



Appeal Decisions

Site visit made on 6 September 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Appeal A - Ref: APP/J0405/C/22/3307598

Appeal B - Ref: APP/J0405/C/22/3307599

Land at Rick Yard Farm, Granborough Road, Hogshaw, Buckinghamshire MK18 3LB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Ian Johnson and Appeal B is made by Mr John Bitmead, against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 26 August 2022.
- The breach of planning control as alleged in the notice is without planning permission,
 - (1) The material change of use of the Land from agricultural to a mixed use of agricultural and B8 storage, and
 - (2) Operational development consisting of the erection of outbuildings.
- The requirements of the notice are to:
 - Step 1 – Permanently cease the unauthorised storage use of the Land.
 - Step 2 – Permanently remove all materials and items being stored on the Land, inclusive of, but not limited to: metal, wood, glass, plastic, vehicles, trailers, cement, bricks, hardstanding, fencing, tarmac, corrugated iron sheets, portaloo, water butts, septic tanks, petrol jerry cans, skip, cones, pallets, barrels, refrigerator, sofas, chairs, ladders, scaffolding, tables, mannequins, tarpaulin, cement mixer, piping, global truss, trailers, tyres, refuse bin, touring caravans and shipping containers.
 - Step 3 – Permanently remove (demolish) the hardstanding from the Land and ensure all materials used in its construction is removed from the Land.
 - Step 4 – Permanently remove (demolish) the outbuildings from the Land and ensure all materials used in their construction is removed from the Land.
 - Step 5 – Reinstate the Land to its appearance prior to unauthorised development which consisted of open grassland and back-fill, using soil, where required and sow the Land with grass seed.
 - Step 6 – Permanently remove any debris or materials from the Land that arise as a result of complying with Step 1, 2, 3, 4 and 5 of this Notice.
- The period for compliance with the requirements is: 5 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(b) and (d), and Appeal B is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.

Decisions

1. The appeals are allowed and the enforcement notice is quashed.

Preliminary Matters

2. An accompanied site visit was arranged, at which I was to be accompanied by representatives of both the appellant and the Council. At the visit, the Council failed to attend. As a result, I undertook the visit on an access required basis and explained to the appellant's representative that I would do so.

Appeal A - Ground (b)

3. An appeal on ground (b) is that what is alleged by the enforcement notice has not occurred. The onus is on the appellant to make their case on the balance of probabilities.
4. The Council contend that a material change of use has taken place from agricultural, to a mixed use of storage and agriculture. It states that in 2017, encroachment outside of a yard area into land to the north began and in 2021 a large amount of material began being stored at the northern extremity of the site. It is claimed that this was outside of the planning unit that existed previously and led to the creation of a new chapter in the planning history of the site.
5. I am conscious that in 2002 planning permission was granted for the retention of an access road, compacted hardcore yard and track, and retention of buildings. The plans for this development show the application site limited to the area of the track and the yard and does not encompass the remainder of the appeal site. Nonetheless, I am not convinced that the area covered by this planning permission defined the extent of the planning unit.
6. The Council's own submitted aerial photographs show that in 2009 there were some materials being stored outside of this area. This also appears to be the case in photographs dated 2017, 2018, 2020 and 2021. The Council have also referred to the case of *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This case established that the planning unit is usually the unit of occupation, unless a smaller area can be identified that is physically separate and distinct.
7. At the time of my visit, there was no physical or functional separation between the area covered by the previous planning permission and the remainder of the appeal site. I was able to walk around the entire site without any impediment. Furthermore, there was no functional distinction between the different areas of the site. Based on the evidence that has been submitted, there is nothing that convinces me that any separation existed previously that would have delineated two separate and distinct planning units.
8. In my view, since at least 2009, as a matter of fact and degree the entire appeal site has comprised a single planning unit, and the uses taking place within that unit have comprised a mix of both agriculture and storage. As a result, I do not agree that a new planning unit has been created through a material change of use of the land, or that this amounts to a new chapter in the planning history of the site.
9. The Council also contends within its appeal statement, should I be minded to find that there was a pre-existing storage use at the site, that there has been an intensification of this use which has resulted in the change in the character of the use of the land. However, as established in *Kensington and Chelsea RBC v Mia Carla Ltd* [1981] JPL 50, the matter of intensification must be contained within an enforcement notice if it is to be relied on. That is not what has been alleged in the notice in this case. The allegation within the notice is clear that it is a material change of use from agriculture to a mixed use of agriculture and storage being alleged, not an intensification of a pre-existing storage use. As such, this matter has little bearing on my decision. My findings in this respect

do not prevent the Council considering any further action in this regard that it may consider necessary.

10. For the reasons above, I find that the alleged breach, the material change of use of the Land from agricultural to a mixed use of agricultural and B8 storage, has not occurred as a matter of fact.
11. The alleged breach of planning control also refers to operational development consisting of the erection of outbuildings. The notice does not identify the number of these outbuildings or their locations within the appeal site. There is however reference within the Council's statement of case to there being seven outbuildings in situ across the land, including a large two-storey structure to the rear of the site. It is stated that six of the seven buildings were erected in approximately June 2022.
12. The Council accept that there was a single outbuilding present on the land prior to the erection of the most recent six, and that this would have been immune from enforcement action due to its presence since 2009. It is the Council's contention that, given that a new planning unit has been formed, it can seek the removal of the previously immune outbuilding also.
13. However, I have found above that a new planning unit has not been created and therefore, the outbuilding that was immune from planning enforcement action remains so. Consequently, the notice is not able to require its removal.
14. The notice simply refers to "operational development consisting of the erection of outbuildings." As I have stated, specific buildings or their locations have not been clearly identified in the Notice or on the attached plan. In my view, therefore, a reasonable interpretation of the alleged breach of planning control is that the notice refers to all buildings within the appeal site; effectively alleging they are all unauthorised and seeking their removal. As one building is immune from action through the passage of time the allegation that all buildings are unauthorised is inaccurate and therefore, the alleged breach of planning control comprising the erection of outbuildings has not occurred as a matter of fact.
15. I am unable to vary the notice to identify only those buildings which are not immune from planning enforcement action through the passage of time, because I have no evidence from the appellant or the Council of precisely where the outbuildings were located at the time the Notice was served. Furthermore, at the time of my site visit much of the site had been cleared. Therefore, I do not have sufficient evidence to appropriately vary the notice without the risk of causing injustice to parties.
16. As a consequence of this, I find that the allegation in respect of the erection of all the outbuildings within the site being unauthorised, to also not have occurred as a matter of fact.
17. Accordingly, the appeal on ground (b) succeeds and the notice will be quashed.

Conclusion

18. For the reasons given above, I conclude that the appeals should succeed on ground (b). The enforcement notice will be quashed.

19. In these circumstances, the appeals on grounds (d) and (g) do not fall to be considered.

Martin Allen

INSPECTOR