning control as alleged in the notice is without planning permission, a material change of use to a mixed use comprising a horticultural plant nursery and the storage and distribution of wholesale landscaping supplies and material, and the laying of an area of hardstanding.
 - The requirements of the notice are
 1. Cease the use of the land for the storage and distribution of landscaping supplies.
 2. Remove the hard standing and storage bays in the area hatched black on the plan attached to the notice.
 3. Remove all shipping containers from the land.
 4. Remove all materials associated with wholesale landscaping supplies from the site.
 5. Remove the hard standing in the area cross hatched on the plan attached to the notice.
 6. Remove all resulting debris from the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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Decision

1. The enforcement notice is quashed.

The Notice

2. Within the Council's Statements of Case, it is proposed to "amend" the allegation and vary the requirements of the notice "in the interests of clarity and following the receipt of the appellant's Statement of Case". It is proposed to change the allegation from:

"Without planning permission, a material change of use to a mixed use comprising a horticultural plant nursery and the storage and distribution of wholesale landscaping supplies and material, and the laying of an area of hard standing." to

"a) Without planning permission, a material change of use from a horticultural plant nursery to the mixed use of the land as a plant nursery and for the import, storage and distribution of wholesale/retail landscaping supplies, materials and plants.

- b) Without planning permission, the laying of an area of hard standing.”
3. The appellant objects and finds the amendments to be significant. In particular, it is stated that they fail to take into account the activities carried out by J and P Plants, who have used the site since 2009. The Council appear to accept that there has been a mixed use in the past, having regard to their comments in paragraph 10 of their Statement of Case but do not address the use by J and P Plants.
 4. Where there is an allegation of a mixed use, all the uses on the planning unit at the time when the notice is issued should be referred to in the allegation, even if only one element is subject to the notice. It appears the Council did not serve a Planning Contravention Notice and therefore my understanding of the history of the use is derived from both party's Statements of Case, which I set out below and from what I saw at my site visit.

Site history and observations on the use(s)

5. Both parties state that the site has a long horticultural use. The incomplete¹ statutory declaration from Mr Pritchard states that Pritchard's Nursery were the sole occupiers of the site from the 1920's until 2009. They grew plants from seed, bought in plants to grow on, as well as fully grown plants including trees and shrubs, all for mainly wholesale. As part of that primary horticultural use, there was also an ancillary retail use selling plants and horticultural items such as soils, compost, plant pots and baskets to the public. Not all the glasshouses were used for growing, some were used as holding bays and display areas.
6. In 2009 Mr Pritchard permitted J and P Plants to also operate from the site. They are plant wholesalers and they have stated 90% of what they sell such as plants, shrubs, seasonal bulbs and hanging baskets, is bought in. They have occupied in their time various glasshouses around the site for the storage of goods and in addition, the remaining 10% of what is sold, such as tomatoes, is grown on site. They also sell ancillary horticultural items such as plant pots, bark and turf. They used to share the main access into the site from Mott Street to the south but, at some point, this changed, so now they use a different access shared with Sewardstone Nursery (occupying land to the north of the appeal site) that runs along the western side of the appeal site (the western access).
7. The appellant describes the activities carried out by J and P Plants as falling within Use Class B8, which is use for storage or as a distribution centre. At the site visit I saw that J and P Plants are now using the northwest corner glasshouse for the storage of plants and ancillary items. A small area is also currently used for growing cucumbers. J and P Plants use the western access to take their goods to market for sale and their vans are parked adjacent to their glasshouse. Whether their activities can be described as a separate B8 use depends on the planning unit and unless it can be shown that they occupy their own planning unit, it appears that their activities are part of a mixed use taking place on site.
8. Pritchard's Nursery closed in 2013. J and P Plants remained on site but did not take over the whole of the site. In November 2018 Evergreen Garden Supplies (EGS) leased the site. I find that prior to the arrival of EGS it appears that the

¹ It is undated, there is no title plan and there are no details of the declaration.

site comprised one planning unit having had a mixed use for the following activities:

- growing of plants from seed and buying in plants to grow on (horticulture);
- the wholesale of these plant products together with associated horticultural items;
- storing and distributing plants and associated horticultural items; and
- ancillary sale of plants to the public with associated horticultural items.

9. After November 2018 it appears that there was a new mixed use within the same planning unit comprising the following activities:

- growing of plants from seed and buying in plants to grow on (horticulture);
- the wholesale of these plant products and other plants bought into and stored on the site together with associated horticultural items;
- wholesale of hard landscaping materials; and
- storing and distributing plants and associated horticultural items.

Reasons

10. I find having regard to what I have set out above that the allegation as originally drafted is incorrect as it does not state all the activities taking place in the mixed-use. I also find that the proposed amended allegation is incorrect. Sometimes when specifying a material change of use it is not necessary to set out the "before" situation prior to the existing use but where it is stated, it ought to be correct, insofar as the enforcement investigation has ascertained. In this case there is an inconsistency as the amended allegation states the existing use was horticulture but the Council's Statement of Case accepts that there was a previous mixed-use. Notwithstanding this, the proposed amended allegation fails to state all the activities taking place in the mixed-use.
11. When the site was occupied by Pritchards and J and P Plants, each had their own primary uses with different ancillary uses. This appears to have changed after 2018 when the appellant occupied the site. Their activities appeared to amount to a different mix of primary uses with ancillary uses added to the primary activities carried out by J and P Plants.
12. Before moving on to whether I should exercise my powers of correction under section 176(1) of the 1990 Act it is also necessary to consider the second part of the allegation. This is stated as the "laying of an area of hard standing" which implies there is only one new area of hard standing. However, the requirements of the notice refer to two areas, as well as storage bays, with reference to a plan, namely an area in the southeast corner of the site and an area in the northeast corner of the site.
13. The allegation could easily be corrected without injustice to the appellant to include both areas and expanded to include the storage bays as the appellant accepts this operational development (the storage bays) has occurred and has lodged an appeal under ground (b) in respect of the hard standings. This is not

straightforward though having regard to the requirements of the notice, which I will address shortly.

14. It is open to me to correct the material change of use allegation provided there would be no injustice to the parties. However, changing the scope of the allegation but not the requirements could cause injustice to the Council by giving rise to the prospect of planning permission being granted via section 173 for use including or comprising the additional activity or activities alleged. There could also be injustice to either party by changing their case on the grounds of appeal especially as it is not clear that J and P Plants were served with a copy of the notice.
15. Turning now to the requirements of the notice, these should follow logically on from the allegation. In the first instance, Step 1 specifies "Cease the use of the land for the storage and distribution of landscaping supplies." This is imprecise as it is not known what is meant by "landscaping supplies". The appellant sells hard landscaping materials such as block pavers, flagstones, sub-base material, sand and other similar items as well as soft landscaping supplies such as bark. "Landscaping supplies" could also encompass potentially plants and trees.
16. From the Council's submissions, it is the sale of the material stored in the storage bays and from the hard standing around the storage bays that is one of their concerns but the appellant ought to be able to establish this from the four corners of the notice.² As currently drafted there is uncertainty³ and, furthermore, there is the potential for injustice if I were to vary the notice as this may capture the activities carried out by J and P Plants.
17. Moving on to the hard standings and storage bays, it is not clear whether at the time the notice was issued, the storage bays for the loose hard materials, such as sand, were in the southeast corner or the northeast corner. The notice requires their removal from the southeast corner but at the site visit I saw they were in the northeast corner. From the submissions there is evidence that during the enforcement investigation the appellant tried to resolve matters by moving the storage bays to the northeast corner but it is not known when this occurred.
18. If I were to vary the requirements to correct this situation, there is a risk of injustice to the appellant. Currently they could argue that the notice has been partially complied with if the storage bays were in the southeast corner when the notice was issued. However, if I were to specify their removal from the northeast corner, that would, in effect, result in widening the scope of the allegation.
19. The third step is to remove all shipping containers from the land but this requirement is not clarified by reference to a plan. From the Council's submissions they were concerned about a number of containers stacked near the Mott Street entrance to the site. At my site visit I saw that these had all been removed bar one. However, during my inspection of the rest of the site, I saw other, apparently older, containers sited around the glasshouses. It is not clear whether these were also being attacked by the notice. To clarify step 3

² Miller-Mead v MHL [1963] 2 WLR 225

³ Payne v NAW & Caerphilly CBC [2006] EWHC 597

further could lead to injustice to the appellant in terms of their choice of grounds of appeal.

20. Step 4 is also imprecise, for the reasons I have outlined above, as it is not known what is meant by "materials associated with wholesale landscaping supplies".

Conclusion

21. For the reasons given above, I conclude that the notice does not specify with sufficient clarity the alleged breaches of planning control and the steps required for compliance. Furthermore, it is unclear to me how the notice could be corrected and varied without resulting in injustice to any party. As such, I am unable to correct the notice in accordance with my powers under section 176(1)(a) of the 1990 Act. The notice is invalid and will be quashed.
22. In these circumstances, the appeal on grounds (a), (b), (c), (f) and (g) set out in section 174(2) of the 1990 Act and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

D Fleming

INSPECTOR