



Appeal Decisions

Site visit made on 9 May 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 11 December 2023

Appeal A Ref: APP/V1505/C/22/3305143

Willow End Farm, Approach Road, Billericay, Essex, CM11 2UT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr Mitchell Wood against an enforcement notice issued by Basildon Borough Council.
 - The notice, numbered 19/00114/UBW(N2), was issued on 13 July 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from residential to a mixed use of residential use and use in connection with the owner's steel fabrication business use class E(g) (iii).
 - The requirements of the notice are to:
 1. Cease the use of the Land for a mixed use of residential use and use in connection with the owner's steel fabrication business use class E(g)(iii)
 2. Remove the Building (as approximately shown hatched black on the Notice Plan) from the Land including all associated fixtures, fittings and waste materials therefrom.
 3. Return the Land to its former natural topography.
 - The period for compliance with the requirements is: four months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Act.
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Appeal B Ref: APP/V1505/C/22/3305144

Willow End Farm, Approach Road, Billericay, Essex, CM11 2UT

- The appeal is made under section 174 of the Act. The appeal is made by Mr Mitchell Wood against an enforcement notice issued by Basildon Borough Council.
 - The notice, numbered 19/00114/UBW(N1), was issued on 13 July 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building ("the Building" – shown edged and hatched black on the Notice plan) on the Land.
 - The requirements of the notice are to:
 1. Remove the Building (as approximately shown hatched black on the Notice Plan) from the Land including all associated fixtures, fittings and waste materials therefrom.
 2. Return the land to its former natural topography.
 - The period for compliance with the requirements is: four months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Act.
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Decision

1. Appeal A and Appeal B are dismissed and the enforcement notices are upheld.

Procedural Matter

2. Whilst Appeal A and Appeal B were submitted as separate appeals, Appeal A and Appeal B are both brought under ground (f) and (g) of the Act and they raise identical issues. Appeal A also includes an appeal under ground (b),

however, to avoid duplicity I have therefore considered the appeals and my conclusions are contained within one decision letter.

The appeal on ground (b) – Appeal A

3. To succeed on this ground the appellant must demonstrate on the balance of probabilities that the use of the land identified in the notice had not changed to a mixed use of the land for residential use and use in connection with the owner's steel fabrication business, Use Class E(g)(iii) on or before the date when the notice was issued.
4. It is the appellant's case that by reason of the building being without a roof covering and thus open to the elements, the building had not been used in connection with, or to facilitate any business use and therefore a material change of use of the land had not occurred.
5. Similarly, no plausible justification has been advanced to counter the Council's photographic evidence taken on the date of the notice being issued that shows a forklift truck, flat backed truck and the storage of materials, which appear to be predominantly metal materials including a wrought iron gate, on the land. To my mind, such items are more readily associated with the alleged mixed use than solely residential use and the appellant has failed to clarify any other reason for the presence of such items nor explain their relevance to a domestic use.
6. Nevertheless, no explanation has been provided by the appellant to explain how he had been using the land such that his activities could be construed as being ancillary to the lawful residential use of the site on the date of the notice being issued or beforehand. Within the appellants' evidence in support of ground (f), the appellant remarks that *'the building as a whole is not for domestic purposes....'* which is contradictory to the appellant's statement that a material change of use has not occurred.
7. The Council's evidence refers to an application for planning permission¹ being made by the appellant for a new workshop and storage building for Use Class E(g)(iii). A supporting statement (dated 26 February 2021) accompanying that application for planning permission sets out that that the appellant had purchased the property *'as a family home and as somewhere he could operate his steel fabrication business, with a view to relocating his business from various rented workshops and storage units onto one site, offering him a more secure and accessible workspace'*. The statement went on to set out that construction had commenced on a new steel portal frame building for use as a new workshop and storage building for his steel fabrication business and to use for fabrication of building elements like staircases, handrails and balconies. No explanation has been given by the appellant to explain the differences between the supporting evidence of the planning application and the views expressed as part of this appeal.
8. Accordingly, I conclude that the appellant's evidence is not sufficiently precise and is both inconsistent and ambiguous. There is little evidence before me to demonstrate that the site was not being used as a mixed use of residential use and use in connection with the appellant's steel fabrication business use class E(g)(iii). The appellant has failed to demonstrate on the balance of

¹ Planning Reference: 21/00532/FULL

probabilities, that as a matter of fact, the breach as alleged had not occurred. The ground (b) appeal therefore fails.

The appeal on ground (f) – Appeal A and Appeal B

9. The appeal on ground (f) is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary. The two appeals raise identical issues in respect of ground (f). Requirement 1 of the notice in Appeal A which requires the mixed use to cease is not stated to be challenged as part of the appeal under ground (f).
10. The purposes of an enforcement notice are set out in section 173(4) of the Act and are to remedy the breach of planning control (s.173(4)(a)) or to remedy injury to amenity (s.173(4)(b)). Given the extent of the steps required by the notice, namely to discontinue the unauthorised use of the land and restore the land to its condition before the breach took place, it appears to me that the notices are concerned with remedying the breach of planning control. Therefore, an appeal on ground (f) could only succeed if the appellant's proposed lesser steps would remedy the breach of planning control.
11. The appellant asserts that the permitted development rights may apply to the hard base of the unauthorised building and that there is no impact on openness of the Green Belt from the hardstanding. The Council disagrees. However, Article 3(5) of the General Permitted Development Order 2015 (GPDO) provides that the planning permission granted by the GPDO does not apply if, in the case of permission granted in connection with an existing building or an existing use, the building operations involved in the construction of that building are unlawful, or, that use is unlawful. The purpose of this provision is to prevent unlawful development from acquiring permitted development rights.
12. Furthermore, no appeal has been brought on ground (a) and an appeal on ground (f) cannot be used to consider the planning merits including the impact on openness of the Green Belt or to bring about a deemed application for an alternative development which comprises part of the unauthorised building. There is no guarantee that if submitted, a planning application or certificate of lawful existing use or development (CLEUD) would be approved by the Council. In these circumstances, the only point at issue under ground (f) is whether the requirements of the notices exceed those necessary to achieve their purpose, which in each case is to remedy the alleged breach of planning control. Whilst the description of the breach in Appeal A doesn't include any operational development, an enforcement notice that is directed at a material change of use may require the removal of works. On the evidence before me, I am satisfied that the hard base is integral to and solely for the purpose of facilitating the unauthorised use, therefore, leaving the hard base in position would not remedy the breach. In these circumstances, it is therefore appropriate that the land is restored to its condition before the change of use took place.
13. In order to remedy both breaches of planning control, it is not excessive to require the removal of the building in its entirety and the reinstatement of the land to its former natural topography. I conclude that no lesser steps would remedy the breaches of planning control that have occurred. The appeals on ground (f) therefore fail.

The appeal on ground (g) – Appeal A and Appeal B

14. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. Whilst requirement 1 of the notice in Appeal A requires the mixed use to cease, four months to cease the mixed use has not been challenged as part of the appeal under ground (g).
15. In each case, the appellant has requested a period of six months. However, references to the '*size of the task*', organisation of manpower and help, work and family life factors are all vague and no specific information has been presented to indicate that it would not be practically possible to carry out the physical operations required within a four month period. A portal framed building is relatively easy to dismantle.
16. Reference is made by the appellant to the effect on openness being reduced over time as the building is taken down. However, this matter does not amount to a reason to extend the time period for compliance and I am required to balance the circumstances of the appellant against the requirement to ensure expediency in the enforcement of the planning system.
17. The four months compliance period would be sufficient time in which to pursue an application for planning permission or a CLEUD.
18. I therefore conclude that the arguments and evidence supporting ground (g) do not indicate that the four month period for compliance is less than should reasonably be allowed. The appeals on ground (g) fail.

Other Matters

19. A number of interested parties have submitted comments, a number of which include consideration of the planning merits, however, as explained above, as deemed planning applications have not been made, those matters are not material to, nor do they alter my findings in relation to the grounds above.

Conclusion

20. For the reasons given above, I conclude that Appeal A and Appeal B should not succeed. I shall uphold the enforcement notices.

E Brownless

INSPECTOR