



Appeal Decisions

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 1ST NOVEMBER 2023

Appeal A Ref: APP/N4720/C/22/3313556

Appeal B Ref: APP/N4720/C/22/3313557

Land at Wakefield Road, Oulton, Leeds, LS26

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeals A & B are made by Mr Robert Knowles and Mr Robert Ward respectively against an enforcement notice issued by Leeds City Council.
 - The notice, numbered 22/00124/UCU3, was issued on 22 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of land for driving of all motor vehicles / 4x4 / motorsport activities.
 - The requirements of the notice are: (1) Cease the use of land for the driving of all motor vehicles / 4x4 / motorsport activities; (2) Permanently eradicate from the land the various tracks, including mounds of soil; (3) Permanently remove from the site all items and debris associated with the use, including but not limited to, that are supporting or associated with the unauthorised motor vehicles / 4X4 / motorsports including container, tyres and advertisement banners.
 - The periods for compliance with the requirements are: Step (1) 14 days and Steps (2) and (3) 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(d), (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of 3 months and the substitution of 6 months as the time for compliance with Steps (2) & (3) of the requirements.
2. Subject to the variations, the appeals are dismissed and the enforcement notice is upheld.

Ground (d)

3. An appeal on this ground is on the basis that at the time that the notice was issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice, and it is for the appellants to prove their case on the balance of probabilities. In this case they must therefore prove that the material change of use of the land for driving of all motor vehicles/ 4x4 / motorsport activities took place and continued for a substantially uninterrupted period of 10 years prior to 22 November 2022.
4. The appellants argue that the land previously had a recreational use but that this changed to the motor vehicle activity use in around 2011/12 at the latest. They say that the use was originally more casual and became a formal and permanent change when a lease was granted in 2011 and the limited company operating from the site was formed in 2012. Their case is that works to create the tracks and mounds necessary for the use were created at that time. They

- produce some photographs taken on the site showing parts of it being used in such a way during 2012.
5. However, whilst reference is made by both main parties to aerial photographs I have only been provided with those that date back to 2015 and as such do not have any earlier photographic evidence which shows the entire site. The individual photographs other than the aerial images only show small parts of the overall land. The information regarding the use of the site provided by the appellants is not specific or detailed regarding the extent, frequency, type and nature of the use, even in terms of location within the site.
 6. Given the amount of supporting evidence from people who have used the site for activities associated with motor vehicles and sport I do accept that there has been an element of this type of use for a period in excess of 10 years. However, none of this evidence is sworn and nor does it give much in the way of detail regarding the frequency or specific elements of the use. It does not pinpoint when the material change of use occurred whether the use described is ancillary or incidental to another use at that time.
 7. The Council argue that the material change of use happened much later. They had undertaken two site visits in 2016 and 2018 when they concluded that the use of the land did not constitute a material change of use at that time. In addition they argue that the increase of complaints regarding the use of the site in around 2021 support their case that the material change of use in fact occurred more recently. It is reasonable to assume that the timing of these complaints indicate that the use of the site was increasingly affecting the nearby residents around this time.
 8. I accept that appellants' case that the extent of the physical works (including the fencing restricting access as well as the mounds and tracks created for the motor vehicle use) shown in the aerial photograph from 2015 onwards mean that the use would not necessarily be a temporary change covered by Class B, Part 4 of Schedule 2 of the General Permitted Development (Town and Country Planning) Order 2015, as it may not have been possible to revert to the 'normal use' in between specific dates. However, the lack of factual information regarding the dates of the works, level and duration of the use of the site at specified times means that it is not possible to say when any material change of use did in fact occur. Similarly, the representations made by interested third parties during the course of the appeals indicate that it is more likely than not that a material change of use has occurred, but are not detailed enough so as to identify when that happened.
 9. Whilst there has been some type of motor activity use on the site for some time, the details provided are not sufficiently precise and unambiguous so as to identify when the material change of use took place. The appellants have not proven on the balance of probabilities that the material change of use of the land for driving of all motor vehicles/ 4x4 / motorsport activities took place and continued for a substantially uninterrupted period of 10 years prior to the issue of the enforcement notice, and the appeal on ground (d) cannot therefore succeed.

Ground (g)

10. The appellants seeks additional time to comply with Steps 2 and 3 of the notice. The site is large and a considerable amount of works are required in order to comply with the notice and to remove the tracks and mounds of earth. It is therefore reasonable that the use ceases within 14 days as required in the notice but that the periods for compliance with Steps 2 and 3 are extended to 6 months to allow these works to be arranged and undertaken properly.
11. I shall therefore vary the notice prior to upholding it. The appeals on ground (g) succeed to that extent.

Zoë Franks

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/N4720/C/22/3313556	Mr Robert Knowles
Appeal B	APP/N4720/C/22/3313557	Mr Robert Ward